

## **2021 Date of Gift Summary**

**Prepared by John H. Taylor**

### **Periodically Updated and Amended by a Host of Others**

The following summary, updated as needed every November, has been verified and validated by attorneys and IRS representatives. In addition, a Canadian colleague has repeatedly confirmed the Canadian references. Of course, you should follow whatever institutional policies that have been dictated - although certainly, the below might help you address/change old procedures.

As a reminder, the IRS releases annual allowable benefit (quid pro quo) levels, below which no receipt disclaimer is required. The IRS announces these limits as part of their yearly inflation adjustment process and generally comes out in October, November, or December. For example, the 2022 changes came out on October 26, 2021, and were sent to the FundSvcs listserv that day.

With that, here's the "traditional" Annual Date of Gift message:

#### Annual Date of Gift Message

In the United States, the IRS does not require any date of gift on acknowledgments/receipts. In Canada, two dates are required: the date you received the gift and the date you printed the receipt. NOWHERE IS A "DATE OF GIFT" REQUIRED IN EITHER COUNTRY. In the most recent version of IRS Publication 1771, however, the IRS does suggest providing a "date received." My personal preference, however, remains "date processed." The acceptability of reflecting a processed date has been confirmed with the IRS.

We often face the dilemma of donors sending in last-minute end-of-year contributions and being frustrated when they get a receipt mentioning a "gift date" in January. I would be too. It is not the donee's responsibility to assign a date of the gift. That responsibility falls on the donor. If you, as a donee, were to state a gift date on a receipt, you could be required to produce evidence supporting that date during an IRS audit of one of your donors.

Stating gift dates on receipts would necessitate your keeping envelopes with postmarks, for example, for the required IRS statute of limitations. That is why the only time I suggest mentioning a gift date is for gifts of securities IF you feel like providing a value for them (not required per IRS Publication 1771 as securities are gifts of property). However, if you choose to do so, make sure that you include a disclaimer advising the donor that the value and date are being used for internal purposes only and seek official guidance from their tax adviser. My suggested receipt language for these instances is as follows:

"Thank you for your gift of X shares of Y stock, which we have valued for our internal purposes only at \$Z as of MM/DD/YY. For tax purposes, you will want to seek guidance from a tax professional in determining your deductible amount."

During my nearly 15 years there, Duke University rarely received a complaint from a donor about showing a processed date and not a gift date. However, the phone calls went away when, for the first two weeks of January, Duke began including the following message on receipts in

place of the typical fund, department, or school-based note (I believe Duke no longer even needs to add this reminder):

“May we remind you that the date above reflects when we processed your gift and does not imply the date your gift was made. While you should consult with your CPA or tax preparer to determine the tax consequences of your donation, the date you delivered or mailed your donation is generally recognized as the gift date. The determination of the contribution date is entirely your decision. Should you have any questions concerning this matter, please get in touch with me.”

Yes, a few times, donors insisted that I “change” the date on a receipt. Instead of changing the date, I deleted any mention of a date, which made each donor very happy!

Don’t get caught up trying to ascertain gift dates for your donors. But, since I am asked “When is a gift a gift?” every year, here are some common answers and misconceptions:

The date of the check HAS NOTHING TO DO WITH REALITY. It’s not a legal date for anything. I am afraid I disagree with the need to record this date in your CRM (although many software packages include this field). Entering this data is a waste of time, IMHO, and certainly cannot be used to represent the date of the gift, the date received, or the date processed. To save data input efforts and standardize gift processing, the only date I suggest you reflect for most gifts is when the donation was entered on your system - which is usually automatically inserted - hence the phrase “processed date” recommendation I offer.

The customary “legal” date of the gift for mailed contributions is the date of the postmark. This, however, is not true for metered mail. Nor does a postmark reflect the legal date of the gift for some other non-cash forms of gifts like credit cards and stock donations. For credit cards, regardless of when or how the donor tells you to debit their account, the legal gift date is the date the charge hits their account. For stock, things get a bit more complicated. If the donor mails it in, the gift date is the later of the two USPS (not metered) postmarks for the certificate and stock power. If DTCed, it’s the date of DTC and NOT THE DATE THE DONOR TOLD THEIR BROKER TO TRANSFER THE GIFT. For the gift to be consummated, the stock MUST be registered in your name or the control of you or your legal agent.

For items sent via third parties, like FedEx and UPS, the gift date is the date you sign for or take into your possession, the package, not the date it was sent (a donor can recall items “mailed” this way until you have signed for it - thus the item is still in their control until control is yours).

**From Crescendo regarding gifts by check:** “These “check” rules apply despite the fact taxpayers could hypothetically stop payment on the check and negate the actual gift. One word of caution: postdated checks are not deductible when hand delivered or mailed. A postdated check is a promise to pay in the future and, thus, not deductible at time of delivery.”

**From Crescendo regarding credit card gifts:** “Gifts by credit card are deductible in the year when the charges are made on the card owner’s account.”

**From Crescendo regarding electronic delivery of stock gifts (dealing with a broker not acting on a transfer request when it is made):** “Stocks are frequently transferred by electronic delivery. For instance, stocks are usually held in “street accounts” with financial services firms. While a taxpayer may irrevocably instruct his or her broker to transfer the stock to charity, the gift is not complete until the stock is delivered to the charity’s account. This means that the gift date for tax purposes may be days and possibly even weeks after the taxpayer’s instructions to transfer. This poses a potential problem to last minute charitable contributions.”

<p style="text-align: center;"><b>Date of Gift Addendum</b> <b>Prepared by Alan S. Hejnal</b> <b>First Written November 27, 2017</b></p>
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*The following is a reply to an annual date of gift email to FundSvcs by Alan Hejnal at the Smithsonian and contains some valid and useful information and reminders:*

I don’t disagree with anything that John has said, with respect to the Written Substantiation and Written Disclosure requirements.

I do feel that I should add that the Pension Protection Act of 2006 (PPA) added a “record-keeping” requirement that applies to cash gifts (only).

Prior to the PPA, cash gifts of under \$250 could be substantiated by, for example, keeping a log of the amounts that you put into the donation box every time you visit the Smithsonian American Art Museum.

The PPA said that, going forward, to deduct a cash contribution, you needed either a bank record or written communication from the charity. IRS Publication 1771 also covers this requirement:

“A donor cannot claim a tax deduction for any contribution of cash, a check or other monetary gift unless the donor maintains a record of the contribution in the form of either a bank record (such as a cancelled check) or a written communication from the charity (such as a receipt or letter) showing the name of the charity, the date of the contribution and the amount of the contribution.”

The kicker there is that the record is supposed to show “the date of the contribution.”

This is possibly not Congress’s finest work legislating. If you read the report of the Joint Committee on Taxation, it’s pretty clear that the committee thought that written acknowledgments already needed to include the date of the contribution so that there was no discussion that they might be adding an additional requirement, but, as John very correctly points out, they were wrong and there was no such requirement.

The IRS does not attempt to reconcile any of this. In discussing the Written Acknowledgment/ Substantiation requirement, they continue to use exactly the same examples that John cites,

featuring a “date received,” and then, separately, they discuss the record-keeping requirement, noting that the required record must include “the date of the contribution.”

It’s a bit of a mess. All of John’s arguments against providing the legal gift date still apply, including that, in cases like metered or business-reply mail, we have no way of determining that date, even if we wanted to do so.

The good news, I guess, is that the IRS seems entirely uninterested in enforcing that the written records include anything like a legal gift date, and it seems to me that the best practice is still, as John says, to put the date processed on the receipt.

Still, there is this requirement that “the donor cannot claim a tax deduction for any contribution of cash, a check or any other monetary gift unless...”

Like the Written Acknowledgment requirement, it is the donor’s responsibility to obtain the required record, so that’s something. A credit card statement likely contains the required information for those gifts, and a donor’s financial institution may provide check images for gifts by check, so the donor might have access to a compliant record other than our receipt. On the other hand, they might not.

In any case, it is probably worth being aware of this additional requirement, since a diligent donor might quite reasonably ask us for a gift receipt that includes the date of the contribution.