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Applying Section 6113 Fundraising Disclosures to Modern Media: @IRS: 2 much 2 ask 4 upd8?

The IRS requires that certain disclosures be made when tax-exempt entities conduct fundraising. Section 6113 of the Internal Revenue Code provides that tax-exempt organizations, contributions to which are not tax deductible—such as political organizations, social clubs, and fraternal orders—that publish fundraising solicitations, must include in any solicitation an express and conspicuous statement that contributions are not tax deductible.

In 1988, the IRS issued [Notice 88-120](#) describing what constitutes adequate disclosure under Section 6113. Notice 88-120 addresses required disclosures in print media, telephone, television, and radio solicitations, and provides a safe harbor under the regulations for organizations that include, at minimum, the following statement at the time of solicitation: “Contributions or gifts to [Organization] are not tax deductible.” In addition, the statement must be in at least the same size as the primary message, and either it must appear in the first sentence or paragraph or it must constitute its own paragraph.

Twenty-five years later, one wonders how to apply these rules to modern media. Section 6113 includes any communication in “written” form, so the disclosure rule does apply to words written in electronic social media as well as on paper. However, the above “safe harbor” statement alone takes up 61 characters, or almost half of a 140-character limited Tweet or text message.

Absent any IRS updates to Notice 88-120, we are left to the language of the dated Notice itself, which does provide some guidance as to how nonprofits can disclose the non-deductibility of contributions in circumstances that stray from the more basic forms of media. According to the Notice:

If an organization makes a solicitation to which section 6113 applies and the solicitation does not comply with the above safe harbors, the Service will evaluate all the facts and circumstances to determine whether the solicitation contained “an express statement (in a conspicuous and easily recognizable format) that contributions or gifts to such organization are not deductible as charitable contributions for Federal income tax purposes.” A good faith effort to comply with the requirements of section 6113 will be an important factor in the evaluation of the facts and circumstances.

We can assume that any disclosure statement provided in a text message or a Tweet will automatically be of the same size and font as the primary message, and will also necessarily comprise part of the first (and only) paragraph, given the brevity of these forms of messaging. But just what constitutes “a conspicuous and easily recognizable format”?

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Most would probably agree that the following text or Tweet solicitation would satisfy the test:

“Donate \$10 to support your local Rotary Club now. Your donation is not tax deductible.”

But what if the primary message requires more space? Let’s try this:

“Candidate Smith will cut taxes, clean up the streets, and end corruption in the city. Help him by donating \$10 to @GoSmith.”

You have 16 characters remaining. How do you fit in your required disclosure? Here are a few ideas of potential fundraising disclosures of 16 characters or less that arguably satisfy the Notice’s facts and circumstances test:

- > 0 dductbl
- > no deductn
- > 0 tax dedctn
- > \$0 deductn
- > not tax deductbl
- > 0 tax deductn

Whether the IRS would accept such statements as sufficiently “conspicuous and easily recognizable” remains to be seen, but for the time being, they may very well represent “a good faith effort to comply” within the constrictions of the medium.