KLR Certified Public Accountants
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Quid Pro Quo Charitable Contributions

KLR Not-for-Profit Services Group

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Quid Pro Quo Charitable Contributions

Donee Organizations' Responsibilities in Part-gift, Part-Purchase Transactions

Disclosure requirement for quid pro quo charitable contributions.

A charitable organization that receives a quid pro quo contribution in excess of $75 must provide a written statement, in connection with soliciting or receiving the contribution, that (1) informs the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of the amount of any money (and the value of any property other than money) contributed by the donor over the value of the goods or services provided by the organization and (2) provides the donor with a good-faith estimate of the value of those goods or services. These requirements don't apply to Code Sec. 170(c)(1) organizations (states, their political subdivisions, the U.S., and the District of Columbia.)

Quid pro quo contribution defined.

A quid pro quo contribution is a payment made partly as a gift and partly in consideration for goods or services provided to the donor. But the term doesn't include any payment made to an organization, organized exclusively for religious purposes, in return for which the taxpayer receives solely an intangible religious benefit that generally isn't sold in a commercial transaction outside the donative context.

An example of an intangible religious benefit is admission to a religious ceremony. Tuition for education leading to a recognized degree, travel services, and consumer goods aren't intangible religious benefits. But de minimis tangible benefits (such as wine) that are incidental to a religious ceremony may generally be disregarded.

The disclosure requirement applies to all quid pro quo contributions where the donor makes a payment of more than $75. Thus, if a charity receives a $100 contribution in exchange for which the donor receives a dinner valued at $40, the charity must inform the donor in writing that only $60 is deductible as a charitable contribution.

However, the disclosure requirement doesn't apply if the donor receives only *de minimis*, token goods or services, such as those that are deemed to be of insubstantial value. Also, the disclosure requirement doesn't apply to transactions that have no gift element, such as sales of goods by a museum gift shop.

For purposes of the $75 threshold, separate payments made at different times of the year with respect to separate fundraising events generally will not be aggregated. However, it is intended that IRS will issue anti-abuse rules to prevent avoidance of the quid pro quo disclosure requirement by writing several checks for the same transaction.

Operational Tip

From a public relations view point, you do not want your donors attempting to deduct something, only to have the IRS deny their deduction. Therefore, we recommend that you indicate on all tickets and special event invitations how much of the ticket price is tax deductible – even the tickets which are priced under $75.00.

Raffles – special circumstances

Raffles are fund-raising transactions that are also covered by the quid-pro-quo regulations. In general, the cost of a raffle ticket never includes a donation component. The IRS assumes that the value of the item being raffled off exceeds the cost of the raffle ticket. Therefore, the entire cost of the ticket is not tax deductible.

Furthermore, the IRS regulations have clearly indicated that the charitable organization must not use the terms *contribution* or *donation* on the ticket in regard to the price. *e.g.* donation $10. The correct manner of listing the cost of the raffle ticket on all literature associated with the raffle is to list the cost only or to indicate *Tickets $2 each, 3 for $5* or other similar information.

How disclosure is made.

The disclosure must be made in a manner that is reasonably likely to come to the donor's attention. For example, disclosing the required information in small print within a larger document might not meet the requirement

Responsibilities of donee organizations with respect to part-gift, part-purchase transactions

IRS asks charitable organizations to: make clear, in advance of solicitation, how much of a payment will be a contribution, and clearly indicate this part in the ticket, receipt, etc. IRS has asked charities to determine the fair market value of the benefits offered for contributions in advance of a solicitation, and to state, in the solicitation and tickets, receipts or other documents issued in connection with a contribution, how much is deductible and how much is not. If a charity is unable to make an exact determination of the fair market value of the benefits, it should use a reasonable estimate of fair market value.

Insubstantial benefits to donor and responsibilities of donee organizations with respect to part-gift, part-purchase transactions.

With respect to a charity's obligation to determine how much of a contribution is nondeductible, the IRS says that a benefit may be so inconsequential or insubstantial that the full amount of the contribution should be allowed as a charitable deduction. Benefits will be considered insubstantial if the patron's payment occurs in the context of a fund-raising campaign in which the charity informs patrons how much of their payment is a deductible contribution; and any of the following requirements are met:

1. The fair market value of all the benefits received in connection with the payment may not be more than 2% of the payment, or $50, whichever is less.

2. The payment must be at least $25 (adjusted for inflation for years after '87, see below) and the only benefits received in connection with the payment must be token items (bookmarks, calendars, key chains, mugs, posters, tee shirts, etc.) bearing the charity's name or logo. The cost (as opposed to the fair market value) of all of the benefits received by the donor must, in the aggregate, be within the limits established for low cost articles under Code Sec. 513(h)(2), i.e., the cost may not exceed $5 (adjusted for inflation for years after '87, see below).

3. The charity mails or otherwise distributes free, unordered items to patrons. To meet this requirement, any item received by a patron must not have been distributed at the patron's request or with his express consent. Any item distributed must be accompanied by a request for a charitable contribution and by a statement that the patron may retain the item whether or not the patron makes a contribution

Inflation adjustments

The adjustment for inflation is made by increasing the amounts ($5, $25, or $50 as the case may be) for calendar years beginning after '87 in accordance with the rules of Code Sec. 1(f)(3)

As of 2013, the low-cost article limit is $10.20, the payment must be at least $51, and the $50 benefit limitation set forth in (1), above, is $102. The $50 limitation was indexed for inflation beginning in '93.

The above rules are intended as a safe harbor. Depending on the facts in each case, benefits received in connection with contributions may be "insubstantial" even if they don't meet these guidelines

Impracticality and responsibilities of donee organizations providing insubstantial benefits to donor.

There may be situations in which it is impractical to state in every solicitation how much of a payment is deductible. For example, where a nonprofit broadcasting organization offers a number of premiums in an on-air fund-raising announcement, it may be unduly cumbersome to include information on the fair market value of each premium. In these cases, the charity may seek a ruling from IRS concerning an alternative procedure. IRS will rule on whether the alternative procedure meets the goal of providing accurate and sufficient information to contributors.

Newsletters or program guides and determining benefit amount.

Newsletters or program guides (other than commercial quality publications) will be treated as if they don't have a measurable fair market value or cost, if:

1. Their primary purpose is to inform members about the activities of an organization, and
2. They aren't available to nonmembers by paid subscription or through newsstand sales. Generally, publications that contain articles written for compensation and that accept advertising will be treated as commercial quality publications having measurable fair market value or cost. Professional journals (whether or not articles are written for compensation and advertising is accepted) will normally be treated as commercial quality publications.

Example 1:

During 2013, a nonprofit broadcast organization sends its patrons a listener's guide for one year in return for a contribution of $60. The cost of production and distribution of the listener's guide is $8 per year per patron, and its fair market value is $10. The listener's guide isn't available to nonmembers by paid subscription or through newsstand sales. It is written by a salaried staff member at the broadcast organization and it accepts advertising. The listener's guide, therefore, is a "commercial quality publication." However, since the donor’s payment was more than $51.00 and, the cost of the listener's guide is $8 (it is less than $10.20), the broadcast organization may advise its patrons that the full amount of the payment is a deductible contribution.

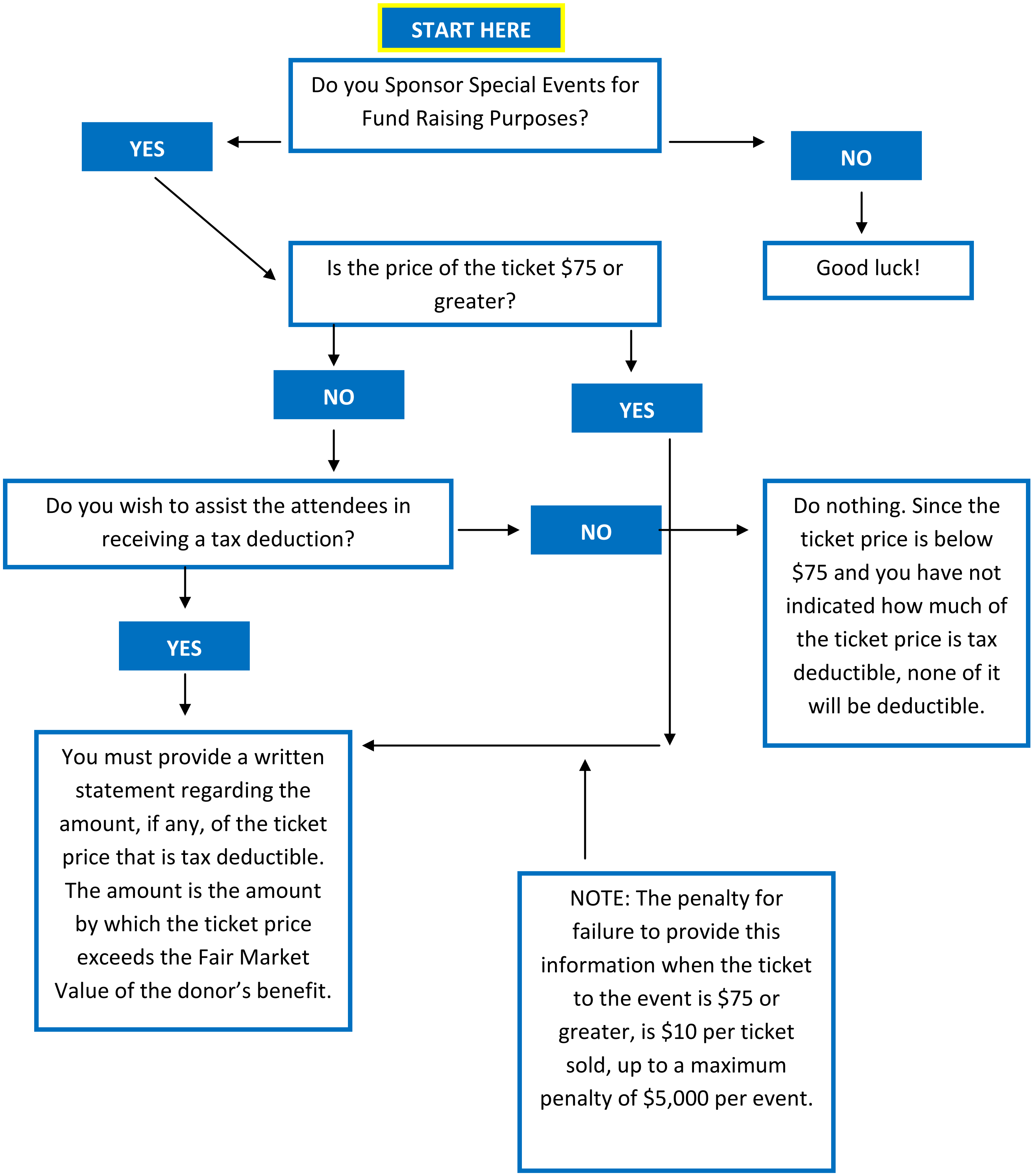
If the fair market value of the listener's guide was more than $10.20 but the cost is below this amount, the result would be the same. *Cost* is the crucial factor. If the cost of producing and distributing the listener's guide is $8 and fair market value is $12, then the $60 payment can still be deducted in its entirety by the member.

However, if the cost of the listener’s guide was $12 and the fair market value of it was $10 cost is still the key factor. In this situation, only $50 of the payment is deductible and $10 isn't deductible. Note: this information flow is tricky. The test was whether the *cost* is above $10.20, but the amount to reduce the contribution amount by was the *fair market value*, not the cost.

Example 2:

Assume that the nonprofit broadcast organization (above) also gives its patrons a coffee mug with the organization's logo. The cost of a mug to the organization is $3. Its fair market value is $10. Since the listener's guide costs $8 (with a fair market value of $12) and the coffee mug costs $3, their aggregate cost exceeds the 2013 limit of $10.20. The organization should inform its patrons that $38 of their contribution is deductible and $22 ($12 + $10) is not deductible.

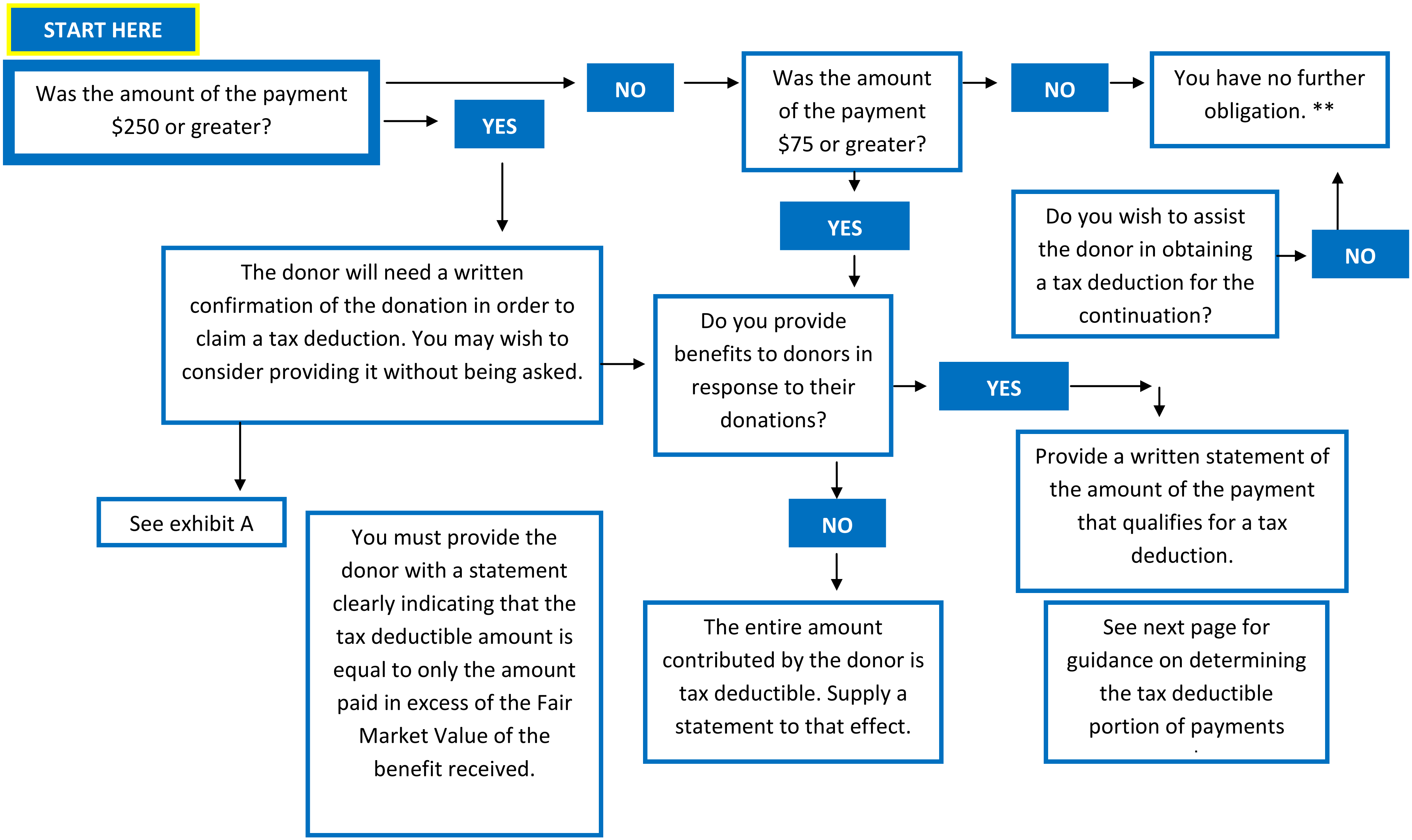
A Guide to the Internal Revenue Service Disclosure Requirements Relating to Fundraising Events



** Fair Market Value is the value of the event to the participant/donor. It is not what the event has cost your organization to provide. Fair Market Value is what it would cost a participant/donor to attend a similar event in the community.

A Guide to the Internal Revenue Service Disclosure Requirements Relating to:

Benefits Provided to Donors in Response to their Donations- $250 or more.



** Without written documentation regarding the tax deductible portion of the payment, for payments below $75, the IRS will presume that none of the amount is deductible.

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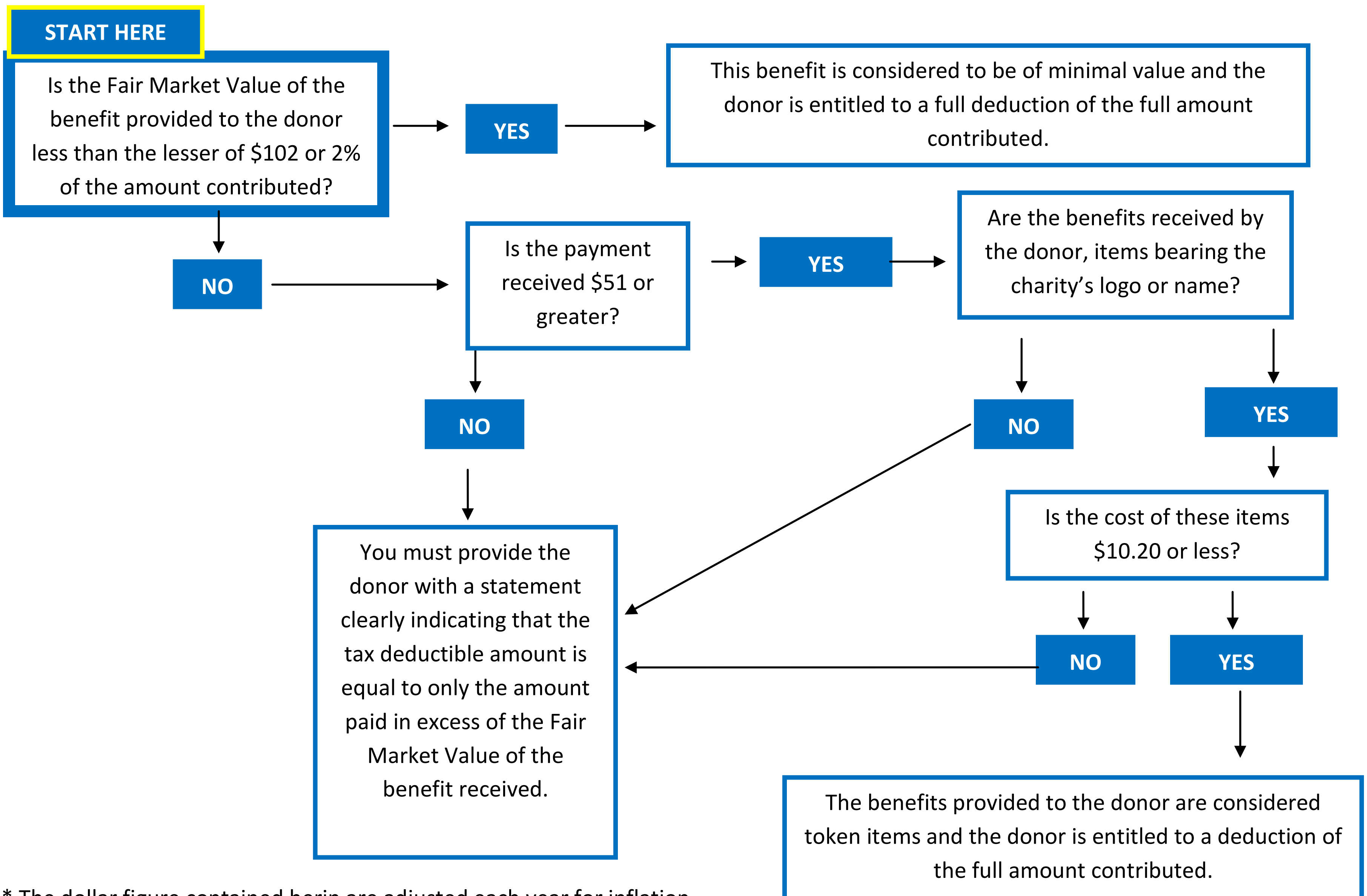
A Guide to the Internal Revenue Service Disclosure Requirements Relating to Benefits Provided to Donors in Response to their Donations



** The dollar figure contained herin are adjusted each year for inflation.
The above figures represent the amounts in effect for 2013.

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WRITTEN ACKNOWLEDGEMENT OF CHARITABLE CONTRIBUTION RECEIVED (EXHIBIT A)

Designed to Provide Substantiation of Charitable Contribution in Accordance With
Internal Revenue Code Sec. 170(f)(8)(A) as amended

Date of contribution: ________________

Name and address of Donor: ____________________________________
____
____

Name and address of Charitable Organization:

____
____
____

Amount of Cash Contribution $ _________________

Description of non-cash items contributed:

____
____
____
____

✓ as appropriate

☐ The Charitable Organization did not provide any goods or services in consideration for the contribution.

☐ The Charitable Organization provided goods or services in consideration for the contribution in the amount of $___________

☐ The goods or services provided by the Charitable Organization in consideration for the contribution consisted of intangible religious benefits.

Signed by Charitable Organization ________________________________ Date ______________

Designed by Kahn, Litwin, Renza & Co., Ltd. to comply with Internal Revenue Code regulations. The IRS has indicated that this form may be sent to donors via e-mail or in a hard copy.

ABOUT OUR FIRM

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*Please note that this whitepaper is a general summary of the law and omits many important details, footnotes and caveats. It is no substitute for informed advice from a tax professional based on your particular circumstances.