DAVID SCHNAID ACCOUNTANCY CORPORATION
CERTIFIED PUBLIC ACCOUNTANTS

IRS TIGHTENS REQUIREMENTS FOR THE DEDUCTIBILITY OF CONTRIBUTIONS AND OFFERS NEW INCENTIVES FOR GIVING

Charitable deduction rules have undergone major refinements in past years. Many of these changes are outlined in the Pension Protection Act of 2006, which applies to the tax deductibility of charitable contributions made in 2007.

Individuals who itemize deductions may deduct charitable contributions of cash or non-capital gain property to qualified charitable organizations. The deduction would include any out of pocket expenses, including mileage (calculated at 14 cents per mile), incurred by an individual who donates his or her services to the charity.

GENERAL RULES
Generally, the maximum amount that can be deducted by any individual donor in any tax year is 50% of that donor's adjusted gross income (AGI). A lower maximum, 30%, applies for capital gain property contributed to public charities. In this case, however, the donor can elect to claim as a deduction his adjusted basis (to avoid the lower limitation) rather than the fair market value of the property contributed to avoid the 30% limitation. Additionally, contributions to semi-public and private charities have lower allowable AGI thresholds (30% for non-capital gain property and 20% for capital gain property). Any contributions made in excess of the applicable limitations may be carried forward for five years.

For corporations, the limitation for deduction of charitable contributions is 10% of the corporation's taxable income.

RECORDKEEPING
The new law imposes stricter recordkeeping requirements. Donors must be prepared to substantiate the value of property contributed to charity. All cash donations, regardless of amount, can be substantiated by the taxpayer's bank statement or credit card. Donations made by debit or credit card can be substantiated by the taxpayer's bank statement. Self-created contemporaneous records are no longer acceptable documentation. Donors may not deduct a charitable contribution of $250 or more unless the charitable donee has provided a contemporaneous written acknowledgement of the contribution. These requirements are in addition to existing requirements.

GOODS OR SERVICES RECEIVED IN EXCHANGE FOR CONTRIBUTIONS
If a donor receives goods or services (meals, entertainment, etc.) in return for a contribution, their deduction is limited to the amount by which the value of the contribution exceeds the value of the goods and services received in exchange.

However, a charity may provide token benefits to contributors without reducing the amount of the donor's deduction. A charity that provides goods or services in return for a contribution of more than $75 must provide contributors with a written statement estimating the value of goods and services provided.

NON-CASH CONTRIBUTIONS - "GOOD CONDITION RULE"
Several provisions dealing with non-cash contributions and their valuation have been enacted. A non-cash contribution in excess of $500 still requires the filing of Form 8283 with the donor's tax return.

In general, if the non-cash contribution is in excess of $5,000, a qualified appraiser's signature is required. If the non-cash contribution is $500,000 or more, the qualified appraisal must be attached to the return.

For non-cash contributions of clothing and household items, no deduction is allowed unless the items are at least in "good condition." The term good condition has not been defined and there is no further guidance from Congress. The limitation does not apply to gifts over $500 for which the donor has a "qualified appraisal." In addition, the Treasury is authorized to issue regulations denying deductions for items of minimal value, such as socks and undergarments.

The definition of "qualified appraiser' has also been modified to require that the appraiser be recognized by a professional association or to otherwise have met minimum experience and education requirements. The appraiser must also be specifically qualified to appraise the type of property being valued and must perform appraisals on a regular basis. The appraisers themselves are subject to fines and, in extreme cases, disciplinary action for any valuation that results in a "substantial" or "gross" valuation misstatement, except in the case that they can prove their valuation was "more likely than not" the actual value. "Substantial" misstatements are those in excess of 150% of the value and "gross" misstatements are those in excess of 200% of the correct amount. The taxpayer also faces penalties in the case of misstatement of value.

EXEMPT USE PROPERTY REQUIREMENT
If a donor contributes appreciated tangible personal property with a value in excess of $5,000 to a public charity that fails to use the property for its stated purpose within 3 years of the contribution, the donor must recapture as income the difference between the deduction taken and the donor's basis in the property. The donor can avoid recapture if the charity certifies it intended an exempt use of the property and that use became unfeasible. There is a $10,000 penalty for a false certification.

CHARITABLE DISTRIBUTIONS FROM IRA'S
For 2007, donors 70 years of age and older can now directly transfer up to $100,000 from a traditional or Roth IRA to a public charity other than a support organization or donor advised fund. The donor does not have to take the distribution into income and is not entitled to a charitable contribution deduction. Any distribution will count toward the donor's required minimum distribution. This provision does not apply to distributions that would not ordinarily have been taxable to the donor.

ENHANCED DEDUCTION FOR CONTRIBUTIONS OF BOOKS AND FOOD
The new law extends the enhanced charitable deduction for donations of food and book inventory to include contributions of food and book inventory by taxpayers engaged in a trade or business. The amount of the deduction is limited to the lesser of tax basis plus percentage of fair market value in excess of tax basis, or (ii) two times tax basis. The contribution deduction is limited to 10% of the net income for the taxable year and the contribution must be used for the purpose of caring for the ill, the needy or infants. In the case of contributions of books, the donee organization must certify in writing that the books are suitable for, and will be used in, the donee organization's educational programs.

CALIFORNIA CONFORMITY
Please note that California has not yet conformed to any of the provisions included in the Pension Protection Act of 2006.