

# Tax Deductions *for* Concert Tours

Have you ever wondered about the possibility of deducting concert tour expenses from your tax return?

Well, it's true, and now you can! We have noticed a HUGE increase in our clients' interest in claiming certain concert tour expenses as a tax deduction. We have followed the success of certain clients in their efforts to make this attractive incentive available to their musicians. The results have been spectacular — and, participation in concert tours has increased dramatically (including singers or musicians who have always sat on the sidelines for past tours).



Therefore, we have invested research dollars and time in the interest of assisting those who have this interest.

We have learned that a tax deduction is certainly a possibility for any domestic or international concert tour sponsored by a qualified tax exempt public charity described in section 501(c)(3) of the Tax Code. Religious, educational, and charitable organizations can all be qualified public charities. Many music directors — with existing boards, parent booster organizations, or religious affiliations — have formed their own 501(c)(3) successfully and are certainly eligible to consider this amazing benefit.

Using the services of Mauck & Baker (a law firm specializing in legal expertise to nonprofits) in Chicago to summarize the tax benefits and eligibility of a wide range of MCI clients, we



have developed a legal analysis for five different programmatic profiles for which your ensemble can possibly fit. With only small changes, your ensemble can arrange its trip to meet a different profile with more potential tax benefits. We offer their analysis at no cost to you — for your own consideration!

We strongly recommend that you take this information to your local legal and accounting experts to see how you can take advantage of a benefit that could very positively impact your future touring success, and attract new singers or musicians to your organization in the process!

Let us be clear that Music Celebrations is not in a position to offer you legal or accounting advice. At the same time, we would welcome a conversation with any of you to discuss this exciting possibility! It is important to note that an individual's enjoyment of a trip is not the deciding factor for tax purposes. Instead, the key to whether a contribution is deductible is whether the tour in question is primarily for charitable purposes or primarily for personal pleasure. If a tour is primarily for charitable purposes, any trip sponsor wishing to do so should be able to arrange such tour so that most contributions to the sponsor are tax deductible.



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Music Celebrations International, LLC  
1440 S. Priest Dr., Suite 102  
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Re: Tax Issues Raised by Domestic and International Musical Tours

## MEMORANDUM

Music Celebrations International, LLC ("Music Celebrations") has asked our law firm to provide guidance on a variety of tax issues faced by Music Celebrations' clients' sponsorship of domestic and international musical tours.<sup>1</sup> Each such tour involves the exchange of culture and ideas through music, and each client is a musical ambassador in one form or another. As a result, the tours all further the sponsor's tax exempt purpose, which means that contributions to such sponsors, including contributions by tour participants, may be tax deductible. It has come to our attention, however, that many trip sponsors are not taking advantage of this rule. With this in mind, we have been specifically asked to discuss various arrangements in which tour-related expenses can be deducted as charitable contributions to the trip sponsor.

For the sake of discussion, we have created five profiles which are representative of Music Celebrations' clients. In each profile, tour-related expenses are handled slightly differently. For example, in the first profile below, trip participants handle expenses on their own. This is a common arrangement, and a tax deduction is possible, but this arrangement can be burdensome for trip participants, both in terms of planning and in terms of tax deductibility. In profiles two through five, on the other hand, the trip sponsor facilitates payment for tour-related expenses. While such arrangements involve more administration, for tax purposes they can be quite effective. Profiles four and five describe two particularly effective arrangements. It is also important to note that an individual's enjoyment of a trip is not the deciding factor for tax purposes. Instead, the key to whether a contribution is deductible is whether the tour in question is primarily for charitable purposes or primarily for personal pleasure. If a tour is primarily for charitable purposes, any trip sponsor wishing to do so should be able to arrange such tour so that most contributions to the sponsor are tax deductible.

It should be noted that due to changes in federal tax law in 2017, fewer persons may take advantage of the charitable itemized deductions as described below due to higher standardized deductions

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<sup>1</sup> We have not been asked to discuss legal issues associated with musical tours, such as potential liability for personal injuries suffered by participants, volunteers, and employees, or other related civil or contract issues.

allowed today for individuals and married couples. The standard deduction has been raised to \$12,200 for individuals and \$24,400 for married couples filing jointly. This is nearly double the pre-tax reform standard deduction in 2017 and previous years. Thus, more middle-class families may now opt for the standard deduction and will not be concerned about taking individual charitable deductions. Wealthier taxpayers will likely still be concerned about charitable deductions and therefore continue to itemize their deductions.

## LEGAL ANALYSIS<sup>2</sup>

### Profile One

Our first trip sponsor profile is a qualified public charity that regularly conducts domestic and foreign musical tours but does not fund those trips or solicit contributions to fund those trips. Instead, participants pay service providers (such as airlines and hotel operators) directly for trip-related expenses out of the participants' (or their parents') own pockets.

Generally an individual cannot deduct the value of time spent in service to an organization, but an individual may be able to deduct his or her trip-related expenses as a charitable contribution to the trip sponsor. Section 170(j) of the Internal Revenue Code (the "Tax Code") provides for a tax deduction for unreimbursed travel expenses associated with volunteer service, so long as the primary purpose of the trip is not for personal pleasure.<sup>3</sup> This deduction is claimed by listing unreimbursed travel expenses associated with volunteer service on an individual's federal income tax return.

This arrangement is common and relatively simple to administer for the trip sponsor. Nevertheless, we do not typically recommend this method of trip sponsorship. The tax reporting burden on the individual participant is quite high, and there probably would be some individuals who decide not to participate because of this burden. If nothing else, this method is not likely to motivate potential participants, other than those individuals who are firmly committed to the organization's cause and for whom the tax benefits are relatively unimportant.

### Profile Two

The second profile is a trip sponsor that regularly conducts musical tours, solicits funds from participants to pay for those tours, and facilitates payment for the entire trip, including all trip-related expenses such as program activities, airfare, food, and lodging. Unlike the first profile, participants do not pay service providers directly for trip-related expenses. Also, while participants do not have an ongoing financial connection to the trip sponsor (such as membership dues), participants are expected and required to make sufficient monetary contributions to cover the cost of their respective trip costs.

For purposes of this memorandum, the tax consequences for trip sponsors and individual participants are essentially the same as the ones described for Profile One. According to the IRS, the rules

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<sup>2</sup> To aid those unfamiliar with federal tax law, many important terms are defined in the attached appendix.

<sup>3</sup> "[U]nreimbursed expenditures made incident to the rendition of services to an organization contributions to which are deductible may constitute a deductible contribution." Treas. Reg. 1.170A-1(g); *see also* IRS Publication 526, page 4 "Out of Pocket Expenses In Giving Services" and page 5, "Travel." <https://www.irs.gov/pub/irs-prior/p526--2018.pdf>.

regarding tax deductions for unreimbursed travel expenses for volunteers apply whether the volunteer incurs the costs “directly or indirectly.”<sup>4</sup> This profile is an example of what the IRS considers “indirect” travel expenses. The IRS basically disregards the fact that the participants technically make payments to the sponsor rather than the service provider. There are, however, a few important practical differences from profile one. This arrangement presents a significantly reduced administrative burden on participants, both in terms of the facilitation of trip-related expenses and the documentation needed to claim the deduction. This administrative ease may encourage individuals who are seeking a charitable deduction to participate. This arrangement does present an increased administrative burden on trip sponsors, but because the trip sponsor plays a significant role in the planning process in both profiles, this administrative burden should not be too great.

### Profile Three

The third profile is the same as the second, except that the trip sponsor collects required annual or monthly dues from members instead of collecting funds directly tied to trip-related expenses. In this scenario, we assume these previously collected dues allow the sponsor to facilitate payment of all trip-related expenses. We also assume that only dues-paying members of the sponsor are permitted to participate in the sponsor’s trips, but that those participants’ selection is nevertheless based upon their skills, and not upon their financial contributions.

The tax consequences of the arrangement described in this profile are significantly different from the consequences of the arrangements described in profiles one and two. On the one hand, the trip sponsor’s finances (i.e., annual reports, Form 990s, etc.) may appear to be quite robust because membership dues will be accounted for. This can be helpful on several fronts. For a publicly supported charity, such membership dues can be used in calculating the charity’s public support. Such dues can also be helpful in demonstrating the scale of an organization’s activities, as an organization that primarily engages in trip planning but does not account for the financial aspects of such activities may look, at least in its financial reporting, to be rather uninspiring. On the other hand, however, this arrangement can be somewhat complicated for participants. According to the IRS, payment of membership dues to a charity may be deductible as a charitable contribution, but only to the extent such payment exceeds the monetary value of any personal benefits and privileges made available to the member as a result of such dues payment.<sup>5</sup> A full discussion of this issue is outside of the scope of this memorandum, but suffice it to say that determining whether (and how much) to deduct membership dues can be complicated. In addition, another related issue with this arrangement is the issue of “impermissible private benefit” under federal tax law. The private benefit rule applies to organizational funds that are directed to benefit specific individuals (who may be, but do have to be, “insiders”) rather than the good of the organization as a whole and the public at large.<sup>6</sup>

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<sup>4</sup> IRS Publication 526, page 5 “Travel,” <https://www.irs.gov/pub/irs-prior/p526--2018.pdf>; see also Treas. Reg. 1.170A-1(g).

<sup>5</sup> IRS Publication 526, page 3-4, “Membership Fees and Dues,” <https://www.irs.gov/pub/irs-prior/p526--2018.pdf>; see also 26 C.F.R. § 1.501(c)(3)-1.

<sup>6</sup> “[A]n organization is not organized or operated exclusively for [charitable purposes] unless it serves a public rather than a private interest.” IRS Publication 526, page 3 “Contributions from Which You Benefit,” <https://www.irs.gov/pub/irs-prior/p526--2018.pdf>; Treas. Reg. § 1.502(c)(3)-1(d)(1)(ii).



In our experience the arrangement described in this profile is fairly common, and it is mostly used by organizations that enjoy significant credibility in the communities they serve. Because of this credibility factor, many contributors are successful in claiming charitable tax deductions. That said, it is essential that contributors, participants, and trip sponsors all examine the specific facts of a given arrangement and assess any idiosyncratic challenges such facts present under relevant tax rules. The balance of charitable purposes vs. personal pleasure is important if contributors wish to take charitable deductions for membership dues. Additionally, the trip sponsor may wish to adopt policies regarding the use of funds, emphasizing the importance of the organization's discretion in choosing participants based on ability rather than past financial contributions. Trip sponsors must also insist that a disinterested group of leaders exercise control over funds at all times and disburse such funds at their discretion, rather than at the direction of a dues paying member who may have a financial interest at stake.

#### *Profile Four*

The fourth profile is a qualified tax exempt public charity that regularly conducts domestic and foreign musical tours, solicits funds from a wide collection of individual, governmental, and foundation donors to pay for those tours, and facilitates payment of 100% of trip-related expenses. In this scenario, the itinerary of the trip in question reveals the purpose of the trip to be almost entirely charitable. In other words, almost every aspect of the trip is charitable, and any tangible personal benefit is insignificant at most. Furthermore, in this scenario, the trip sponsor solicits charitable contributions for trips specifically, even if they engage in other charitable activities as well, and that such sponsors properly account for such "trip funds." (In other words, the sponsor separates funds collected for trip activities from other contributed funds.) In addition, in this scenario some individual donors may also be participants, but the participants' selection is not based on their financial contribution. Instead, it is based on their willingness to sacrifice time and effort to further the charitable purpose of the trip.

In this arrangement, the impermissible private benefit issues described in profile three continue to be in play, so it is worth reiterating the importance of the trip sponsor strictly adhering to a policy of having a disinterested group of leaders select participants based on their ability to contribute to the charitable purpose of the trip, not their financial contributions (if any). Similarly, the trip sponsor must be careful to avoid the problem of "earmarked" donations, or donations that are in some way marked for use by one or more specific individuals, rather than the group as a whole. Improperly earmarked contributions are generally not tax deductible, and the trip sponsor may also be deemed by the IRS to be acting as a "conduit" organization in violation of the impermissible private benefit rules.<sup>7</sup> A donation can be directed to a particular fund only if the charity maintains control and discretion over the contributed fund.<sup>8</sup> Of course, there may be situations in which donors to an organization also happen to be participants in a musical tour. This is acceptable if the trip is planned carefully.

Assuming these specific issues are addressed, this arrangement can be quite effective in terms of tax deductibility. From the perspective of the individual supporter, he or she simply gives money to the trip sponsor and, if appropriate, directs that such funds be used to fund one or more trips planned by the sponsor (as opposed to, say, the sponsor's general accounts). The sponsor will then issue a tax receipt to

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<sup>7</sup> See IRS Publication 526, page 6, Contributions to Individuals," <https://www.irs.gov/pub/irs-prior/p526--2018.pdf>; see also *Davenport v. Commissioner*, 34 T.C.M. 1585 (1975).

<sup>8</sup> "For the contribution to be deductible, the qualified organization must approve the program as furthering its own exempt purposes and must keep control over the use of the contributed funds." IRS Publication 526, page 6, <https://www.irs.gov/pub/irs-prior/p526--2018.pdf>.

the individual, which he or she should keep for substantiating documentation of the charitable deduction he or she will claim on his or her next individual tax return. From the perspective of the trip sponsor, so long as its leaders exercise appropriate control and discretion over contributed funds, the organization should be able to disburse such funds for any charitable purpose it sees fit. It can then account for such transactions on its internal and external financial statements. The phrase “money begets money” may be cliché, but in our experience, an organization that brings in significant revenue and expends significant funds on program-related activities has a better chance of flourishing than an organization with meager financial records.

#### Profile Five

The fifth and final profile is largely the same as profile four, and thus the issues of impermissible private benefit and earmarking must also be addressed. For purposes of this memorandum, the only significant difference between this arrangement and the arrangement described in profile four is that some of the trip may include personal pleasure for participants. We believe this describes most of Music Celebrations’ trip sponsor clients.

Technically, only the portion of an individual’s contribution to the charity that results in charitable programming (i.e., the portion of a contribution that is used to fund the charitable aspects of a tour, such as a music recital) should be tax deductible.<sup>9</sup> Any portion of such contribution that results in personal pleasure for trip participants (i.e., the portion of a contribution that is used to fund the personal aspects of a tour, such as a sightseeing tour or a spouse’s stay in a hotel room) is not tax deductible. However, the deduction for travel expenses will not be denied simply because you enjoy providing services to the charitable organization.<sup>10</sup> One must be careful not to include a significant amount of personal pleasure ventures and expenses so as to minimize the charitable purpose of the trip. The administrative burden on the trip sponsor and the individual taxpayer to properly account for this bifurcated use of funds is significant. Calculating deductibility for large items, such as airfare, may also be challenging.

So how can this problem be addressed? The trip sponsor should only pay for the portion of the tour that is clearly charitable and require participants to directly fund any personal activities, such as dining or sightseeing, out of their own pockets. In addition, the sponsor should not pay for non-participants such as spouses or family members, unless there is a significant reason for such participation. With proper attention to these details, this can be the most effective arrangement described in this memorandum, as it allows an organization to allow for some time for personal pleasure in its tour itinerary while maintaining its ability to collect tax deductible contributions. For individual contributors and participants, the practical steps to claiming the tax deduction are the same as in profile four.

### CONCLUSIONS AND RECOMMENDATIONS

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<sup>9</sup> As long as the trip is charitable and there is “*no significant element* of personal pleasure, recreation, or vacation in such travel,” payments can still be deducted. 26 U.S. Code § 170(j) (emphasis added).

<sup>10</sup> The IRS Publication uses an example of this principle: “You spend the entire day attending a charitable organization’s regional meeting as a chosen representative. In the evening you go to the theater. You can claim your travel expenses as charitable contributions, but you can’t claim the cost of your evening at the theater.” IRS Publication 526, page 5, <https://www.irs.gov/pub/irs-prior/p526--2018.pdf>.

In this memorandum, we have discussed five distinct ways to arrange a musical tour and we have noted that certain of these options enjoy more favorable tax treatment than others. The five profiles discussed are the five most common arrangements we have seen in our several decades of experience working with the charitable and tax exempt community. But, it is important to note that we have not addressed every potential way in which trip sponsors and participants may arrange their affairs, and we recognize that each individual arrangement has its own unique legal issues. As such, readers are cautioned against viewing the five profiles discussed as an exhaustive list. Furthermore, our discussion has been necessarily general, and while we believe this document will be a helpful starting place, we encourage any school, church, or other charitable organization that engages in such trips to contact our law firm for tailored legal advice.

## DEFINITIONS

**Qualified Public Charity:** Each trip sponsor is a qualified tax exempt public charity described in section 501(c)(3) of the Tax Code. Religious, educational, and charitable organizations can all be qualified public charities. Certain public charities, such as churches, hospitals, and schools, are qualified by virtue of the type of organization, while other public charities are qualified by virtue of the sources of their funding.<sup>11</sup>

**Charitable Deduction:** Under Section 170(a) of the Tax Code, an individual that makes a “charitable contribution” to a qualified tax exempt public charity may be able to claim a deduction on his or her tax return for the year in which the contribution was made.

**Substantiation of Charitable Contributions:** Generally, a qualified public charity must provide a written disclosure statement to donors of a *quid pro quo* contribution of more than \$75.<sup>12</sup> According to the IRS *quid pro quo* contribution is a “payment made to a charity by a donor partly as a contribution and partly for goods or services provided to the donor by the charity.”<sup>13</sup> Furthermore, an individual donor claiming a charitable deduction of \$250 or more is also required to obtain and keep a “contemporaneous written acknowledgment” from the donee organization to substantiate such deduction.<sup>14</sup> The onus of obtaining and retaining this acknowledgment is on the donor, not the donee. This acknowledgment must state whether the donee provided any goods or services in exchange for the contribution, and if so, it explain how much of the contribution is actually deductible. Finally, in the case of an individual claiming a charitable deduction of \$5,000 or more, a qualified appraisal must generally be obtained.<sup>15</sup>

**Business Travel vs. Travel for Personal Pleasure:** Unreimbursed travel expenses associated with volunteer service may be deductible if “there is no significant element of personal pleasure, recreation, or vacation in such travel.”<sup>16</sup> Similarly, contributions directly to a trip sponsor to help fund

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<sup>11</sup> For example, a public charity described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Tax Code must generally receive at least one-third of its support from the general public. A public charity described in Section 509(a)(2) of the Tax Code must generally receive more than one-third of its support from the general public and/or from gross receipts from activities related to its tax-exempt purposes, and it must not receive more than one-third of its support from gross investment income and unrelated business taxable income. *See also* 26 U.S. Code § 501(c)(3); 26 U.S. Code § 170.

<sup>12</sup> *See* IRS Publication 1771, page 3, <https://www.irs.gov/pub/irs-pdf/p1771.pdf>; 26 U.S. Code § 6115(a).

<sup>13</sup> For example, consider an individual who gives a charity \$100 and receives a gift bag worth \$40. Because the total contribution is more than \$75, the charity must provide a statement explaining only \$60 is tax deductible.

<sup>14</sup> *See* IRS Publication 1771, page 4, <https://www.irs.gov/pub/irs-pdf/p1771.pdf>; 26 U.S. Code § 170(f)(8)(A).

<sup>15</sup> A charitable deduction of \$5,000 does not need an appraisal for donations of cash, stock, intellectual property rights, or vehicles (other than vehicles which the charity significantly used or made improvements to). 26 U.S. Code § 170(f)(11)(C).

<sup>16</sup> Individual trip participants may also need to differentiate between “business” days and “personal” days because they can only deduct expenses associated with business days. A day is generally a business day for an individual if she is traveling that day; her presence is required for a business meeting that day; and she conducted



tours may be deductible so long as such tours are primarily for charitable purposes, rather than for personal pleasure. In other words, the tour must be primarily to benefit the organization as a whole and the public at large, not the individual participants.

Very truly yours,

**MAUCK & BAKER, LLC**

  
Richard C. Baker

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“significant business” that day (i.e., a majority of the working hours were spent conducting business). Weekends and holidays can also be counted if the individual is required to conduct business the day before and the day after the weekend or holiday. In some cases, the individual may need to prorate certain expenses, such as airfare, to ensure that only the portion qualifying for deduction is claimed. *See also* IRS Publication 526, page 5, <https://www.irs.gov/pub/irs-prior/p526--2018.pdf>; 26 U.S. Code § 170(j).