

Can Gifts of Software Be Counted?
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I want to summarize some information pertaining to the "booking"/counting of gifts of software. I dare say that there is a lot of confusion pertaining to this topic. CASE muddied the waters a bit in their guidelines since the 3rd edition. And I take responsibility for that as I was the editor of that edition. I am pleased that CASE issued a clarification on this (on their website) a number of years ago.

If you read the CASE Guidelines - and only look at snippets of the section on software outside the context of the entire publication - it would appear that CASE is indicating that we can count these contributions. But in the context of the entire publication, CASE is only offering how to count these gifts **when legal ownership is transferred**. That can be done - although very rarely. In fact, 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 simply that CASE only permits the counting of truly tax-deductible contributions. Only with rare exception that happens with software "donations." Ownership is not being transferred. We typically are only being given free use of the software (license) for a specific period of time. That is what the IRS calls "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. See the last sentence of paragraph 1.2.2 on page 14 of the 4th edition of the CASE Guidelines: "Gifts of services (for example a coupon for yard work) or partial interest (use of a beach house for a week) are *not* gifts and, therefore, not countable/reportable." Also see paragraph C of the Software and Hardware section on page 17: "A donor must irrevocably transfer *ownership* of the property to the institution for the property to be considered a gift."

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

http://www.case.org/Samples_Research_and_Tools/CASE_Reporting_Standards_and_Management_Guidelines/Clarification_to_Standards_Oct_2011.html

In the section pertaining to Corporate Partnerships, CASE states: "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."

So, bottom line here is that these contributions can never be counted in official fundraising totals as reported to the Council for Aid to Education in their annual Voluntary Support of Education survey.

However, you might consider counting a portion of these in multi-year comprehensive campaigns. While it is true that the CASE Guidelines are fairly emphatic about NOT counting these, there are some 8-10 areas that organizations often deviate from those guidelines. I personally have no problems with some of those deviations, that as long as we are 100% transparent about it and include the expectation of these "exceptions" **when building our campaign goals**.

At NC State, 18 months before the pre-public launch of our \$1.5B campaign, we wrote our own campaign counting standards and had them approved by the Board. They were a whopping 2 pages long simply because they stated that we would adhere to the CASE Guidelines, but with a few exceptions. And so 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 standards.

While we did not consider software as one of those exceptions, there have been a number of institutions who have knowingly and intentionally counted on such a gift when planning their campaign. As long as we do so in advance of the campaign (no changing rules after the campaign begins!), and inform our constituents of our intention to count something that is not a tax-deductible gift, I think that is possible. Again, it is all about being transparent! Just remember to EXCLUDE these from your CAE report, and to identify these as an exception when completing the bi-annual CASE Campaign report.