Help Clients Avoid Tax Missteps

By James C. Thomas III, CPA

As the most recent un-extended tax filing season comes to an end, no one in the tax-preparing portion of the CPA community needs reminding that the federal income tax system is complex. To make the system more complicated, it relies on voluntary compliance by the taxpayers. This voluntary compliance is made more complicated by the technical rules of the Internal Revenue Code that can come back to bite honest, hard working taxpayers. This bite was emphasized in a recent Tax Court case, *Durden v. Com'r.*, T.C. Memo 2012-140.

The Durdens were tripped up by the substantiation requirements for charitable contributions in amounts of $250 or more. The Durdens made $22,517 in contributions to their church during 2007. All but $317 of these contributions were made by checks in amounts larger than $250. The IRS audited the Durdens' return and denied the Durdens' charitable deduction. In response to the denial of the charitable deduction, the Durdens provided copies of cancelled checks and a letter from their church that acknowledged the contributions. The letter from their church was dated Jan. 10, 2008, which was before the April 15, 2008, due date of the Durdens' 2007 return.

The IRS rejected the acknowledgement from the church because it did not contain a statement that "no goods or services were provided in consideration for the contributions." The Durdens obtained a second acknowledgement from their church that contained the "no goods or services" disclaimer. However, because this second acknowledgement was not obtained until after the Durdens had filed their return and were under audit, it was dated after the due date of the Durdens' return.

The IRS rejected the second acknowledgement because it was dated after the due date of the Durdens' return. On appeal, the Durdens argued that they had substantially complied with the substantiation requirements for their charitable contribution deduction. The Tax Court rejected the Durdens' substantial compliance argument.

The denial of the Durdens' charitable contribution is consistent with the letter of the law. The first acknowledgement was statutorily deficient because it did not contain the required "no goods or services" disclaimer. The second acknowledgement contained the required disclaimer, but it was statutorily deficient because the second acknowledgement was provided after the due date of the Durdens' return. Therefore, the Durdens did not technically comply with the requirements for their charitable contribution deduction.

While technically correct, this is a poor result. There was no ill will or bad intentions on the part of the Durdens. There is no argument made that the Durdens did not actually make the contributions to their church. There is no argument that the Durdens actually received any goods or services in exchange for their contributions. There is no indication that the Durdens' church was a fake church created to avoid taxation. These were just dedicated, faithful churchgoers who had one sentence left off the contribution acknowledgement from their church.

This problem is not uncommon. In preparing my parents' return this year, I noticed the contribution acknowledgement from their church did not contain the required "no goods or services" disclaimer. Fortunately, there was still time for their church to re-issue them a new disclaimer before the due date of their return.

Most taxpayers probably don't even know about the required disclaimer. They probably just check the dollar amount on the charitable contribution acknowledgements they receive against their records. Some churches or other charities may not be paying close attention to this substantiation requirement. Yes, the substantiation requirements are in the Internal Revenue Code. Yes, the taxpayers and the charities need to follow the law. However, a little common sense is necessary in the application of the law, particularly when there is no indication of bad faith or ill will.

The unfortunate situation of the Durdens serves as a reminder that tax practitioners need to be vigilant in helping clients avoid accidental tax problems, such as failing to meet the substantiation requirements for their charitable contributions. CPAs cannot review every word on every paper related to the clients' tax returns, but you should try to help your clients avoid the minefield of complexity as much as possible while still providing a reasonably priced service.

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