

MEMORANDUM

TO: All Pastors, Principals, Department and Agency Heads

FROM: Lawrence R. Jannuzzi, Associate Legal Counsel

DATE: March 8, 2006

RE: Advisory re: Car Donations

cc: Rev. Mr. John Norris, Director of Development

As you may already know, the Internal Revenue Service has long imposed strict rules and detailed paperwork requirements concerning car-donation programs. This has resulted in our long-held stance that such programs are to be approached with caution. In the last year, the IRS has revised these rules to make them even more difficult to navigate, with the result that these programs are not encouraged.

For those programs that do exist or if any are contemplated, however, following is a synopsis of the **new government rules** (NB: This memo is for your own use/information only; we must never purport to offer tax or legal advice to our donors). Please keep this memo on file and share it with those involved in your parish/school/agency's development and fundraising efforts.

The IRS is chiefly concerned with three areas with respect to gifts to charities: 1) the deductibility of the gift from the donor's taxes; 2) the reporting requirements to the government by the recipient (i.e., the charity); and 3) verifying that the donation was truly "charitable" in nature. The first includes rules of "acknowledging" certain gifts. Without a proper acknowledgment from the charity, the donor may not claim the deduction and so will have less incentive to make the gift. The second and third involve the paperwork that the charity must provide to the government confirming receipt of the gift.

In the context of car donations, this means:

1. **Acknowledgment:** Because deductions are limited, the donor must be given a "contemporaneous acknowledgment" of the gift if the "claimed value" of the car is greater than \$500 (That is to say, a donor cannot claim a deduction of greater than \$500 without the proper acknowledgment). The IRS now has created Form 1098-C which has multiple duplicates, one copy of which (Copy B) can be used to acknowledge the gift. Please note that it is a **violation of the tax laws either**

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to furnish a knowingly false acknowledgment or knowingly fail to furnish an acknowledgment in the manner, at the time, and showing the information required. Note also that Form 1098-C may be downloaded, but currently the downloaded version may not be used for filing. You must request the appropriate forms directly from the IRS.

2. The acknowledgment of a car donation is required to be “contemporaneous.” However, the acknowledgment must also state whether the car is to be sold, donated to a needy individual, sold to a needy individual at less than market value, or sold “after material improvements or significant intervening use” (which must be described on the form). If sold, the date of sale and gross proceeds must be listed. These are, obviously, factors that cannot be known at the time of the donation. Therefore, “contemporaneous” is defined to mean *either* within 30 days after the date the car is eventually sold, if it is to be sold; *or* within 30 days of the date of the donation, if the car is to be used by the charity or “transferred to a needy individual for significantly less than market value in furtherance of the donee’s charitable purpose.” If the car is sold in a year other than the year in which it is donated, the donor must file an amended return claiming the deduction for the year in which the donation was made. (There is no mention of what happens if a car donation is accepted for sale but no buyer can ultimately be found, or if it can only be sold after “improvements” but the improvements are more expensive than the value of the car, making the transaction a net loss to the charity. For this reason, many charities have been forced to modify their “running or not” policies and further IRS clarifications can be expected).
3. **Reporting:** Form 1098-C *must* be used to report the gift of a car to the IRS (for donations during 2005 only, the Charity may provide a copy of the actual acknowledgment if Form 1098-C was not used). Form 1098-C must be filed no later than February 28 of the year following the year in which the donation was made. The 1098-Cs for the prior year should all be sent together along with Form 1096, “Annual Summary and Transmittal of U.S. Information Returns.” If more than 250 1098-Cs must be filed for a particular year, they must be filed electronically or on a disk. As with the acknowledgment, **it is a violation to knowingly report false information or knowingly fail to report required information.**
4. If the donor will claim more than \$500 non-cash gifts in any year (including cars), the donor must file IRS form 8283 to claim a deduction. If any of those gifts (e.g., a car) is claimed to be worth more than \$5,000 (claimed by the donor – we do not express any opinion as to value), the donor must also obtain an independent appraisal, which will be reflected in Form 8283 (“Appraisal

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Summary”), and must be certified by the Charity. In this event, the Charity must then file IRS Form 8282 “Donee Information Return” if it sells or otherwise disposes of the car within two years of donation. Form 8282 must be filed within 125 days of sale or disposition. The Charity must then give a copy of Form 8282 to the donor.

5. **Raffles:** Cars donated for raffles present a special case. According to the IRS, a raffle is not a “sale” and therefore does not fit any of the categories listed on 1098-C. The Charity, therefore, **cannot** give a 1098-C acknowledgment of the donation of a car to be raffled. Without that acknowledgment, therefore, a donor cannot claim a deduction greater than \$500 for a raffled car, even if the car is worth \$75,000 or more. In place of the 1098-C, the gift of a car to be raffled should therefore be acknowledged with an ordinary receipt of the kind given for any sort of donated item, i.e., it should describe the item (but not its value), give the date of donation and state that no goods or services were exchanged for the item.
6. **Sales Agents/Middlemen:** A charity may desire to hire a “service” to accept donations for the charity and refurbish and/or sell the cars donated. The danger here is that the “service” is simply a sham for “renting” the charity’s charitable status for its own business. Any agreement with such a “service” must be clearly arranged so that the Charity **actively** monitors the program operations and retains the right to “review all contracts, establish rules of conduct, choose or change program operators, approve of or change all advertising, and examine the program’s books and records.” If, on the other hand, the Charity does not maintain active involvement and the right of control as described (if, for example, the “service” simply gives a flat fee or percentage from the sale of the cars to the Charity), then this program **is not considered charitable** and any acknowledgment/reporting of cars donated to such a program would be considered **potentially fraudulent** in the eyes of the IRS).
7. **State Law:** The Charity accepting car donations must comply with state law governing the transfer of vehicles, including transfer of title, tags, emission tests, license, taxes, etc. I have not examined the state procedures in California, but these should be verified (e.g., to ascertain the tax-exempt status of the transfer) before any donations are accepted.

I am attaching for your reference a copy of the IRS publication “A Charity’s Guide to Car Donations.” Please keep this and review in conjunction with the material already

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