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**From:**

**Sent:** Tuesday, April 26, 2011 12:35 PM

**To:**

**Cc:**

**Subject:** Section 170(f)(8)(D)

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Attachment:

**Question:** Does a donor who discovers that he failed to obtain a contemporaneous written acknowledgment under section 170(f)(8)(A) meet the requirements of section 170(f)(8) if the donee subsequently files an amended Form 990 for the year of contribution for purposes of attaching a statement to the Form 990 that includes the information required by section 170(f)(8)(B)?

**Answer:** No.

**Analysis:** In Schrimsher v. Commissioner, T.C. Memo 2011-71 (March 28, 2011), the Tax Court recently held that taxpayers' failure to obtain a contemporaneous written acknowledgment resulted in disallowance of a charitable contribution deduction. The law is well settled that no deduction is allowed unless the taxpayer substantiates in accordance with section 170(f)(8). See e.g., Addis v. Commissioner, 118 T.C. 528, aff'd, 374 F.3d 881 (2004), cert. denied, 543US 1151 (2005); Viralam v. Commissioner, 136 T.C. No. 8 (Feb. 14, 2011).

The taxpayers in Schrimsher had argued that the deed satisfied this requirement, but the Court did not agree. The Court noted that the taxpayers did not argue that any exception to section 170(f)(8) applied. In paraphrasing the requirements of section 170(f)(8), the Court properly noted that section 170(f)(8)(D) provides that the requirement of a contemporaneous written acknowledgment does not apply if the donee files a return, on a form and in the manner regulations may prescribe, that includes the information otherwise required to be included in the contemporaneous written acknowledgment.

Section 170(f)(8)(D) states:

(D) Substantiation not required for contributions reported by the donee organization. Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with

such regulations as the Secretary may prescribe, which included the information described in subparagraph (B) with respect to the contribution.

Section 170(f)(8) was enacted in the Omnibus Reconciliation Act of 1993, P.L. 103-66. Regulations have been promulgated under section 170(f)(8). T.D. 8690, Nov. 27, 1996.

The final regulations promulgated in T.D. 8690 (Treas. Reg. 1.170A-13(f)) were preceded by a Notice of Proposed Rulemaking (IA-44-94) published in the Federal Register for August 4, 1995 (60 FR 39896). A number of comments were received in response to the Notice. See 1997-1 C.B. 68 at 71. For example, commenters asked whether a contemporaneous written acknowledgment must be in any particular format. The Service responded that a contemporaneous written acknowledgment may be in any format.

One commenter suggested that the regulations allow charities to report charitable contributions directly to the IRS on Form 990 or 990-PF. In response to this comment, the Secretary noted that section 170(f)(8) authorizes the Secretary to prescribe regulations allowing donee organizations to satisfy the requirements of section 170(f)(8) by filing a return that includes the information described in section 170(f)(8)(B). However, the Secretary stated that the "IRS and Treasury have decided not to implement this suggestion at this time. However, in an effort to reduce paperwork and taxpayer burdens, the IRS will examine whether any existing IRS forms can be modified to assist in their use in substantiating charitable contributions." 1997-1 C.B. 71.

To date, the Secretary has not identified any existing forms for donees to use in connection with section 170(f)(8)(D). Because the Secretary has chosen, as documented above, not to provide for donee reporting under subparagraph (D), taxpayers cannot satisfy the requirements of section 170(f)(8) with a Form 990 or any other Form filed by the donee under subparagraph (D).