



January 3, 2012

Independent Ethics Commission
101 West Colfax Ave, Suite 500
Denver, CO 80203

RE: Request for a letter ruling regarding the value of the gift conferred by complimentary tickets to the Colorado Nonprofit Week Awards Luncheon

Dear Members of the Independent Ethics Commission:

The Colorado Nonprofit Association ("Association") will hold its annual Colorado Nonprofit Week Awards Luncheon ("CNW Luncheon") on March 12, 2012. The Association regularly invites legislators and government employees to attend and would like to offer them complimentary tickets to the luncheon. To comply appropriately with Article XXIX, section 3 (2) of the Colorado Constitution, the Association seeks a letter ruling that the value of the gift conferred by a complimentary ticket is the value of the meal served at the CNW luncheon.

The following facts may be relevant to this question:

- (a) The Association is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. We have 1,380 nonprofit members who under our by-laws must also be 501(c)(3) organizations.
- (b) The Association works with and for all of Colorado's nonprofits to create impact in our communities. We do so by providing cost-saving member benefits, up-to-date resources and practical information to help nonprofits. The Association engages in public policy advocacy on matters affecting the sector. We rely on the support of our members, foundations and the community at-large to provide these services.
- (a) The Association has hosted the CNW Luncheon for 16 years to celebrate the importance and many contributions of nonprofit organizations across Colorado. The luncheon program includes recognition of winners of the William Funk Awards for Building Stronger Communities, the Steve Graham Award for Building Nonprofit Capacity, the Excellence in Media Award, Public Service Lifetime Achievement Award, and the Legislators of the Year and the Nonprofit Impact Award, which are given to state legislators. Each individual award winner is given the opportunity to speak to the audience as a part of the program. The Association invites the Governor, Lieutenant Governor, Attorney General, Secretary of State and Treasurer to either give a speech or present an award during the program. The program also typically includes a short presentation by the Association of our annual accomplishments and a video set to music about the nonprofit sector. The Association does not compensate any program participant to speak or perform. Winners of the Funk and Graham Awards (who are nonprofit professionals) receive the ability to direct a \$5,000 grant funded by the Boettcher Foundation to a 501(c)(3) Association member organization. To give the Commission a more complete understanding of the event, we have attached a copy of the 2011 program distributed to attendees. The 2012 event program will be very similar.
- (b) For the last two years, about 770 people attend the CNW luncheon. Attendees include nonprofit organizations, foundations, businesses, and federal, state and local government officials. The Association reaches out to this diverse cross-section of people because successful work by nonprofits in communities requires involvement by the nonprofit, business and government sectors.



The net proceeds of the CNW Luncheon go to a 501(c)(3) organization to fulfill its charitable mission. In this context, the Association believes that it makes sense to look to the IRS charitable deduction rules as a means to determine the gift that the Association is giving to covered officials by providing a complimentary ticket and to help interpret the meaning of "the fair market value or aggregate actual cost of the gift" under Article XXIX. IRS rules and Article XXIX also both use the concept of "admission" in determining value of what is received by a ticket holder.

The Association believes that the gift it gives to covered officials attending the CNW Luncheon is the meal itself, and not admission to the event. In this context, IRS rules for the deductibility of charitable contributions provides useful guidance in determining what constitutes a gift and its value. IRS Publication 526 states, "If you receive a benefit as a result of your contribution to a qualified organization, you can deduct only the amount of your contribution that is more than the value of the benefit you receive." The publication then gives several examples, "... Example 1. You pay \$65 for a ticket to a dinner-dance at a church. All proceeds of the function go to the church. The ticket to the dinner-dance has a fair market value of \$25. When you buy your ticket, you know that its value is less than your payment. To figure the amount of your charitable contribution, you subtract the value of the benefit you receive (\$25) from your total payment (\$65). You can deduct \$40 as a charitable contribution." See IRS Publication 526, page 3.

This IRS publication also provides guidance for tickets to charity benefit events stating, "If you pay a qualified organization more than fair market value for the right to attend a charity ball, banquet, show, sporting event, or other benefit event, you can deduct only the amount that is more than the value of the privileges or benefits you receive. If there is an established charge for the event, the charge is the value of your benefit. If there is no established charge, your contribution is that part of your payment that is more than the reasonable value of the right to attend the event." *Id.* at page 3-4. Revenue Ruling 67-246 gives a basis for determining the "value of the right to attend." That ruling states that, "Where the [charitable] affair is reasonably comparable to events for which there are established charges for admission such as theatrical or athletic performances the established charges should be treated as fixing the fair market value of the admission or privilege. Where the amount paid is the same as the standard admission charge there is, of course, not deductible contribution, regardless of the intention of the parties. **Where the event has no such counterpart, only that portion of the payment which exceeds a reasonable estimate of the fair market value of the admission or other privileges may be designated as a charitable contribution.**" (Emphasis added) See also Example 1, Rev. Rul. 67-246.

The CNW Luncheon program does not have a commercial counterpart, none of the speakers are paid to perform, and people attend the luncheon to celebrate the nonprofit sector, and the award winners and to support the Association. In this context, admission to and the "right to attend" the event by itself does not have a fair market value or confer a privilege of value that has a commercial counterpart, such as a concert or performance. However, attendees do receive the benefit of the meal, which is included in their ticket price. Using the IRS analysis of deductibility, the fair market value of the meal is the benefit the attendees receive and this amount is not deductible (IRS Publication 526, the church-dinner dance in Example 1, page 3). Attendees could deduct the amount of the ticket price that exceeds the fair market value of the meal, which would also be the amount of the donation to the Association.

Using these principles from the IRS rules, the only benefit to the covered officials who receive a complimentary ticket would be the value of the meal. With a complimentary ticket, covered officials would not be making a contribution to the Association nor would they be able to deduct any part of the ticket on their tax returns. The meal is the only value that the Association would give and the only value or benefit received by a covered official for their attendance.

For purposes of Article XXIX Section 3(2), the only part of the Association's complimentary ticket that is a "gift or thing of value" is the meal itself because that is the only benefit received by the ticketholder. The gift does not include an "admission" because there is no commercial counterpart upon which to value an admission price to the event, as there

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(c) Ticket prices to the event are:

2012 Prices	Individual Registration		
	Early (through 2/10)	Regular (through 3/2)	Late (onsite)
Member	\$55	\$65	\$80
Nonmember	\$65	\$75	\$90

2012 Prices	Table Registration (table of 10)		
	Early (through 2/10)	Regular (through 3/2)	Late (onsite)
Member Nonprofit	\$495	\$585	\$720
Nonmember Nonprofit	\$585	\$675	\$810
Member Business or Individual	\$550	\$650	\$800
Nonmember Business or Individual	\$650	\$750	\$850

- (d) Ticket sales make up about 35% of the total revenue for the CNW Luncheon. The remainder of the revenues come from foundation, nonprofit and business sponsorships.
- (e) The CNW Luncheon is a fundraising event for the Association. Any net proceeds from the CNW Luncheon become part of the Association's general operating budget and are used to fulfill our charitable mission.
- (f) The value and benefit received by CNW Luncheon attendees in exchange for their ticket is the lunch meal itself. The CNW program content does not confer a benefit of value on the attendee. (See discussion below.)
- (g) Under the Association's contract with the hotel providing the 2012 CNW luncheon, the price per plate is \$44.91, which includes food, service charge and tax.
- (h) Under Article XXIX, Section 2, no covered official... "shall solicit, accept, or receive any gift or thing of value having either a fair market value or aggregate actual cost greater than \$50 in any calendar year..."
- (i) The Association receives more than 5% of its funding from for-profit entities and any reasonable expenses paid for by the Association for covered officials would not be excepted from the gift limit per Article XXIX, Section 3(3)(f).
- (j) Covered officials who receive awards or who address the audience as a part of the scheduled program may receive complimentary tickets under the gift exception provided in Article XXIX, Section 3 (3)(c) and (e).

The purposes of the CNW Luncheon are to celebrate Colorado's nonprofit sector and to recognize the award winners for their contributions to the sector. The Association invites covered officials and wants to encourage their attendance through complimentary tickets because it is important for government officials to know about the contributions of the nonprofit sector and to become familiar with nonprofit leaders and organizations. Similarly, nonprofit leaders should become acquainted with government officials so that nonprofits and government may more effectively work on community issues. However, the Association does not promote access to a covered official as a primary purpose of the CNW Luncheon or reason for a person to purchase a ticket.

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might be for an event of the type which featured paid performers and was a commercial, not charitable event. Language in the "speaking" exception in Article XXIX, Section 3 (3)(e) to the effect that a gift does not apply to "admission to, and the cost of food or beverages consumed at, a reception, meal or meeting..." does not change this analysis because "the cost of the food and beverages consumed" is the only thing of value and benefit that the Association gives to covered officials in the context of the CNW Luncheon.

Under Article XXIX, Section 3 (2) the "fair market value or the aggregate actual cost" of Association's gift is the cost to the Association of providing the meal. Under our hotel contract, the Association is contractually obligated pay \$44.91 per plate.

The Association asks the Commission for a letter ruling that the value of the gift given to covered officials through a complimentary ticket is the value of the meal provided by the Association at the CNW Luncheon or \$44.91.

Respectfully submitted,

President & CEO
Colorado Nonprofit Association