**Opinion Letter**

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| **Letter Number:** | **O-2000-010** |

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| **Tax Type:** | **Corporate Income Tax; Individual Income Tax** |
| **Brief Description:** | **Qualified contributions for the community service contribution credit.** |
| **Keywords:** |  |
| **Approval Date:** | **05/03/2000** |

**Body:**

Office of Policy & Research

May 3, 2000

XXX
XXX
XXX
XXX

Dear XXX:

Thank you for your letter of March 13, 2000 regarding the contributions made to XXX.

It is my understanding that XXX was designated by the Department of Commerce and Housing as a community service organization for purposes of the community service program and received approval to authorize tax credits to eligible businesses.

In the situation you have presented in your letter, XXX received a donation from XXX in the amount of $XXX. The same day the contribution was made to XXX, XXX purchased a telephone system for $XXX from XXX, making a down payment of $XXX (the same amount as the contribution made by XXX to XXX). XXX paid the balance of $XXX after delivery and installation of the system.

XXX also received a donation from XXX in the amount of $XXX. Again the same day the contribution was made to XXX by XXX, XXX purchased equipment from XXX for $XXX making a down payment of $XXX (the same amount as the contribution made by XXX to XXX). XXX paid the balance of $XXX after delivery and installation of the equipment.

You have specifically asked whether these contributions qualify for the tax credits under the community service program. To make this determination we must first look at the definition of contribution.

K.S.A. 79-32,195(e) provides:

“Contributions shall mean and include the donation of cash, services or property other than used clothing. Stocks and bonds contributed shall be valued at the stock market price on the date of transfer. Services contributed shall be valued at the standard billing rate for not-for-profit clients. Personal property items contributed shall be valued at the lesser of its fair market value or cost to the donor and may be inclusive of costs incurred in making the contribution, but shall not include sales tax. Contributions of real estate are allowable for credit only when title thereto is in fee simple absolute and is clear of any encumbrances. The amount of credit allowable shall be based upon the lesser of two current independent appraisals conducted by state licensed appraisers.”

Donation is defined in Black’s Law Dictionary as,

“A gift. *See* Donatio.” Black’s Law Dictionary 488 (6th Ed. 1990).

Donatio is defined as,

“A gift. A transfer of the title to property to one who received it without paying for it. The act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person, without any consideration.” Black’s at 487.

The definition of gift is as follows:

“A voluntary transfer of property to another made gratuitously and without consideration. Essential requisites of ‘gift’ are capacity of donor, intention of donor to make gift, completed delivery to or for donee, and acceptance of gift by donee.

In tax law, payment is a gift if it is made without conditions, from detached and disinterested generosity, out of affection, respect, charity or like impulses, and not from the constraining force of any moral or legal duty or from the incentive of anticipated benefits of an economic nature.” Black’s at 688.

Without any “consideration” implies that there shall be no motive, price or influence which induces a party to enter into an agreement. In other words, a contribution or gift requires a transfer of ownership of money or property without any expectation of a quid pro quo to be received from the donee. Mertens, Law of Federal Taxation, § 31:04. In the documentation you have provided, the money transfers from the donors appear to involve expectations of quid pro quo (an agreement to purchase property from the donor).

The subject transactions shall not be considered a true donation and therefore would not be a qualified contribution for the community service program.

If I may be of further assistance, please contact me at your earliest convenience.

Sincerely,

Kathleen M. Smith, Tax Specialist
Office of Policy and Research

**Date Composed: 05/31/2000 Date Modified: 10/10/2001**