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## VEHICLE DONATION MEMORANDUM

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### Introduction

This memorandum is written as guidance for a tax-exempt charitable organization's forms and practices to utilize in its charitable receipt and subsequent sale of donated vehicles. Included in the definition of a vehicle is an automobile, boat, and aircraft. Two legal areas of concern merit close attention.

First, as a seller of goods, the tax-exempt organization could face civil liability under a variety of contract and tort theories: (1) breach of express warranty; (2) breach of implied warranty; (3) breach of contract; (4) strict products liability; (5) fraud; (6) unconscionability; (7) duress; and (8) mistake. If the seller uses stronger written disclaimer language and continues its practice of investigation and disclosure, however, its risks can be diminished significantly.

Second, the tax-exempt organization must comply with newly released federal guidance concerning the deductibility of vehicle donations and the accompanying written acknowledgment of donors' contributions.

#### **A. Contract Liability**

If the tax-exempt organization's practice is to offer the donated vehicles for sale via internet or other auctions, the following will apply. A legally binding contract may be formed between the seller and a buyer immediately when that person wins an auction such as is currently offered via E-

Bay. Therefore, the seller should use the language recommended below in *both* its auction listing and Bill of Sale. A sample Bill of Sale is attached herewith.

Simple “as is” language may be used in a seller’s Bill of Sale and auction listing, preferably just above the signature lines is good. These measures are consistent with the Uniform Commercial Code, which allows a seller to exclude both express and implied warranties by making a *conspicuous* writing, using language that calls the buyer’s attention to the exclusion of warranties and makes plain that there is no implied warranty. To exclude the implied warranty of merchantability, the language used must specifically mention “merchantability.”

Borrowing from court-approved language, it is recommended that the following language be used in both a seller’s Bill of Sale and auction listing, in larger font and bold typeface:

**ALL WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED AND STATUTORY, ARE HEREBY DISCLAIMED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. THE VEHICLE (INCLUDING ANY ACCESSORIES AND COMPONENTS) IS SOLD “AS IS.”**

In the Bill of Sale, this disclaimer should remain just above the signature line. In the auction listing, this disclaimer should be conspicuously placed, at the end of the vehicle description and/or just before the bid placement area.

To make the auction listing and Bill of Sale more ironclad, three additional provisions are recommended. First, the seller could add the following language:

**BUYER HAS EXAMINED THE VEHICLE AS FULLY AS DESIRED OR HAS REFUSED TO EXAMINE THE VEHICLE.**

This language precludes any implied warranty with regard to defects which an examination ought in the circumstances to have revealed to the buyer. Second, to preclude any possible claims of other

binding agreements, possibly arising from prior auction communications or oral statements, the seller could add the following language:

This agreement constitutes and contains the entire agreement between the parties. All prior or contemporaneous understandings or agreements between the parties, if any, whether oral or express or implied, are merged into and with this Agreement, which fully and conspicuously states and expresses the parties' understanding and agreement.

Third, to preclude any potential consequential damages, as described below, the seller could also add the following language:

In no event shall Seller be liable for damages of any nature, including without limitation, special, direct, indirect, incidental, or consequential damages, whether or not relating to or in any manner resulting from or arising out of any defect in material and workmanship.

The enclosed sample Bill of Sale incorporates these recommendations.

**B. Tort Liability**

The tax-exempt organization may examine the vehicles to determine if they run and are in need of repair. The organization then may provide written descriptions about the vehicles' specifications to potential buyers. This practice of investigation and disclosure is advantageous for two reasons.

First, so long as the seller discloses *accurate* information, it will be extremely difficult for any buyer to assert tort theories of recovery such as fraud, unconscionability, duress, or mistake. In other words, if the seller gives accurate information to buyers, then they should not be able to later claim in court that they have been duped, misled, or mistaken. Investigative care on the seller's part is thus vital to legal protection as well as good business practice.

Second, the tax-exempt organization's vehicle checks could help prevent any tort claims based on strict liability. If the organization sells a vehicle in a defective condition *unreasonably dangerous* to the user or consumer or to his property, then it may be subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property. It thus would be legally

prudent to check out whether a vehicle is “unreasonably dangerous” prior to offering it for sale. It is also necessary for a reasonably trained inspector to make this determination, and the seller is responsible for choosing this individual.

**C. Bill of Vehicle Donation**

In the tax-exempt organization’s “Bill of Vehicle Donation” form, it is recommended that it include the following statement: “The tax-exempt organization is not selling the vehicle on the Donor’s behalf, but solely in furtherance of its own charitable purposes.” The purpose of this language is twofold: (1) to avoid raising any red flag to the IRS that the tax-exempt organization is providing an impermissible commercial service to the donors; and (2) to otherwise preclude any understanding that the seller is acting as the donors’ agent, whereby principles of agency would give rise to tort liability attributable to the donor.

Enclosed with this memorandum is a sample bill of donation, incorporating this recommendation as well as tax-based recommendations discussed below.

**D. Tax Reporting Requirements**

Internal Revenue Code Sections 170(f)(12) and 6720 govern charitable donations of vehicles, See IRS Notice 2005-44, American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (2004) (adding new Code provisions). These new laws generally limit vehicle deductions to the actual sales price when sold by a tax-exempt organization, unless “material improvements” are made. In addition, donors must obtain timely written acknowledgments from the tax-exempt organization in order to claim the deductions. The following sections provide a more detailed analysis of the newly enacted laws.

**1. Deduction Amount**

For vehicles valued at \$500 or less, the donor is allowed to take a deduction for the fair

market value (“FMV”) of the vehicle.

If the claimed value of a vehicle exceeds \$500, the tax deduction depends on how the tax-exempt organization uses the vehicle. If the organization sells the vehicle without using it in any significant way or without “materially improving” the vehicle, the amount of the charitable deduction cannot exceed the gross proceeds from the sale, or the donor’s basis, whichever is less. If the organization keeps the vehicle for its own use or makes material improvements in it, the donor can claim the FMV. Finally, if the organization sells the vehicle at a price significantly below FMV or gives it away to a needy individual in direct furtherance of its exempt purpose, the donor can claim the FMV.

The IRS defines the term “material improvement” to include a major repair or improvement that improves the condition of the vehicle in a manner that significantly increases the value. Cleaning, minor repairs, and routine maintenance are not considered material improvements. Nor are application of paint or other types of finishes such as rust-proofing or wax, removal of dents and scratches, cleaning or repair of upholstery, and installation of theft deterrent devices. To be a material improvement, the improvement may not be funded by an additional payment by the donor to the client. The IRS additionally defines “significant intervening use” as where the donee organization actually uses the vehicle to substantially further its regularly conducted activities, and such use is significant in nature, extent, frequency, and duration.

The fair market value is generally considered to be the price at which the vehicle would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each having reasonable knowledge of relevant facts. The IRS intends this amount to be determined by reference to an established vehicle pricing guide for vehicles worth \$5,000

or less. The donor should use the price listing for a private party sale of a similar vehicle, and not a dealer's price. Kelly Blue-Books' website is an example of an acceptable vehicle pricing guide (www.kbb.com). For deductions of more than \$5000 that are based on fair market value, a qualified appraisal is required.

## **2. Listing Information Concerning Donation**

The tax-exempt organization should include the following language in its listing's notice to prospective donors: "You may qualify to receive a tax deduction." Alternatively, to provide more detail, the notice could state, "You may qualify to receive a tax deduction for fair market value or the amount of gross proceeds from the subsequent sale of your vehicle, depending on the circumstances."

## **3. Written Acknowledgments**

As a vehicle donee and seller, the tax-exempt organization must "contemporaneously acknowledge" each contribution in writing. The IRS' new "**Form 1098-C**" contains most of the information that the client is required to give its donors of vehicles sold for more than \$500. A copy of Form 8282, with instructions, is enclosed herewith.

For vehicles sold for more than \$500, without any significant intervening use or material improvement, the tax-exempt organization should complete all boxes through 4c of Form 1098-C and then distribute it as directed on the form to the donor, to the IRS, and for retention by the seller. The seller must also include a statement to the donor that the deductible amount may not exceed the amount of the gross proceeds. The seller will satisfy the "contemporaneous" requirement by furnishing the acknowledgment to the donor within 30 days after the date of sale.

For vehicles sold for less than \$500 (and having a claimed value of at least \$250), but without any significant intervening use or material improvement, the seller does not need to send

the Form 1098-C. Instead, the seller should give an acknowledgment to the donor, at the time of the donation, containing the following information:

1. The amount of cash and a description (but not value) of any property other than cash contributed;
2. Whether the client provided any goods or services in consideration, in whole or in part, for the cash or property contributed; and
3. A description and good faith estimate of the value of any goods or services provided by the client in consideration for the contribution, or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

See IRC section 170(f)(8). The seller will satisfy the “contemporaneous” requirement by furnishing the acknowledgment to the donor on or before the earlier of the date when the donor files a return for the taxable year in which the contribution was made, or the due date (including extensions) of that return.

For vehicles sold after significant intervening use or material improvement, the tax-exempt organization is required to complete all boxes through 5c of Form 1098-C, and then distribute it per the form’s directions, within 30 days after the date of *contribution*. Based on Form 1098's short deadline, i.e., before a sale may be completed, the client should expeditiously determine whether it is going to make material improvements. It is sufficient to describe the *intended* material improvement or significant intervening use in box 5c.

The seller could check box 5b, which is for donations to needy individuals at below fair market value, in direct furtherance of its charitable purpose. As stated above, the donor would be entitled to take a deduction for the vehicle’s fair market value, subject to the substantiation requirement.

As a courtesy to donors, the tax-exempt organization can include the IRS Form 8283 (“Noncash Charitable Contributions”) with the Bill of Vehicle Donation, at the time of the

vehicle donation. Donors must prepare and file Form 8283 for vehicle donations of more than \$500 or, for claimed vehicle donation of less than \$500, if more than \$500 in total deductions are claimed. The sample “Bill of Vehicle Donation” form includes language advising donors that they may need to file it with their personal income tax returns in order to claim their deductions. If a donor plans to claim a deduction for individual or group donations of more than \$5000, the tax-exempt organization will need to complete Section B, Part IV of Form 8283, entitled “Donee Acknowledgment,” which it can do at the time of donation. A copy of Form 8283, with instructions, is enclosed herewith.

For its own reporting requirements, the tax-exempt organization will need to file IRS Form 8282 from time to time to report its disposition of donated vehicles as follows. If the organization sells a vehicle within two years of the donation, it must report such transaction on Form 8282 within 125 days thereof. A copy of Form 8282, with instructions, is enclosed herewith.

**E. Conclusion**

To summarize, it is recommended that the tax-exempt organization do the following:

1. Use the Bill of Sale and Bill of Vehicle Donation forms enclosed herewith;
2. Include the following in its listings: (1) the language contained in the body of the Bill of Sale; (2) information concerning the tax deductibility of donated vehicles;
3. Give Form 8282s to donors, in conjunction with the Bills of Vehicle Donation, and complete as appropriate;
4. Begin a practice of inspecting all vehicles within 30 days of donation to determine whether “material improvements” are contemplated;
5. When a vehicle donation is received, send out written acknowledgments to donors within thirty days of receiving the vehicle and includes the following:
  - a. Form 1098-C, with explanatory statement concerning gross proceeds, to donors of vehicles sold for more than \$500;

- b. Form 1098-C for donations in which material improvements have been made or are contemplated;
  - c. A letter containing the three statements set forth above, for vehicles sold for less than \$500;
7. Continue compliance with reporting requirements of Form 8282, concerning donations sold within two years of contribution.

## BILL OF SALE

This receipt certifies that on \_\_\_\_\_ (date), \_\_\_\_\_ (Buyer), of \_\_\_\_\_ (address) bought from \_\_\_\_\_ (seller) the following vehicle(s) for a total of \$ \_\_\_\_\_:

Year	Make	Model/Type/Length	Engine Type	Vehicle Identification No.

Additional information: \_\_\_\_\_

Buyer represents that he or she is over the age of eighteen (18) and legally competent to sign this binding contract.

This agreement constitutes and contains the entire agreement between the parties. All prior or contemporaneous understandings or agreements between the parties, if any, whether or oral or express or implied, are merged into and with this Agreement, which fully and conspicuously states and expresses the parties' understanding and agreement.

In no event shall Seller be liable for damages of any nature, including without limitation, special, direct, indirect, incidental, or consequential damages, whether or not relating to or in any manner resulting from or arising out of any defect in material and workmanship.

**ALL WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED AND STATUTORY, ARE HEREBY DISCLAIMED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.**

**BUYER HAS EXAMINED THE VEHICLE AS FULLY AS DESIRED OR HAS REFUSED TO EXAMINE THE VEHICLE.**

**THE VEHICLE (INCLUDING ANY ACCESSORIES AND COMPONENTS) IS SOLD "AS IS."**

\_\_\_\_\_  
Seller  
(signature)

\_\_\_\_\_  
Buyer (signature)

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Printed name

**BILL OF VEHICLE DONATION**

This receipt certifies that on \_\_\_\_\_ (date), \_\_\_\_\_ (Donor), of \_\_\_\_\_ (address) donated to \_\_\_\_\_, a registered not-for-profit corporation, the following vehicle:

Year	Make	Model/Type/Length	Engine Type	Vehicle Identification No.

Donor's tax identification number (FEIN or SSN): \_\_\_\_\_

The donor acknowledges that \_\_\_\_\_ [seller] will not be using the above-listed vehicle in its own programs and therefore will sell it at auction. \_\_\_\_\_ is not selling the vehicle on the Donor's behalf, but solely in furtherance of its own charitable purposes.

The donor may be entitled under federal law to claim a tax deduction for the donation of this vehicle. If the donated vehicle's estimated value is more than \$500 and is sold for more than \$500, without any material improvement, the donor's deduction will be limited to the gross proceeds from such sale. If the donated vehicle is sold for less than \$500, the donor's deduction will be limited to the *lesser* of the vehicle's estimated fair market value or \$500.

Within 30 days hereof, \_\_\_\_\_ may decide to make material improvements to the donated vehicle. In such case, a deduction may be available for the vehicle's fair market value upon substantiation by reference to an established vehicle pricing guide, for a private party sale of a similar vehicle. A claimed deduction of more than \$5000, based on fair market value, must be substantiated by a

qualified appraiser.

As required by federal law, \_\_\_\_\_ shall provide timely written acknowledgment of the subsequent sale or, in the case of contemplated material improvements, of the contribution. IRS Form 8283 is available for donors wishing to claim tax deductions based on their vehicle donations to \_\_\_\_\_.

\_\_\_\_\_  
Seller Representative (signature)

\_\_\_\_\_  
Donor (signature)

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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