SB 2015-2016:06

The policies of Associated Students Incorporated are in compliance with the regulations of the California State Polytechnic University, Pomona, the CSU Chancellor and the CSU Board of Trustees, as well as all applicable state and federal laws.

POLICY CATEGORY: Accounting/Administration

SUBJECT: Policy on Gift Acceptance by Corporation

OBJECTIVE: The purpose of this policy is to provide guidance and an understanding of the policies and regulations that govern the acceptance of gifts to Associated Students, Inc. (ASI), Cal Poly Pomona, a 501 (c) (3) corporation registered with the State of California.

DEFINITIONS

Gifts

Gifts are generally funds received from an individual, corporation or foundations that may come in a variety of forms such as cash, products, properties and other items of value. Gifts may come with or without restrictions or may designate a particular program or activity to which the funds or resources should be directed. A gift is an irrevocable transfer of money or property that arrives with no quid pro quo or expectation of return of service or product and no contractual requirement accompanying it. In order to qualify as a gift, the item donated must have a related use to the mission of the university. The donor must have the intent to make a donation in order to be counted as a gift and receive donation credit.

Gifts may be either solicited or unsolicited. Upon acceptance, the gift becomes the property of ASI and shall be used only for the benefit of ASI, its programs and services. As applicable, gifts shall be utilized in compliance with donor restrictions.

Fundraising Event

Per ICSUAM (Integrated California State University Administrative Manual) 15701, fundraising events are conducted for the sole or primary purpose of raising charitable funds where participants make a charitable contribution and a purchase for the fair market value of goods or services. Fundraising events may include dinners, dances, door-to-door sales of merchandise, concerts, carnivals, golf tournaments, auctions, casino nights and similar events. Fundraising events do not include the following:

- Activities substantially related to the accomplishment of the CSU's educational purpose, including such activities that receive sponsorship
- Unrelated trade or business activities that generate fees or service
- Fundraising solicitations and related prospecting activities intended to generate only a contribution (no purchase of goods or services)
- Raffles in which the prizes have only a nominal value and do not require reporting as taxable income

Raffle

Per ICSUAM 15701, raffles are also known as opportunity drawings or basket auction. A raffle is a scheme for the distribution of prizes by chance among persons who have paid money for paper tickets that provide the opportunity to win these prizes. Each ticket is sold with a detachable coupon or stub and both the ticket and its associated coupon or stub are marked with a unique and matching identifier.

ACCEPTANCE OF GIFTS

The ASI Executive Director or designee is authorized to accept gifts for purposes and uses that are approved by the ASI Senate and in line with the mission of ASI. The Executive Director is required to present a written report to the ASI Senate upon receipt of any gift. ASI shall only accept gifts that are consistent with the regulations of the university and the CSU as well as applicable laws. The ASI Senate shall determine that gifts to ASI are evidence of philanthropic intent and that this is in accord with the stated mission of ASI.

The ASI Executive Director or designee shall work with University Advancement to ensure that ASI's policy and procedures for accepting, recording and issuing receipts for gifts and donations are in compliance with University and CSU policies and regulations.

ASI reserves the right to refuse any gift that is not consistent with its mission. These gifts may include, but not be limited to gifts that are in violation of federal law, state law or local ordinance, involve unlawful discrimination; come with unreasonable conditions or gifts of partial interest and property, financially unsound and can expose ASI to adverse publicity, litigation or liability exposure.

In order to avoid conflict of interest or appearances thereof, officers, directors and employees are prohibited from accepting gifts, gratuities or prizes from vendors, suppliers or others whom they have contact in the course of business.

RAFFLES

As stated in ICSUAM 15701, raffles conducted by nonprofit organizations for charitable purposes are lawful under California Penal Code 320.5. The law requires charitable organizations to register with the Attorney General's Registry of Charitable Trusts for approval prior to conducting a raffle and annually report the results of any raffles conducted. Registration and reporting forms may be obtained from the Registry of Charitable Trusts by mail or from the Charitable Trusts website.

- Ninety percent of raffle revenue must be used for a charitable purpose or program. 50/50 drawings are not permissible under California law
- The raffle must be conducted under the supervision of an individual who is 18 years of age or older
- Raffles may be advertised on the internet under specific rules but tickets may not be sold via the internet
- Only nonprofit organizations that have been in existence for a year or more are eligible to conduct raffles

California Penal Code 320.5, subdivision (m), states that a raffle is exempt from registration with the Attorney General's Office if all of the following are true:

- It involves a general and indiscriminate distributing of the tickets
- The tickets are offered on the same terms and conditions as the tickets for which a payment is given.
- The scheme does not require any of the participants to pay for a chance to win.

Payments received for the purchase of raffle tickets are not eligible for a charitable tax deduction. The purchaser has received in return the benefit of a "chance to win".

QUID PRO QUO CONTRIBUTION

A payment made that is partly a contribution and partly for goods and services is a quid pro quo contribution. For example, if the donor gives $100 and receives a concert ticket valued at $40, the donor has made a quid pro quo contribution. In this example, the charitable part of the payment is $60. Even though the deductible part of the payment is not more than the $75 threshold for written acknowledgment, a disclosure statement must be provided. Failure to make the required disclosure may result into a penalty to the nonprofit organization (ICSUAM 15701)

Disclosure Statement

The required written disclosure statement must:

1. Inform the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of any money (and the value of any property other than money) contributed by the donor over the fair market value of goods or services provided, and
2. Provide the donor with a good faith estimate of the fair market value of the goods or services that the donor received. The charity must furnish the statement in connection with either the solicitation or the receipt of the quid pro quo contribution. If the disclosure statement is furnished in connection with a particular solicitation, it is not necessary for the organization to provide another statement when it actually receives the contribution.

No disclosure statement is required if any of the following is true:

1. The goods or services given to a donor have insubstantial value as described in Revenue Procedures 90-12 and 92-49,
2. The donor makes a payment of $75 or less per year and receives only annual membership benefits that consist of:
    a. Any rights or privileges (other than the right to purchase tickets for college athletic events) that the taxpayer can exercise often during the membership period, such as free or discounted admissions or parking or preferred access to goods or services, or
    b. Admission to events that are open only to members and the cost per person of which is within the limits for low-cost articles described in Revenue Procedures 90-12 and 92-49 (as adjusted for inflation). Also see the discussion of insubstantial value above.

GOOD FAITH ESTIMATE OF FAIR MARKET VALUE

Any reasonable method to estimate the fair market value (FMV) of goods or services may be used, as long as the method is applied in good faith. The FMV of goods and services that generally are not commercially available may be estimated using the FMV of similar or comparable goods or services. Goods or services may be similar or comparable even if they do not have the unique qualities of the goods or services being valued.

PENALTY FOR FAILURE TO DISCLOSE

A penalty is imposed on a charity that does not make the required disclosure of a quid pro quo contribution of more than $75. The penalty is $10 per contribution, not to exceed $5,000 per fundraising event or mailing. The charity can avoid the penalty if it can show that the failure was due to reasonable cause.

SALES ACTIVITIES

The sale of goods or merchandise is subject to sales tax unless it is covered by a specific exemption or exclusion. This is true whether a person pays by cash or another method, or offers something in barter or trade. In general, the taxable amount is the price set and received for the item. However, in the case of auctions, the full amount received is taxable, regardless of the item's fair market value. Specific exemptions from sales tax include;

- Sales of tickets for concerts, movies, plays shows, and similar events when food and meals are not included in the ticket price.
- Sales of services such as travel, home rentals, lessons, and other things of value that are not physical products.
- Sales of gift cards, gift certificates and coupon books.

AUCTIONS

Donors who purchase items at an auction may claim a charitable contribution deduction for the excess of the purchase price paid for an item over its fair market value. The donor must be able to show, however, that he or she knew that the value of the item was less than the amount paid. Each person who attends an auction should be provided with a good faith estimate of items that will be available for bidding either through a catalog or bid sheets. Assuming the donor has no reason to doubt the accuracy of the published estimate, if he or she pays more than the published value, the difference between the amount paid and the published value may constitute a charitable contribution deduction.

In addition, donors who provide goods for charities to sell at an auction often ask the charity if the donor is entitled to claim a fair market value charitable deduction for a contribution of appreciated property to the charity that will later be sold. Under these circumstances, the law limits a donor's charitable deduction to the donor's tax basis in the contributed property and does not permit the donor to claim a fair market value charitable deduction for the contribution. Specifically, the Treasury Regulations under section 170 provide that if a donor contributes tangible personal property to a charity that is put to an unrelated use, the donor's contribution is limited to the donor's tax basis in the contributed property. The term unrelated use means a use that is unrelated to the charity's exempt purposes or function, or, in the case of a governmental unit, a use of the contributed property for other than exclusively public purposes. The sale of an item is considered unrelated, even if the sale raises money for the charity to use in its programs. (IRS website Charity Auctions)

MEALS SERVED AT FUNDRAISING EVENTS

Sales tax generally applies to charges for drinks, food, and meals included in the ticket price of fundraising events. The business or organization that serves the meals at a fundraising event is responsible for reporting the taxable sales and paying the tax due. When the event host is also the caterer, tax is due based on the ticket price for the meal. If the value of the meal is not separately listed on the fundraising event ticket, the entire ticket price is taxable. (California State Board of Equalization publication 18 August 2008)

CASH HANDLING

Cash and cash equivalents must be collected and documented in a timely, controlled and cost-effective manner. In circumstances where it is not practical to process a receipt, other mitigating controls must be implemented, such as ticket count reconciliations against cash collected. (ICSUAM Acceptance of Cash and Cash Equivalents 3102.03)

FOR ASI USE ONLY:

ASI Senate Approval Date: February 25, 2016

Verified By:

2/25/16

David Lee, ASI Attorney General   Date

Approved By:

2/25/16

Julian Herrera, ASI President   Date