

Deducting for Out-of-pocket Expenses Incurred While Volunteering

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Background

Although a charitable deduction is not allowed for a contribution of services, unreimbursed out-of-pocket expenditures made in connection with rendering volunteer services to a charitable organization may be deductible as charitable contributions [Reg. 1.170A-1(g)]. However, as the taxpayer in the recent *Van Dusen* [136 TC No. 25 (2011)] case discovered, it can be easier to herd cats than to substantiate those expenses. Still, this court decision was about as taxpayer-friendly as we could of hoped for, and it provides some welcome guidance on what taxpayers need to do to secure a tax deduction for unreimbursed volunteer expenses.

The Facts

Ms. Van Dusen (D) was one of many volunteers for Fix Our Ferals (FOF), a Section 501(c)(3) organization whose mission is, in part, to trap urban feral cats, spay/neuter them, obtain necessary medical treatments and vaccinations, and return them to their original neighborhood (or a safer one). Finding short-term and long-term foster care is also an important part of FOF's mission.

After sterilization, the cats must be temporarily housed in volunteers' private residences while they recuperate. In addition, some cats are too sick, too old, or just too unfit to be released or adopted out through animal shelters. Consequently, FOF encourages its volunteers to provide long-term care for these animals. FOF reimburses volunteers for their emergency medical expenses and sometimes for sterilization, but otherwise, volunteers pay all veterinary expenses.

During 2004, D had 70 to 80 cats in her house, including seven that were her pets. Most of the foster cats were the result of D's personal rescue and her affiliation with FOF. D could not specifically attribute all the cats to her FOF efforts because some were acquired while she had worked with other rescue organizations or through contacts outside the FOF network. However, this was not fatal in the Court's view because the other cat rescue organizations with which D was affiliated were also charitable organizations.

D claimed a 2004 charitable deduction of \$12,068 (\$1,381 for supplies, \$9,607 for vet bills, and \$1,080 for utilities). The utilities expense was attributed to higher electric and gas bills because she laundered so

much cat bedding and ran a special ventilation system to ensure fresh air. The frequent laundering also increased her water bills. Her garbage bills increased because of the high volume of cat-related waste.

Observation: Surprisingly, an automobile mileage deduction was omitted. Presumably, D would have racked up mileage in locating and releasing cats, purchasing cat supplies, and making trips to the vet. Currently, the allowance is 14 cents per mile, plus any fees for parking and tolls.

Expenses Must be Incurred in Performing Services for a Charitable Organization

Unreimbursed expenses are deductible only if incurred in performing services for a charitable organization [Reg. 1.170A-1(g)]. Consequently, the IRS initially sought to deny D's expenses by arguing that she was an independent cat rescuer whose services did not benefit FOF. In rejecting this assertion, the Court noted that the regulations do not require that the services be performed under the charity's control or supervision. Control or supervision is simply one of the factors to be considered. Other factors include the strength of the taxpayer's affiliation with the organization, the organization's ability to initiate or request services from the taxpayer, and the taxpayer's accountability to the organization.

For example, in *Smith* [60 TC 988 (1973)], church members were allowed to deduct evangelism travel expenses even though their church never initiated, controlled, supervised, or assisted with their trips. The church encouraged missionary work in general; and before the taxpayers embarked on a trip, the church gave them letters of commendation evidencing its approval and serving as introductions to intrafaith groups during the trip. After each trip, the church publicized the members' efforts and accomplishments to other congregations.

Cash Contribution Substantiation Rules Apply to Out-of-pocket Expenses

First the Court had to determine whether D's expenses should be governed by the recordkeeping rules applicable to contributions of money or contributions of property provided in Reg. 1.170A-13(b), since the regulations are silent on which set applies to unreimbursed expenses. Starting with the premise that unreimbursed volunteer expenses are not free from recordkeeping requirements, the Court concluded that those applicable to contributions of money are also applicable to unreimbursed expenses, based in part on the fact that volunteers usually use money to purchase goods or services.

To substantiate a cash gift, a donor must produce one of the following [Reg. 1.170A-13(a)(1)]: (1) a cancelled check; (2) a receipt (or letter or other communication from the donee charity) showing the donee's name, contribution date, and contribution amount; or (3) when neither a cancelled check nor receipt is available, other reliable written records showing the donee's name, contribution date, and amount. (As we'll discuss shortly, additional substantiation requirements apply if the out-of-pocket expense is \$250 or more.

D had neither cancelled checks nor receipts from FOF. In fact, she had few, if any, original receipts documenting her expenditures. Her explanation was that her tax preparer told her that these documents were unnecessary to support her charitable deduction and, consequently, they were not preserved. (What was the preparer thinking?)

D was able to produce her check register which had carbon copies of her checks, bank account statements, credit card receipts, vet hospital client account history, and electric, water, and garbage bills. Collectively, these documents did not satisfy any of the three requirements for substantiation described above. However, the Court concluded that although D could not strictly comply with Reg. 1.170A-13(a)(1) , she had substantially complied with the rules. The Court reasoned that its substantial compliance doctrine was justifiable because the “regulation was not written with unreimbursed volunteer expenses in mind.” The documents produced were legitimate substitutes for cancelled checks because they provided the same information (i.e., date and amount) as a cancelled check except for the charity's name. A volunteer's cancelled check obviously will reflect the name of the payee, not the name of the organization to which the volunteer's services are rendered.

The Court considered D's records to be reliable because they were made contemporaneously with the expenditures and in the regular course of recordkeeping.

Allocating Mixed Personal and Volunteer Expenditures

D could not explain how the components of her \$12,068 deduction were calculated, especially the utilities portion. A “friend” had prepared a spreadsheet of D's cat rescue operation expenses, but it was not produced for the trial. Also, there was no evidence about the friend's methodology for separating FOF-related expenses from personal expenses. Consequently, some payments evidenced only by check copies were disallowed because of D's inability (lacking detailed receipts) to demonstrate that the expenditure was for wholly cat-related supplies. In other instances, the Court accepted payments that

appeared to be exclusively cat-related (e.g., payments that were an exact multiple of the price of a bag of cat litter).

After deciding which expenditures were exclusively cat-related, the next issue was to determine the deductible portion. Remember that D had pet cats in addition to foster cats. Since cat-care costs would apply equally to all of them, the Court accepted D's argument that 90% of the veterinary and pet supply expenses were attributable to foster cats (based on the ratio of seven pets out of 70–80 total cats). The Court allowed only 50% of other expenses (cleaning supplies and utilities), reasoning that this was a conservative estimate to ensure that no personal expenses were counted.

Contemporaneous Written Acknowledgment for Expenses of \$250 or More

A contribution of \$250 or more must, in addition to meeting one of the three recordkeeping requirements described previously, be supported by a contemporaneous written acknowledgment from the donee charity [Reg. 1.170A-13(f)(1)]. However, this requirement does not apply to separate contributions of less than \$250 made to the same charity, even if the aggregate donations to it within the same taxable year exceed \$250. A taxpayer who incurs an unreimbursed expenditure of \$250 or more when rendering services must obtain a statement from the charity that describes the services provided [Reg. 1.170A-13(f)(10)]. The acknowledgment must be obtained by the earlier of the date the taxpayer filed the original return for the taxable year in which the contribution was made, or the return's due date (including extensions).

Since D did not have a written acknowledgment from FOF for her expenditures or a statement of services rendered, the Court had to determine which expenses were not deductible for lack of an acknowledgment. It adopted the practical approach of multiplying each cat-care expense by the relevant percentage (90% or 50%). Any resulting amount less than \$250 was deemed to be deductible and any amount of \$250 or more was held not deductible.

The Moral of This Story

Unreimbursed out-of-pocket expenses incurred while rendering volunteer services to a charity may be deductible, but only if the expenses are properly documented and, if the expense exceeds \$250, a proper acknowledgement is received from the charity. This acknowledgement will likely need to be requested by the taxpayer. An example of a letter to a charity requesting written acknowledgment is attached. It's also important to volunteers and donors to preserve original documents until the statute of limitations expires.

Sample Letter to Charity Requesting Written Acknowledgment of Volunteer Services

Dear Charity:

As you probably know, an out-of-pocket expense of \$250 or more incurred in connection with performing volunteer services for your organization is not deductible for federal income tax purposes unless I receive a written acknowledgment from your organization describing the volunteer services that I provided to your organization, and if I was provided with goods or services, a description and good faith estimate of the value of such items (or if the only items provided were intangible religious benefits, a statement to that effect).

I incurred out-of-pocket expenses in connection with performing volunteer services for your organization during [Year]. However, I did not receive an acknowledgment of the services (or the acknowledgment I received did not include the required information). As soon as possible, please provide me with an acknowledgment of my [Year] volunteer services that includes the information listed above. Alternatively, you may complete the bottom portion of this letter and return a copy of it in lieu of providing a separate acknowledgment. The acknowledgment or a signed copy of this letter should be returned to: [Donor's Name and Address].

Thanks in advance for your prompt attention to this matter.
Sincerely,

ACKNOWLEDGMENT:

During [Year], the following volunteer services were performed by [Donor's Name] :

Description of services provided: _____

Activity for which services were provided: _____

Check the statement that applies:

_____ No goods or services were furnished in return for the donation(s), or

_____ Only intangible religious benefits were provided in exchange for the donation(s), or

_____ The following goods or services were furnished in return for the donation(s):

Description of Goods or Services	Estimated Value
_____	\$ _____

Name of Charity: _____

By: _____ Title: _____ Date: _____