

G. UPDATES ON DISCLOSURE AND SUBSTANTIATION RULES

by
Michael Seto and Dave Jones

1. Introduction

The Omnibus Budget Reconciliation Act of 1993 contains two provisions that significantly affect charities and their contributors. These two provisions are IRC 6115, relating to disclosure of certain information to contributors and IRC 170(f)(8), relating to substantiation of certain information by contributors.

These two provisions were discussed in the 1995 CPE, Substantiation and Disclosure Rules of OBRA '93, at pp. 129-138. That article was written just after the statute was enacted. The Service has since issued proposed regulations, 1.170A-13(f) and 1.6115-1, to implement IRC 6115 and IRC 170(f)(8).

The purpose of this article is to discuss the disclosure and the substantiation rules as interpreted by the proposed regulations. The article will highlight the circumstances where disclosure and substantiation statements are required; the elements necessary to the statements; safe harbors that have been created to ensure greater compliance; and how the rules work in certain special situations.

2. Disclosure of Quid Pro Quo Contributions

IRC 6115 provides that charities, for contributions made on or after January 1, 1994, must provide timely written disclosure statements to contributors who make payments described as "quid pro quo" contributions in excess of \$75. IRC 170(f)(8)(A) provides that for contributions made on or after January 1, 1994, no deduction will be allowed under IRC 170 for a contribution of \$250 or more (whether in cash or property) unless the contributor has a contemporaneous written acknowledgment from the charity substantiating the contribution.

These are two different requirements, and although at times they may overlap (a "quid-pro-quo contribution" of \$250 or more), each must be satisfied. For example, in certain circumstances, charities may be able to meet both requirements with the same written document. Nevertheless, they must be careful to provide the written statement in a "timely" manner satisfying the more stringent requirement of the disclosure rules if the statement is to meet the requirements of both sections.

A. Quid Pro Quo Contribution Defined

A "quid pro quo contribution" is defined as a payment made partly as a contribution and partly as payment for goods or services provided to the contributor. A charity provides goods or services in consideration for a contributor's payment if, at the time that contributor make the payment, he or she receives or expects to receive goods or services in exchange for that payment. Goods or services include those provided in a year other than the year in which a contributor made the payment.

Illustration: On December 20, 1995, a contributor provides the Washington Opera, a section 501(c)(3) organization, \$100 in consideration for a concert ticket with a fair market value of \$60. The concert is to take place Jan. 20, 1996.

The Washington Opera must furnish that contributor a timely disclosure statement indicating among other things that the value of the ticket is \$60.

The contributor may claim the \$40 as a charitable deduction on his or her 1995 tax return.

Note that the \$75 threshold is determined on the \$100 payment, not on the amount of the actual deductible portion (i.e., \$40) of said payment.

For purposes of the \$75 threshold, separate payments of \$75 or less made at different times of the year for separate fundraising events are not aggregated. To prevent circumvention of the disclosure requirement in situations such as the writing of multiple checks by a contributor in the same transaction, the Service is authorized to develop anti-abuse rules. No such rules have been prescribed.

B. Contribution Defined

Whether or not the portion of a payment in excess of the fair market value of the goods or services received is a contribution depends on the intent of the donor. The Service applies a two-part test, which was adopted in United States v. American Bar Endowment, 477 U.S. 105 (1986): first, a payment to a charity is deductible only to the extent the payment exceeds the fair market value of any goods or services the contributor received; and, second, the excess payment is made with the intent to make a gift. See also Rev. Rul. 67-246, 1967-2 C.B. 104.

The first condition is satisfied by evidence that the payment exceeds the fair market value of the goods or services received. The second condition is satisfied where the surrounding facts and circumstances of a particular payment indicate such intent. In most situations, the intent is apparent.

Illustration 1: WXYZ, public television station, informs A that she may receive a compact disc of classical music, with a fair market value of \$15, for a contribution of \$50. That compact disc can be purchased for \$15 at music stores in the community. A sends the \$50 contribution and accepts the compact disc. Since the contribution exceeds the fair market value of the compact disc and A was informed of this before she made the \$50 payment, A has made a charitable contribution of \$35 to WXYZ.

Illustration 2: The facts are the same as in Illustration 1 except that WXYZ only asks for a \$15 contribution. Notwithstanding the fact that A may think she is making a charitable contribution of \$15 to WXYZ, no part of the payment is deductible. Since the payment approximates the established purchase price of identical compact discs sold at music stores, the \$15 payment is not a contribution; it is the purchase price of the disc.

C. Written Disclosure Statement

A charity, in connection with the solicitation or receipt of a quid pro quo contribution in excess of \$75, must provide to the contributor a written disclosure statement. See IRC 6115(a).

(1) Content

The required written disclosure statement must accomplish the following: first, inform the contributor that the part of the payment that is deductible for Federal income tax purposes is limited to the excess of any money, and the value of any property other than money, contributed above the value of goods or services provided by the charity; second, provide the contributor with good faith estimates of the value of the goods or services furnished to the contributor. For an in-depth discussion of good faith estimates and fair market value, read Section 4 of this article.

Illustration: On May 1, 1996, X contributes \$150 to the Houston Symphony, a section 501(c)(3) organization, and receives in return one concert ticket with a fair market value of \$50. The information in the disclosure statement should include the following:

- (A) A statement that the amount of the contribution the donor may deduct for Federal income tax purposes is limited to the excess of the money contributed over the value of the goods provided by the Houston Symphony in exchange for the contribution;
- (B) A description of the quid pro quo goods (a concert ticket);
- (C) the fair market value of the ticket (\$50).

Also, the information in the disclosure statement must be made in a manner that is reasonably likely to come to the attention of the contributor. Since there is no specific format, whether a disclosure statement satisfies this requirement depends upon the facts and circumstances of a particular situation.

(2) Time of Disclosure

Charities must furnish the disclosure statements in a timely manner - with either the solicitation of the quid pro quo contribution or the receipt of the quid pro quo contribution. If the disclosure statements are furnished in connection with a particular solicitation, it is not necessary for charities to provide additional statements when contributions are actually received. The timing, however, is critical.

(3) Situations Where Disclosure Statements are Not Required

In the following three circumstances, disclosure statements are not required.

First, when goods or services given to contributors by an organization described in IRC 170(c) have an insubstantial or de minimis value. See Proposed Reg. 1.6115-1(b). These goods or services can be treated as having no value for purposes of disclosure pursuant to IRC 6115. The standards for insubstantial or de minimis value are prescribed in Rev. Rul. 90-12, 1990-1 C.B. 471, as amplified by Rev. Proc. 92-49, 1992-1 C.B. 987, and modified by Rev. Proc. 92-102, 1992-2 C.B. 580; Rev. Proc. 93-49, 1993-2 C.B. 581; Rev. Proc. 94-72, 1994-2 C.B. 811; Rev. Proc. 95-53, 1995-52 I.R.B. 22. Since the dollar amount that the Service considers insubstantial or de minimis is adjusted annually, check any updates or modification to Rev. Proc. 90-12 and Rev. Proc. 92-49. Also, read Section 5 of this article for additional discussion.

Illustration: In its 1995 fundraising campaign, the March of Dimes provides a bookmark bearing its logo to any contributor donating \$75. The cost of each bookmark is 25¢. Each bookmark is considered de

minimis or a low cost article pursuant to IRC 513(h)(2) because the cost is well below the \$6.60 limitation stated in Rev. Proc. 94-72. Also, the \$25 payment rule is satisfied because the \$75 contribution is more than the \$33 limitation stated in Rev. Proc. 94-72. Thus, the March of Dimes may treat the bookmark as having no substantial value and, thus, need not issue a disclosure statement to the contributors.

Second, there is no donative or gift element in a particular transaction. A typical museum gift shop sale is an example of a transaction without a donative element; it is not a *quid pro quo* contribution.

Third, where there is only an intangible religious benefit provided to contributors. Intangible religious benefits are benefits provided to contributors by an organization organized exclusively for religious purposes and are not generally sold in commercial transactions. Payments for intangible religious benefits are not *quid pro quo* contributions. See IRC 6115(b). An example of an intangible religious benefit is admission to a religious ceremony. The exception also includes de minimis tangible benefits, such as wine or wafer, provided in connection with a religious ceremony. The intangible religious benefit exception, however, does not apply to such items as payments for tuition for education leading to a recognized degree or for travel services or consumer goods.

D. Failure To Provide Disclosure Statements

IRC 6714(a) provides that a penalty is imposed on organizations that do not meet the disclosure requirement of IRC 6115. This provision also provides that a penalty of \$10 per contribution, not to exceed \$5,000 per fundraising event or mailing, be imposed on organizations that failed to make the required disclosure in connection with a quid pro quo contribution of more than \$75.

Charities may avoid such penalties if they can show that the failure was due to reasonable cause. See IRC 6174(b). Reasonable cause is dependent upon the facts and circumstances of a particular case.

3. Substantiation of Charitable Contributions

IRC 170(f)(8)(A) provides that beginning January 1, 1994, no deduction will be allowed under IRC 170 for a contribution of \$250 or more whether in cash or property unless the contributor has a contemporaneous written acknowledgment from the charity. A one year transitional rule, for calendar year filers, allowed contributors to take a deduction where they made a good faith attempt to contact the charities by October 15, 1995, to obtain written substantiation.

If they could not obtain the written substantiation but have documented a good faith attempt to obtain it, they can take a deduction for contributions made. See IRS News Release 95-25 (March 22, 1995). This transitional rule applied to the 1994 tax year, and no further relief has been granted.

A. Written Substantiation

A contributor must have a written statement substantiating the amount of the donation from the donee charity in order to take a deduction. The contributor cannot rely upon cancelled checks alone to substantiate the contribution. It is the responsibility of the contributor to obtain the written statement.

Under IRC 170(f)(8)(D), charities need not substantiate donations if, in accordance with Treasury regulations, they report directly to the Service the information required to be provided in the written statements. There are no regulations at present establishing such reporting procedure, nor will there be any in the foreseeable future. Hence, charities may not report to the Service on behalf of contributors the information in the written statements. In practice, since good donor relations are in charities' interest, most, if not all, charities will provide contributors written statements with the proper information.

(1) Content

The written statement must include sufficient information to substantiate the amounts of deductible contribution. Thus, it should have the following information. First, if the contribution is in cash, the amount must be in the written statement. If the contribution is in property, the written statement must have a description of the property, but need not value the property. See IRC 170(f)(8)(B)(i) and Proposed Reg. 1.170A-13(f)(2). Second, if the charity provided any goods or services in consideration, in whole or in part, for the contribution, the written statement must provide a description and the good faith estimate of the fair market value of the goods or services. See IRC 170(f)(8)(B)(ii), (iii) and Proposed Reg. 1.170A-13(f)(2)(ii), (iii). Finally, if the contributor received nothing in return for the contribution, the written statement must say so. The information does not have to include contributors' social security or tax identification numbers.

If goods or services consist entirely of intangible religious benefits, the written statements should indicate this. The written statements need not describe or provide estimates of the value of these benefits. See IRC 170(f)(8)(B)(iii) and Proposed Reg. 1.170A-13(f)(2)(iv).

(2) Format

There is no prescribed form for the written statement. Letters, postcards, or computer-generated forms are acceptable.

B. Contemporaneous

The written statement must be contemporaneous. IRC 170(f)(8)(C) provides that written statements must be received by a contributor no later than the date the contributor actually files his or her return for the tax year in which the contribution was made. If the return is filed after the due date or extended due date, the written statements must be obtained by the extended due date. See Proposed Reg. 1.170A-13(f)(3).

C. Separate and Aggregate Contributions

Charities may provide separate written statements for each contribution of \$250 or more received from a contributor, or provide periodic written statements substantiating contributions of \$250 or more. Separate payments received from a contributor at different times are regarded as independent contributions and are not aggregated for the purpose of applying the \$250 threshold.

To prevent the circumvention of the substantiation rule in situations such as the writing of multiple checks in an amount below \$250 on the same date, the Service is authorized to establish anti-abuse rules. No such rules have been prescribed.

D. Substantiation of Contributions Made By Payroll Deductions

If contributions are made through withholding of wages, the contributions deducted from each paycheck are regarded as separate payments to be substantiated. Reg. 1.170-13(f)(11)(ii). Substantiation of payroll deductions may be done by the following: first, a pay stub, Form W-2, or other documents furnished by the employer that show the amount withheld by the employer for payment to the charity and, second, a pledge card or other document prepared by or at the direction of the charity that includes a statement to the effect that the charity did not provide goods or services in whole or part in consideration for the contribution. See Reg. 1.170-13(f)(11).

E. Substantiation of Contributions Made Through Intermediary Organizations

Frequently, intermediary organizations such as the United Way, Combined Federal Campaign receive contributions and distribute them to one or more charities. Reg. 1.170A-13(f)(12) provides that these intermediary organizations are treated, for purposes of the substantiation rules, as the recipients of the contributions. Therefore, they should provide written statements to contributors.

Intermediary organizations are not treated as the recipients of the contributions if the actual recipient/charities provide goods and services to contributors. They structure the transaction to avoid taking the goods or services into account in determining the amount of the charitable deduction to which contributors are entitled. See Reg. 1.170A-13(f)(12).

F. Substantiation of Out-of-Pocket Expenses

A contributor who incurs expenses while rendering services and qualifies for a charitable deduction is treated as having obtained contemporaneous written acknowledgment for these expenses if:

1. The contributor has records that substantiate the amount of the expenses; and
2. By the appropriate date, obtains from the charitable organization:
 - a. a description of the services provided;
 - b. the date on which the services were provided;
 - c. a statement of whether or not the recipient charity provided any goods or services for performance of the services; if the recipient charity provided such goods and services,
 - i. a description and good faith estimate of the value of those goods or services;
 - ii. if the recipient charity provided intangible religious benefits, a statement to that effect. See Proposed Reg. 1.170A-13(f)(10)(ii).

G. Substantiation of Matched Payment

If a contributor's payment is matched, in whole or in part, by another contributor and the contributor receives goods or services in consideration for

the payment and some or all of the matching payment, the goods and services will be treated as provided in consideration for the contributor's payment and not in consideration for the matching payment.

H. False Substantiation

Charities that knowingly provide false written substantiation to contributors may be subject to penalties under IRC 6701, aiding and abetting an understatement of tax liabilities. Whether a charity knowingly provided false substantiation depends upon the facts and circumstances of the particular situation.

4. Good Faith Estimate and Fair Market Value

Perhaps the most daunting aspect of the disclosure rule under IRC 6115 and the substantiation rule under IRC 170(f)(8) is the requirement in both provisions to provide contributors with good faith estimates of the goods or services given as an inducement to make contributions. See IRC 6115(a)(2) and IRC 170(f)(8)(B)(iii).

A. Definition of Good Faith Estimate

One basic issue is the definition of a good faith estimate. Proposed Regs. 1.6115-1(a)(1) and 1.170A-13(f)(7) provide that a good faith estimate is the donee charity's estimate of the fair market value of the goods or services. Neither of the proposed regulations requires any particular method of estimating fair market value. Consequently, charities may use any reasonable methodology as long as it is used in good faith. See Proposed Reg. 1.6115-1(a)(1) and 1.170A-13(f)(7).

B. Estimating Fair Market Value

There are many methods that can be used to estimate the fair market value of a particular item or property. One is the market-comparable method. For example, if a real estate agent wants to estimate the value of a house, she examines the sale price of similar houses with similar features in the same neighborhood. Although an identical house may not be available, the agent estimates the value by looking at similar or comparable houses.

Charities may use the market comparable method to estimate the goods or services provided to contributors as long as they do so in good faith.

(1) Goods or Services That Are Not Commercially Available

A charity may provide goods or services that are not commercially available. In this case, estimates can be based on goods or services that are commercially available even though the commercially available goods or services do not have the unique qualities of the goods or services being valued. See Proposed Reg. 1.6115-1(a)(2).

Illustration: a museum allows contributor A to hold an event in one of its galleries in return for a contribution of \$50,000. No other private events are held in the museum. In the community where it is located, there are four hotels with ballrooms with the same capacity as the gallery in the museum. Two of the four hotels, Y and Z, have ballrooms offering amenities and atmosphere comparable to the gallery in the museum, although the two hotels lack the unique art displayed on the walls of the museum. Because the capacity, amenities and atmosphere of the ballrooms of the two hotels are market-comparable to the room in the museum, a good faith estimate of the fair market value of the benefits received by contributor A may be determined by reference to the cost of renting the ballroom in either of the two hotels. The cost of renting the ballrooms in Y or Z is \$5,000. Hence, the rental value of the gallery in the museum is \$5,000.

An axiom of tax law is that the fair market value of property is what a willing buyer will pay a willing seller. Fair market value is not what it costs the charity to purchase a particular item. A common error many charities make when estimating the fair market value of benefits is to value items given to it at \$0. If a charity is given books, which it turns around and gives as premiums, a good faith estimate of the fair market value of the books can be determined by looking at market-comparable book prices. The value should not be \$0.

(2) Certain Goods or Services Treated As Having No Measurable Value

Newsletters or other publications that are not of commercial quality are treated as though they do not have measurable value as long as their primary purpose is to inform members about the activities of the charity and are not available to the public through subscriptions or newsstands. See Rev. Proc. 90-12, 1990-1 C.B. 471. Generally, publications that contain articles written for compensation and that accept advertising are considered commercial quality publications and have measurable fair market value. Professional journals, whether or not their articles are written for compensation, or whether or not advertising is accepted, are considered commercial quality publications.

Illustration 1: A museum sends a newsletter to patrons who made \$250 contributions. The primary purpose of the newsletter is to inform patrons about forthcoming art exhibits and lectures. It contains no commercial advertisements or articles; it is only available to patrons who made such contributions. The newsletter is treated as having no measurable fair market value for substantiation and disclosure purposes.

Illustration 2: Assume the same facts as Illustration 1, except that the newsletter also contains high quality photographs of art works and articles and reviews written by experts, critics, historians and collectors of art works. Announcements of art openings held in commercial art galleries are also included in the newsletters; the museum charges a fee to include such announcements. The newsletter is printed on quality paper and in a magazine format, and published quarterly. The newsletter is sold to the general public in the museum's gift shop as well as book stores and museum gift shops throughout the country for \$60. The cost of producing the newsletter is \$20. Under the facts and circumstances, the newsletter is a commercial quality publication and is also not a de minimis or low cost article. Consequently, the newsletter cannot be treated as having no measurable market value. The value is \$60.

Celebrity presence is another item that is treated as having no fair market value. Often celebrities will lend their presence to enhance the fundraising of a charity they support. The mere presence of celebrities need not be valued because, generally, it cannot be valued independently. See Proposed Reg. 1.6115-1(a)(3).

Illustration: A charity provides a contributor of \$1,000 with a dinner for two followed by an evening tour of a museum. An artist, whose most recent works are on display at this museum, conducts the tour. Typically, tours at this museum are free. Because museum tours are free, the celebrity presence is treated as having no value and the charity need not value the tour. The museum, however, must provide a good faith estimate of the fair market value of the dinner for two.

In contrast, another charity provides a one-hour tennis lesson with a tennis professional in return for the first payment of \$500 it receives. The tennis professional normally provides one-hour lessons for \$100. Because the services of the tennis professional have a market and can be valued, the charity must provide to the contributor a good faith estimate (\$100) of the fair market value of the one-hour lessons.

5. Safe Harbors from the Requirements of the Disclosure and Substantiation Rules

Many charities, in their fundraising activities, provide benefits to contributors in appreciation of their contributions or to potential contributors as enticements to make contributions. These charities are required to disclose to contributors the value of benefits for purposes of the disclosure and substantiation rules. Nevertheless, there are several situations where charities need not disclose so long as they conform to any of the following safe harbors.

The first safe harbor involves the use of token items such as bookmarks, calendars, key chains, mugs, tee shirts and other such items that bear the charities' names or logos. See Rev. Proc. 90-12, 1990-1 C.B. 471; see also Proposed Regs. 1.170A-13(8)(i)(A) and 1.6115-1(b). The use of these items must be in the context of a legitimate fundraising campaign. The token items are exchanged for a contribution of \$25 or more (adjusted for inflation) and such items are low cost articles within the meaning of IRC 513(h)(2). For 1996, this safe harbor applies where the value of a contribution must be \$33.50 or more and the value of low cost articles is \$6.70 or less. See Rev. Proc. 95-53, 1995-52 I.R.B. 22 (the dollar amount that the Service considers insubstantial or *de minimis* is adjusted annually; check any updates or modification). If these conditions are met, the fair market value of token items can be treated as having no substantial value and can be disregarded for charitable deduction purposes.

Illustration: A charity, an inner city nonprofit health clinic, in its 1996 fundraising campaign, sends its supporters a small calendar bearing its logo in return for a contribution of \$250. The cost of production and distribution of the calendar is \$1.50 per supporter. Since the cost of the calendar is below \$6.70, the calendar is considered a low cost article. Also, the \$25 payment rule is satisfied because the \$250 contribution is more than the \$33.50 limitation stated in Rev. Proc. 95-53. Thus, the health clinic can inform the contributor that the calendar has no substantial value and that the full amount of the contribution is deductible in the substantiation statements.

The second safe harbor involves charities mailing or otherwise distributing free, low-cost, unordered items to patrons. The items will be treated as not having market value. See Rev. Proc. 92-49, 1992-1 C.B. 987. For this safe harbor to apply, items received must not have been distributed at patrons' requests or with the express consent of patrons and must be low cost articles within the meaning of IRC 513(h)(2). In 1996, the amount of low cost articles is \$6.70 or less. See Rev. Proc. 95-53, 1995-52 I.R.B. 22.

Illustration: As part of a fund raising campaign, on June 1, 1995, a charity mails each potential contributor a packet of 20 return address labels containing his or her name along with a solicitation letter requesting a donation of \$250. The packet has not been distributed at potential contributors' requests or with their consent. The solicitation states that the potential contributor may keep the packet whether or not he or she makes a contribution. The cost of producing each packet is 75¢. Since the cost of each packet is well below the \$6.70 limitation stated in Rev. Proc. 95-53, the packet is considered a low cost article. Thus, the charity may inform the contributor that the labels have no substantial value and that the full amount of the contribution is deductible in the substantiation statements.

The third safe harbor is where the fair market value of a benefit received in return for a contribution is not more than 2% of the contribution or \$50, whichever is less. See Rev. Proc. 90-12, 1990-1 C.B. 471. The \$50 is indexed for inflation, and in 1996, that amount is \$67. See Rev. Proc. 95-53, 1995-52 I.R.B. 22.

Illustration: A section 501(c)(3) university, in 1996, gives its contributors a framed print of the university campus with a fair market value of \$40 in return for contributions of \$1000. The university may inform its contributors that the print has no substantial value and that the full amount of the contribution is deductible.

The fourth safe harbor involves membership package benefits. Charities, such as museums, libraries, zoos, and arboretums, typically use membership packages to build a following and base of support. The benefits of a typical membership package may include free parking, gift shop discounts, an admission discount, etc. Charitable organizations which offer basic membership packages at \$75 or less and include some or all of the following benefits can treat such membership benefits as having insubstantial value and, hence, need not value them. See Proposed Regs. 1.170A-13(f)(8)(i)(B) and 1.6115-1(b). The membership benefits are:

- a) Any right or privilege, other than rights to seating at collegiate athletic events, the contributor can exercise frequently during the membership period. Examples of such rights and privileges include free or discounted admission to organizations' facilities or events, free or discounted parking, preferred access to goods or services, and discounts on purchases of goods or services; and

- b) Admission to events during the membership period open only to members if the cost per person for the event, excluding any allocable overhead, is within the limits for low cost articles. For 1996, the limit for low cost articles is \$6.70. See Rev. Proc. 95-53, 1995-52 I.R.B. 22.

Illustration: A performing arts center offers a basic membership package for \$75. The benefits offered include the right to purchase tickets one week before they go on sale to the general public, free parking in its garage during evening and weekend performances, and a 10% discount at its gift shop. For \$150, the performing arts center offers a preferred membership package which includes all the benefits of the \$75 package plus a poster sold at its gift shop for \$20. The basic membership and the preferred membership are each valid for twelve months. There are approximately 50 productions at the performing arts center during the twelve month period. The center's gift shop is open for several hours during the week and during performances. The performing arts center may disregard the value of the basic membership package benefits for purposes of the disclosure statement. Preferred members must receive a disclosure statement indicating that a reasonable estimate of the fair market value of their membership benefit is \$20, the fair market value of the poster. This estimate also should be included in the preferred members' substantiation statements.

This safe harbor can only apply to frequently available benefits. The following illustration is meant to draw the distinction between frequently available benefits and those that cannot be exercised frequently.

Illustration: A community theater group performs four different plays each summer. Each play is performed twice. In return for a membership fee of \$60, the theater offers a membership package that consists of free admission to any of its performances. Non-members may purchase tickets for \$15 each on a performance-by-performance basis. If a contributor makes a gift of \$350 and receives such membership package in return, the theater must provide a reasonable fair market estimate of the benefit, *i.e.*, the value of the performances. Because the benefit provided admission is to a limited number of performances, it could not be frequently exercised and, therefore, does not meet the requirements of the safe harbor.

6. Special Situations

Where a charity provides to a contributing corporation's employees benefits that are same as those described in any of the above safe harbors, such benefits can be treated as insubstantial and need not be valued. See Proposed Reg. 1.170A-13(f)(9). Where the benefits given employees are other than those described in any of the safe harbors, the substantiation and disclosure statements have to be provided.

7. Conclusion

The final and proposed regulations and the revenue procedures are designed to improve compliance with and facilitate enforcement of IRC 170(f)(8) and IRC 6115. They will also relieve exempt organizations from complying with the disclosure and substantiation rules in certain circumstances. It is anticipated that the proposed regulations will be finalized without substantial changes.