

## Can Gifts of Software Be Counted?

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This paper serves to summarize some information regarding the “booking”/counting of gifts of software. There has been much confusion on this topic.

The 3<sup>rd</sup> and 4<sup>th</sup> editions of the CASE Standards were a bit confusing when it came to counting donated software. These editions included multiple references throughout the publication that seemed inconsistent. In addition, some institutions would cherry-pick snippets from the Standards outside the context of the entire publication. Those out-of-context references made it appear that CASE indicated that we could count these contributions. But in the context of the entire publication, CASE only suggested how to count these gifts **when legal ownership was transferred**.

Software ownership can be transferred! But, in my experience, this is a rare occurrence. I have encountered full transfer of title/ownership of software only twice in 30 years - once at a New England client and once at NC State (software was developed for us by a software engineer, and he transferred all IP rights to us).

The bottom line is that CASE generally only permits the counting of truly tax-deductible contributions. Only with a rare exception does this happen with software donations. Ownership is not usually transferred. We are typically only given free use of the software (license) for a specific period. The IRS calls this “partial interest,” as discussed in IRS Publication 526. While being given the use of the software at no cost is a significant financial benefit to the institution, it (just as in the case of contributed services) cannot be counted.

CASE recognized that many institutions were not putting these pieces together and often counted these “mega” software gifts in their totals. So, in October 2011, CASE issued a clarification on three different counting issues, one of which dealt with software:

“Similarly a software company may offer the use of its product in order to showcase the product to other organizations. While the recipient organization may be able to use the software, ownership of the software is rarely conveyed and the free use of the software programs is generally reviewed for continued use annually. Therefore, these fall under the IRS definition of “partial interest” (see [IRS Publication 526](#)) where there is no tax-deductible gift and, therefore, no countable gift.”

Fortunately, CASE issued much clearer guidance when it published the 1<sup>st</sup> edition of the CASE Global Reporting Standards in March 2021. This publication supersedes all previously published Standards. The new reference further improves on older editions by making a single straightforward statement in one place. On page 30, the new Standards state:

“Gifts of software are not countable and will not be included in grand totals for CASE AMAtlas<sup>SM</sup> surveys. The only exception to this rule is when software is highly developed / customized for the institution. (See reference to intellectual property in Chapter 3.3.6.)”

CASE does, though, appreciate that many of these donations are worthy of donor recognition. So, on page 31, CASE concludes this section of the Standards by writing:

“While gifts of software are generally not countable in CASE AMAtlas<sup>SM</sup> surveys, CASE understands and supports institutions continuing to recognize donors and stewarding such software gifts even if not countable in CASE AMAtlas<sup>SM</sup> surveys. (See Chapter 6.4 Guidelines for Donor Recognition.)”

The takeaway is that these contributions can never be counted in official fundraising totals as reported to CASE in their annual Voluntary Support of Education (VSE) survey.

However, some institutions consider counting a portion of these in **multi-year comprehensive campaigns**. While it is true that the CASE Standards are emphatic about **NOT** counting these, there are some instances when an organization chooses to deviate from the Standards. I understand the occasional need for some of those departures. But, when planning a campaign and intending to make an “exception” to the Standards, CASE demands 100% transparency. The exception must be noted and included in campaign plans and goals – published **before** the launch of the pre-public phase of a campaign.

As a case in point, at NC State, 18 months before the pre-public launch of our \$1.5B campaign, we wrote our campaign counting standards and had them approved by the Board. They were only two pages long. Longer was unnecessary because they stated that we would adhere to the CASE Standards, but with a few noted exceptions. We clearly articulated those exceptions well in advance of the campaign launch.

As an aside, we decided we would *not* count gifts of software licenses in our campaign totals.

While NC State did not consider software as a counting exception, a few institutions knowingly and intentionally count on such gifts when planning their campaign. Provided you do so in advance of the campaign (no changing rules after the campaign begins!) and inform your constituents of your intention to count something that is neither a tax-deductible gift nor typically excluded per national standards, transparency is achieved. Remember to **EXCLUDE** these from your VSE report and identify these as an exception when publicly reporting campaign progress.