



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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The Honorable Mark Green  
U.S. House of Representatives  
Washington, DC 20510

Attention: Casey Buboltz

Dear Mr. Green:

This letter responds to your email dated June 22, 2005, which forwarded to us a message from the Executive Director of . The message has 11 questions and comments on the new rules for vehicle donations under Section 170(f)(12) of the Internal Revenue Code (the Code). I am responding to each of the questions and comments in the order presented in the Executive Director's email.

1. Question: Can the time frame for providing the contemporaneous written acknowledgment to a donor be extended to 60 days in the case of a vehicle for which the donee organization intends a significant intervening use or a material improvement?

Response: The law requires that in the case of a vehicle for which a donee organization intends a significant intervening use or material improvement, a written acknowledgment must be provided to the donor within 30 days of the date of the contribution. Any change would require legislative action.

2. Question: Can the donor claim a year-end contribution of a vehicle as a charitable contribution deduction either in the year in which the donor makes the contribution or in the year the donee organization sells the vehicle?

Response: The law permits a charitable contribution deduction only in the year of the payment. In the case of a vehicle contribution, the payment occurs in the year the vehicle has been delivered to the donee organization. When and whether delivery occurs is a matter of state law; in many cases, delivery of a vehicle occurs when legal or equitable title passes from the donor to the donee.

3 and 4. Question: Can a donor of a vehicle that subsequently sells be allowed the option of deducting the vehicle's fair market value?

Response: The law provides that the charitable contribution deduction for a vehicle the donee organization sells without any significant intervening use or material improvement may not exceed the gross proceeds received from the vehicle's sale (the gross proceeds rule) (Section 170(f)(12)(A)(ii) of the Code.). The only exceptions from the gross proceeds rule are if the donee organization (1) makes a significant intervening use of the vehicle; (2) materially improves the vehicle; or (3) sells the vehicle to a needy individual at a price significantly below fair market value, or gratuitously transfers a vehicle to a needy individual, in direct furtherance of a charitable purpose of the donee organization of relieving the poor and distressed or the underprivileged who need a means of transportation (the direct furtherance exception).

A private letter ruling may be requested on whether use of a vehicle meets the requirements for the significant intervening use, material improvement, or direct furtherance exceptions, and thus whether a vehicle contributed to may be exempt from the gross proceeds rule. I am enclosing Rev. Proc. 2005-1, 2005-1 I.R.B. 1, which explains how to request a private letter ruling.

5. Question: Why can donors of vehicles valued at more than \$5,000 use an appraisal to determine value? Can all donors of vehicles, regardless of a vehicle's value, be allowed to use appraisals or a value guide to establish the value of a vehicle?

Response: The same answer applies as in Questions 3 and 4 above. The new rules provide that the charitable contribution deduction for a donated vehicle may not exceed the gross proceeds received from the vehicle's sale, unless the organization meets the requirements for any of the following exceptions: significant intervening use, material improvement, or direct furtherance. All contributions of vehicles for which the donor claims a value of more than \$500 are subject to the new rules. Thus, the charitable contribution deduction for a vehicle appraised at more than \$5,000 is subject to the gross proceeds rule if the donee organization sells the vehicle without a significant intervening use or material improvement, and does not meet the requirements for the direct furtherance exception. In such a case, an appraisal will not substantiate the donor's deduction, nor is one required. (Section 170(f)(11)(A)(ii)(I) of the Code.)

6. Comment: The Executive Director states that is opposed to using dealer trade-in value as the standard for establishing value for donated vehicles, and explains that supports the private party value as the appropriate standard.

Response: We requested comments on this issue in Notice 2005-44, 2005-25 I.R.B. 1297, section 9, (enclosed). We appreciate receiving the Executive Director's comments and will consider them when drafting future guidance.

7. Question: What is the due date to the Internal Revenue Service of Form 1098-C?

Response: We plan to issue published guidance on the new vehicle donation donee

reporting requirements. Although we cannot provide a specific date, we will give donee organizations a reasonable period of time to comply with all the new reporting requirements, including the due date to the IRS of Forms 1098-C.

8. Question: Will the IRS deny the donor the deduction or subject the non-profit organization to fines if it does not send the contemporaneous written acknowledgment to the donor within the prescribed 30 days?

Response: The new law requires that for the donor to take the deduction, the donor must obtain a written acknowledgment of the contribution within 30 days of either the sale or contribution of the vehicle, as applicable. (Section 170(f)(12)(C) of the Code.) The law does not provide any exception to these time limits.

The law may impose a penalty on any donee organization that knowingly furnishes a false or fraudulent acknowledgment, or knowingly fails to furnish an acknowledgment in the manner, at the time, and showing the information required under section 170(f)(12). (Section 6720 of the Code.)

As to whether the IRS would subject a donee organization to the penalty if it makes a mistake on a written acknowledgment and does not provide a corrected acknowledgement within 30 days of the contribution or the disposition of the vehicle: Without additional information on the nature of the mistake, we cannot comment on this issue. For additional information, we recommend a review of the examples in section 7.03 of Notice 2005-44.

9. Question: Can the donee organization file with the Internal Revenue Service a Form 1098-C that does not include the donor's Social Security Number?

Response: The new law provides that a donee organization that must provide an acknowledgment under the new vehicle donation rules must also give to the IRS the same information contained in the acknowledgment. The information that the acknowledgment must contain includes the donor's taxpayer identification number.

10. Question: What would the IRS consider a material improvement to a donated vehicle under the new law?

Response: Currently, the only guidelines on material improvement are in Notice 2005-44, section 7.01(2). For example, cleaning, minor repairs, and routine maintenance are not material improvements. The following are also not considered material improvements: application of paint or other types of finishes (such as rustproofing or wax); removal of dents and scratches; cleaning or repair of upholstery; and installation of theft deterrent devices.

In Section 9 of Notice 2005-44, we asked for comments and suggestions for future guidance on implementation of the new rules. We would appreciate any comments that can assist us in formulating additional guidelines for determining if an improvement is material for purposes of the new rules. In addition, a private letter ruling may be requested on the issue. See Response to Question 3 and 4.

11. Questions: How would the new law treat a donation if the donee organization disposes of the vehicle by raffle? Does a total raised through an auction serve as the gross proceeds of sale for purposes of the new rules?

Responses: The amount raised by a sale of raffle tickets does not represent the gross proceeds of sale of a vehicle. If the requirements for the significant intervening use or material improvement exceptions are not met, the law limits the deduction for a vehicle contributed to charity and disposed of by raffle to the lesser of \$500 or the vehicle's fair market value.

Generally, a vehicle sold at auction generates gross proceeds for purposes of the new rules. In no case, however, may the deduction exceed the vehicle's fair market value.

I hope this information is helpful. If you need further assistance, please contact me at \_\_\_\_\_ or \_\_\_\_\_, I.D. No. \_\_\_\_\_, at \_\_\_\_\_.

Sincerely,

Thomas A. Luxner  
Chief, Branch 1  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosures: Rev. Proc. 2005-1  
Notice 2005-44