VEHICLE DONATION PROGRAMS: FINALLY, IRS GUIDANCE ON HOW TO DO THEM RIGHT

BY INGRID MITTERMAIER AND DAVID A. LEVITT

After some initial reactions from the IRS that seemed designed to "chill" the growing popularity of vehicle donations to charities, the Service more recently has indicated what exempt organizations need to do in order to have such programs pass muster. Charities that stick to the Service's roadmap will avoid threats to their exempt status, and donors will be assured of a charitable contribution deduction, subject to the applicable limitations.

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As more and more charities[1] look for creative ways to raise money, a fundraising technique that has become increasingly popular is a vehicle donation program. In the usual program, the charity hires a third-party vehicle processor to implement a program in which vehicle donations are accepted from donors and then sold. The processor typically interacts with donors, repair shops, auction houses, the state agencies responsible for motor vehicles, and other parties necessary to accept and sell the vehicles, and often manages donor solicitation and advertising for the program. The proceeds generally cover the costs of the program, with a portion of the remaining amount retained by the processor and the rest transmitted to the charity.

A recent Revenue Ruling and two letter rulings describe correctly implemented vehicle donation programs, providing a framework for the legal requirements of properly structuring such a program.

THE SERVICE'S INITIAL CONCERNS

As vehicle donation programs started to increase in popularity and visibility approximately five years ago, the IRS began to voice concerns over how the programs were being implemented.[2] One of the biggest concerns was that programs arguably promised donors inflated charitable deductions, by implying that donors could take a deduction equal to the "blue book" value regardless of the condition of the vehicle, or whether it was even operational.

On 5/27/99, Marcus Owens, then the Director of the IRS Exempt Organizations Division, sent a memorandum to regional chief compliance officers.[3] Among other things, the memo advised them to be attentive to advertising that promised full blue book value for a donation of a car in any condition.

In Chapter T of the *IRS Exempt Organizations CPE Text for Fiscal Year 2000* (the "CPE Text"), the Service expanded on the Owens letter, alerting IRS Exempt Organizations Tax Law Specialists and other readers to a host of perceived concerns regarding vehicle donation programs. The CPE Text referred to programs implemented with a third-party vehicle processor as "suspect vehicle donation plans or programs," as opposed to programs implemented directly by a charity.

The CPE Text reiterated the Service's concern that programs were improperly encouraging donors to take charitable deductions larger than the FMV of the donated vehicles. The text warned that donors might not be entitled to the deduction they had claimed. It also warned that charities could be liable for aiding and abetting donors in the preparation of a false tax return under tax shelter anti-abuse provisions.[4]

In addition, the CPE Text questioned more fundamentally if a donor could receive a deduction at all. The IRS argued that to be deductible under Section 170(c), a contribution had to be made "to" or "for the use of" a charity. If the charity did not have the proper discretion and control over the processor's actions with respect to the vehicle, so the Service argued, the contribution had not been made "to" the charity, but rather to the processor, resulting in no charitable tax deduction.

The CPE Text went on to raise a variety of other possible concerns, including whether the charity was providing an improper private benefit to the processor, whether the program resulted in prohibited inurement, whether the charity might be considered to have a substantial non-exempt purpose, or whether the charity would have to report proceeds from the program as unrelated business taxable income.

While the IRS did not prohibit vehicle donation programs with third-party processors outright, the Service's message was that such programs were suspect and would be scrutinized.

THE NEW IRS RULINGS

Fortunately, the Service has published more recent guidance regarding how a vehicle donation program can be implemented correctly.

The Revenue Ruling

The IRS in Rev. Rul. 2002-67, 2002-47 IRB 873, used two distinct fact patterns involving a donor's transfer of a vehicle to a charity through a vehicle processor, highlighting that a donor cannot always rely on blue book values. In both scenarios, the charity and the processor established a valid agency relationship pursuant to a written agreement, under which the processor acted as the charity's authorized agent in administering the vehicle donation program in exchange for a fee. The processor undertook to:

1. Solicit donations of used cars.
2. Accept, process, and sell the cars.
3. Transfer the proceeds of the sales to the charity (less the processor's fee).
4. Provide each donor with substantiation and acknowledgment of that donor's contribution.

The processor's fee was not described in the Ruling. The processor's activities under the agreement were subject to the charity's review and approval.

For a vehicle donation to be properly deductible it must be considered to be made 'to' a charity—the 'for the use of' alternative does not apply.

In both situations, the donor transferred a used car to the processor as a donation to the charity and received nothing of value in return. To determine the value of the contribution, the donor consulted an "established used car pricing guide," which provided a current sales price for a car of the same make, model, and year as the donor's, and sold in the donor's area. The guide provided prices for the specified car in both excellent condition and average condition, but not for a car in poor condition.

In the first scenario, the condition of the donor's car was average. Because the guide consulted by the donor included a sales price for a car of the same make, model, and year as the donor's car, sold in the same area and in the same condition, the donor was permitted to use the price listed in the used car pricing guide as the value of the contribution, and could take a deduction for that amount.

In the second scenario, the condition of the donor's car was poor. Because the pricing guide did not provide a value for a car in the same condition as the donor's vehicle, the donor could not rely on the guide to establish the vehicle's FMV. Thus, the donor was required to "establish the fair market value of the car using some other method that is reasonable under the circumstances."

In the Revenue Ruling, the IRS also concluded that (1) the donor's transfer of the car to the charity's authorized agent could be treated as a transfer to the charity and (2) the charity's authorized agent could provide a contemporaneous written acknowledgment of the donation on behalf of the charity.

The Letter Rulings

Two related private rulings describe in greater detail the necessary elements of a proper vehicle donation program. Ltr. Rul. 200230005 involved a charity's receipt of vehicle donations through a property donation program operated by a third-party vehicle processor. Ltr. Rul. 200230007 concerned the same situation from the perspective of a vehicle donor.

In the program under review, a for-profit charitable fundraiser[5] was to act as the charity's agent, pursuant to a written agreement, in soliciting, processing, and selling vehicle donations on behalf of the charity. The processor also, and at its own expense, would advertise and solicit donations of vehicles, subject to the charity's review and approval.

Establishing a valid agency relationship will determine whether income received by the processor is attributable to the charity.

The charity would be the equitable owner of the donated vehicle until an authorized sale occurred and would bear the risk of loss of the donated vehicles, subject to the processor's obligation to pay for insurance coverage. The processor would process all Department of Motor Vehicles documents pursuant to a power of attorney

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[1] As used in this article, "charities" refers to tax-exempt organizations described in Section 501(c)(3).

[2] Issues also were raised by various state agencies. State law considerations and requirements regarding vehicle donation programs are beyond the scope of this article.

[3] 1999 TNT 117-45.

[4] See Sections 6700 and 6701.

[5] Some processors are registered charitable fundraisers under state law, such as the one discussed in these rulings, while others simply implement the vehicle donation program but are not engaged in fundraising.

from the charity, in order to complete the title transfers.

Subject to the review and approval of the charity, the vehicles would be sold or otherwise disposed of as determined by the processor in its reasonable business judgment, using its best efforts to obtain the greatest price. The charity, in return, agreed to pay the processor a fee based on a specified percentage of gross proceeds received from the sale of the donated vehicles. The charity would receive the remainder of the revenue on a monthly basis.

IRS has stated that Service personnel should apply the equivalent of a federal common law of agency since state law concepts may vary considerably.

With respect to documenting the contribution, the processor would provide the donor with a blue book printout and a disclosure that the printout did not represent the opinion of the processor or the charity as to the vehicle's value. For donated vehicles valued at greater than $5,000, the processor would arrange for professional appraisals by an unaffiliated appraiser, with the donor paying for the cost of appraisal. The processor was to provide each donor with a "thank you" letter and a receipt from the charity for the donation, and could sign a Form 8283 on behalf of the charity, acknowledging the gift.

The processor also would be required to provide monthly accounting reports and weekly advertising reports to the charity. In addition, the charity retained the right to audit and inspect the processor's donation program financial statements.

Based on these facts, the Service held that:

1. Donations made through the property donation program could be treated as a donation to the charity and therefore qualify for a charitable deduction.

2. The charity's tax-exempt status would not be affected by the program, because the compensation arrangement did not result in prohibited private inurement or private benefit.

3. The sale of donated property would not generate unrelated business income to the charity.

The TAM

In addition to the Revenue Ruling and letter rulings discussed above, the IRS also has addressed a vehicle donation program that failed to operate within the above guidelines.

In TAM 200243057, a used car salesman ("the founder") created a charity in order to allow individuals to donate their used cars for a tax deduction. The exempt organization operated on the same premises as a used car lot operated by the founder's son, and the donated vehicles were sold on the same lot. The dealer's custom and practice was to provide each donor, in writing, with the retail blue book value of the donated vehicle, together with a Form 8283, regardless of the condition of the vehicle. The charity did not provide the trade-in value, although some of the cars could not be driven and were sold for scrap.

The Service found that individual donors greatly overstated the valuations of their donations due to the charity's misleading information. As a result, the IRS held the organization liable for significant penalties under Section 6701. The Service also found the charity and individuals connected to the charity guilty of other tax violations, including conducting excess benefit transactions under Section 4958.

OPERATING A VEHICLE DONATION PROGRAM

The Revenue Ruling and letter rulings, whose fact patterns represent examples of proper implementation, identify several distinct issues arising from the operation of a vehicle donation program. Each of these issues must be handled properly in order to preserve the tax deductibility of the individual donations, as well as the tax-exempt status of the participating charity.

Principal-Agent Relationship

As noted above, for a donation to be tax deductible under Section 170(c), the contribution must be "to" or "for the use of" a charity that is entitled to receive tax-deductible contributions. Generally, "for the use of" refers to donations made to a legally enforceable trust, or a similar arrangement, and thus is not applicable in this context because the contributions are not made to the processor in trust for the charity.[6] Therefore, for a vehicle donation to be properly deductible it must be considered to be made "to" a charity.

The Service recognizes that a contribution may be made "to" a charity through its authorized agent.[7] Thus, establishing a valid agency relationship will determine whether income received by the agent, i.e., the processor, is attributable to the principal, i.e., the charity.

If a charity does not retain the right to control the processor's activity, no agency relationship exists.

A written agreement is of primary importance in establishing a proper agency relationship with a processor. The mere designation of the parties as "principal" and "agent" is not sufficient, however. Rather, the Service will consider all the facts and circumstances in determining whether the parties have established a proper agency relationship.

Rev. Rul. 2002-67 asserts that the existence of a valid agency relationship depends on state law requirements. The Ruling does not explore the requirements for a proper agency relationship in any greater detail. The IRS, however, has stated in other guidance to its agents that Service personnel

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[6] See Davis, 495 U.S. 472, 65 AFTR2d 90-1051 (1990).

[7] See, e.g., Reg. 1.170A-1(b); Rev. Rul 85-184, 1985-2 CB 84.

should apply the equivalent of a federal common law of agency in making an agency determination, since state law concepts may vary considerably.[8]

More generally, an agency relationship is characterized by the manifestation of consent between two parties that one party shall act on the behalf of and subject to the control of the other.[9] Thus, if a charity does not retain the right to control the processor, the necessary agency relationship will not be established.

In Ltr. Rul. 200230005, the IRS analyzed the parties' written agreement and found that the processor would be acting on behalf of the charity and would be subject to the charity's control in the general performance of its activities. In reaching its conclusion that the written agreement did establish a valid agency relationship, the Service emphasized the following points:

- The charity would be the equitable owner of the property until an authorized sale of the donated vehicles occurred.
- The proceeds of the sale would belong to the charity (less the fee payable to the processor).
- The risk of loss, damage, or destruction of the vehicles would be borne by the charity (subject to the processor's obligation to pay for insurance coverage).
- The processor had an obligation to provide monthly accounting reports and weekly advertising reports to the charity.
- The charity would retain the right to audit and inspect the processor's vehicle donation program financial statements.

The IRS found a valid agency relationship existed, despite the fact that the processor would pay certain costs and expenses, such as advertising for the program and insurance covering the donated vehicles. Some discretion on the part of the processor did not conflict with the agency relationship, in the Service's view.

FMV of the Contribution

The recent rulings address the Service's concern about the proper valuation of the donor's vehicle contribution. When a charitable contribution is made in property other than money, Reg. 1.170A-1(c)(1) provides that the amount of the contribution is the FMV of the property at the time of the contribution. FMV is defined by the familiar formula as the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.[10]

Some discretion on the part of the processor with regard to advertising and insurance costs did not conflict with the agency relationship.

Rev. Rul. 2002-67 states that "there is no single correct way to determine fair market value of a car; any reasonable method may be used." While an established used car pricing guide, such as a blue book, is one acceptable method of establishing FMV, the IRS does not consider it reasonable in all circumstances. According to the Ruling, such a pricing guide is only valid as a means of establishing FMV if it lists the sales price for a vehicle of the same make, model, and year, sold in the same area, and in the same condition, as the donated car. Otherwise, the donor must find "some other method that is reasonable under the circumstances" to determine the vehicle's FMV.

Neither the Revenue Ruling nor the letter rulings articulate other means of establishing this value. Rev. Rul. 2002-67, however, refers to another source, IRS Publication 561, *Determining the Value of Donated Property,* which addresses the valuation of nonmonetary donations of property in general. According to Publication 561, all factors affecting value are relevant and must be considered. These factors include (1) the cost of the property, (2) the selling price of the property, and (3) the sales price of comparable properties in the market. Prices found in published pricing guides only provide "clues for making an appraisal" and suggest relative prices to use as a basis for comparison. If, however, a car is in poor condition, FMV may be determined by checking with repair shops or used car dealers for estimates of the price at which the car would sell.

Charity's Role in Overstatement of FMV

In addition to overvaluation being a concern for a donor in the event of a possible IRS audit, the consequences of a program perceived by the IRS to encourage overvaluations may be significant to the charity as well. Sections 6700 and 6701 set forth monetary penalties for furnishing an overstatement in valuation and aiding in the preparation of a tax return or other document understating a person's tax liability.

The rulings discussed above offer guidance as to what information the processor and the charity should provide to the donor in order for the charity to avoid allegations of aiding and abetting a false tax return. The charity, for instance, might provide a disclaimer notifying the donor that the blue book value of the vehicle does not in any way represent the opinion of the charity as to the FMV of the donation. In some programs, the charity, through the processor, provides the donor with blue book value information but also reminds the donor that the blue book value might not constitute the FMV of the vehicle, and includes IRS discussions regarding FMV in the donor information packet.

Recordkeeping and Substantiation

In the letter rulings, the IRS also addressed the proper recordkeeping and substantiation requirements that must be met in order for a donor to take a deduction for a charitable contribution of a vehicle. If done properly, the processor, rather than the charity, may take responsibility for providing the necessary written acknowledgment of the donation.

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[8] See Chapter C of the *IRS Exempt Organizations CPE Text for Fiscal Year 2002,* page 127.

[9] Restatement Second of Agency, section 1

[10] Reg. 1.170A-1(c)(2).

Substantiation of contributions of more than $250. Pursuant to Section 170(f)(8)(A), a taxpayer may take a deduction for contributions of $250 or more only if the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from the donee. Section 170(f)(8)(B) requires that an acknowledgment contain the following information:

1. The amount of cash and a description (but not the value) of any non-cash property contributed.
2. Whether the donee provided any goods or services in consideration for such property.
3. A description and good faith estimate of the value of any goods or services provided.

Pursuant to Section 170(f)(8)(C), an acknowledgment will be considered contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of the date on which the taxpayer files a return for the year in which the contribution was made, or the due date, including extensions, for filing such return.

The Regulations further develop the recordkeeping and filing requirements imposed on donors contributing assets other than cash. These requirements vary depending on the amount of the deduction the donor is claiming and on the type of property contributed. Generally, the donor must maintain a receipt from the charity showing the name of the charity, the date and location of the gift, and a description (but not value) of the property.[11] This receipt requirement is similar but not identical to the requirements imposed by Section 170(f)(8).

For contributions of property other than money in excess of $500 but less than $5,000, Reg. 1.170A-13(b)(3) provides additional recordkeeping requirements.[12] In addition, where the deduction claimed is in excess of $500, the donor must file a Form 8283 with the tax return of the year the deduction is claimed, with information that varies depending on the size and type of gift, as a result of the requirements set forth on Schedule A of Form 1040.

In Rev. Rul. 2002-67, pursuant to the property donation program, the processor provided to each donor a substantiation of the donor's contribution, including an acknowledgment that contained the information required by Section 170(f)(8)(B). In Ltr. Ruls. 200230005 and 200230007, the processor planned to deliver, on the processor's letterhead, a thank you letter to each vehicle donor on behalf of the charity. The letter rulings assume, based on feedback from the Service, that the letter would include all of the information required by both Section 170(f)(8)(B) and Reg. 1.170A-13(b)(1).

The processor and the charity should provide information to the donor for the charity to avoid allegations of aiding and abetting a false return.

Rev. Rul. 2002-67 states that the acknowledgment provided by the processor to the donor will meet the contemporaneous written acknowledgment requirement of Section 170(f)(8)(A). Ltr. Rul. 20023007 provides that the receipt requirement of Reg. 1.170A-13(b)(1) also will be satisfied by the processor's written letter to the donor. Thus, if a processor qualifies as the charity's agent in administering the vehicle donation program, it can do more than handle the actual vehicles; the processor also can fulfill the charity's role in acknowledging the donations. In addition, in the property donation program described in the letter rulings, the processor was permitted to sign the Form 8283 on behalf of the charity pursuant to a power of attorney.

Substantiation of contributions of more than $5,000. Donations valued at $5,000 or more require additional substantiation beyond that described above. With some exceptions that would not apply to the contribution of a vehicle, Reg. 1.170A-13(c)(2) allows a deduction for a charitable contribution in excess of $5,000 only if the donor (1) obtains a qualified appraisal for such contributed property, (2) attaches a fully completed appraisal summary to the tax return on which the deduction for the contribution is first claimed, and (3) maintains records containing this required information.

The appraisal summary on Form 8283 must be signed and dated by the donee. The person who signs the form on behalf of the charity, however, may be a person specifically designated to sign such appraisal by an authorized official of the charity.[13] In the property donation program described in the letter rulings, the processor was permitted to sign the Form 8283 on behalf of the charity pursuant to a power of attorney; this arrangement, properly implemented, satisfied the appraisal requirements.

Private Benefit and Private Inurement

Compensation of a third-party processor involved in a vehicle donation program also may raise private inurement and private benefit concerns. Rather than being limited to concerns over the deductibility of individual contributions, an adverse finding of private benefit or private inurement will jeopardize the tax-exempt status of the charity itself. In addition to jeopardizing the tax-exempt status of the charity, inappropriate compensation of the vehicle processor could result in the imposition of intermediate sanctions under Section 4958, depending on the facts and circumstances.[14]

Private inurement. The private inurement prohibition is based on language in Section 501(c)(3), which requires that "no part of the net income" of the organization "inure[ ] to the benefit of any private shareholder or individual." Reg. 1.501(a)-1(c) defines "private shareholder or individual" as a person

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11 Reg. 1.170A-13(b)(1).

12 Pursuant to Reg. 1.170A-13(b)(3), the donor must maintain a written record including the information described above plus the manner and date of acquisition and cost basis.

13 Regs. 1.170A-13(c)(4)(i)(B) and 1.170A-13(c)(4)(iii).

14 Since the IRS did not discuss that issue in the rulings, this article does not further discuss Section 4958. For more on these provisions, see Kaufmann, "The Intermediate Sanctions Regulations Are Final—No More Excuses," 96 JTAX 240 (April 2002).

Practice Notes

Exempt organizations considering the implementation of a vehicle donation program run by a third-party processor must keep the following in mind:

- A valid agency relationship is required, created by a written agreement.
- The charity must retain the right to control the processor and supervise the processor's activity.
- The charity must be the equitable owner of the property until it is sold, and then be entitled to the proceeds (less the processor's fee).
- The processor and the charity, to avoid allegations of aiding and abetting a false tax return, must be careful in providing the donor with information substantiating the gift; the charity, for instance, might provide a disclaimer notifying the donor that the blue book value of the vehicle does not in any way represent the opinion of the charity as to the FMV of the donation.
- To avoid private inurement and private benefit, the agreement between the processor and the charity should be negotiated at arm's length, and the service provider should not control the charity.
- Since it will be difficult for the charity to establish the FMV of the donated vehicles when reporting fundraising results to IRS on Form 990, a good faith approximation may be to report the gross receipts from the sales of the vehicles as the gross proceeds from the program.

having a personal and private interest in the activities of the organization.

The Service and the courts have not always made it clear who is included in "private shareholder or individual," but generally have included directors, officers, and trustees as well as other individuals, including employees and in some cases independent contractors, who through their positions play an important role in the charity or otherwise have a private connection to the charity.

In Ltr. Rul. 200230005, the IRS concluded that the processor qualified as an "insider" of the charity due to its role as the charity's agent. Thus, the Service analyzed whether the compensation arrangement would result in private inurement to the processor. Under the reasoning of *United Cancer Council, Inc.*, 165 F.3d 1173, 83 AFTR2d 99-812 (CA-7, 1999), which held that a contract with a third-party fundraiser did not make the fundraiser an insider, it is arguable whether a vehicle processor in fact needs to be treated as an insider to a charity.[15] Nonetheless, it is helpful to see the Service's reasoning in concluding that no inurement occurred.

Pursuant to the agreement between the parties, the processor was to receive a specified percentage of gross proceeds derived from the sale or disposition of the donated vehicles. The IRS recognized that such a contingent compensation arrangement could create a potential conflict of interest between the processor's profit motive and the charity's interest in maximizing its donated funds. Nevertheless, the Service concluded that such an arrangement would not constitute private inurement, if certain criteria were met. In evaluating the agreement, the Service emphasized the following factors:

- The agreement between the parties was negotiated at arm's length, and the service provider did not participate in the management or control of the charity.
- The agreement served a real and discernible business purpose of the charity, independent of any purpose to operate the organization for the direct or indirect benefit of the operator.
- The amount of compensation did not principally depend on the incoming revenue of the charity (from the program and other sources), but rather on the service provider's accomplishment of its objectives as described in the agreement.
- No evidence existed of abuse or of unwarranted benefits being provided to the fundraising organization.

The Service determined that the arrangement met the above four factors and thus did not result in private inurement. Arguably, other compensation arrangements between the processor and the charity also could meet the factors. For example, the processor might have deducted certain specified costs from the proceeds before its share of the proceeds was calculated; such an arrangement arguably would still meet these factors.

Private benefit. Under Section 501(c)(3), an organization must be both organized and operated for tax-exempt purposes. The operational test requires that an organization be operated "exclusively" for exempt purposes. The presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption.[16] An organization is not operated exclusively for an exempt purpose unless it serves a public rather than a private interest. Thus, under Reg. 1.501(c)(3)-1(d)(1)(ii) it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

In Ltr. Rul. 200230005, the Service concluded that no private benefit oc-

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15 For more on this case, see Hill, "Deregulating the Exempt Sector? CA-7 Reverses Tax Court in *United Cancer Council*," 90 JTAX 303 (May 1999).

16 Better Business Bureau, 326 U.S. 279, 34 AFTR 5 (1945).

curred based on the following circumstances:

1. The charity was not created by the private party and was not a "captive" organization of anyone who would benefit from the program.

2. No board member or officer of the charity was a board member or officer of the processor.

3. The agreement was found to be negotiated at arm's length.

4. The donation program still would occur without the processor or its related entities, because the charity could appoint another agent to operate the program.

Thus, the IRS considered any benefit to private parties under these circumstances to be only incidental to the operation of a proper vehicle donation program.

Summary. As a result of the above private inurement and private benefit concerns, a charity must pay careful attention to any arrangement it negotiates with a processor to handle vehicle donations. The arrangement must be negotiated at arm's length and reflect market terms. The charity also should confirm and document that the method of compensation is customary for the solicitation and disposition of used vehicles. Moreover, any proprietary or family relationship between the charity's directors or officers and the vehicle processor may result in greater scrutiny of the arrangement by the Service.

Proper Reporting

The IRS recently also has provided guidance regarding how proceeds from fundraising activities of a charity need to be reported on its Form 990. In Ann. 2002-87, 2002-39 IRB 624, the Service emphasized that it wanted charities to report the gross fundraising figures, together with the fundraising expenses, not just net fundraising proceeds.

Rev. Rul. 2002-67 refers charities to this announcement for information regarding how to properly record proceeds from a vehicle donation program. Applying this requirement to vehicle donation programs, the charity arguably should report the value of the vehicles donated to the charity, together with the expenses incurred and the fees retained by the processor, not just the net proceeds received from the processor. Since it will be difficult for the charity to establish the FMV of the vehicles, a good faith approximation may be to report the gross receipts from the sales of the vehicles as the gross proceeds from the program.

Unrelated Business Income

The Service held in Ltr. Rul. 200230005 that, because the charity planned to receive donated property and resell it to generate funds, the revenue derived from the sale of donated property did not constitute unrelated business income under the "donated goods" exception.[17] This ruling appears to be a change in analysis from the earlier CPE Text, which stated that the donated goods exception may not be available for vehicle donation programs.

CONCLUSION

In light of the recent guidance from the Service, charities now can be more comfortable in entering into agreements with third-party vehicle processors to implement vehicle donation programs. At the same time, the issues that need to be considered and addressed appropriately are complex. A charity should carefully review and analyze any proposed vehicle donation program and its agreement with a vehicle processor before moving forward. ■

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[17] See Section 513(a)(3), Reg. 1.513-1(e)(3).