

## Question 2: What's the *Value* of What I Received?

<http://www.ca-ilg.org/GiftsQuestion2>

California's gift rules (see next page for overview) for public officials are keyed to the value of the gestures received. How does one determine the value of a gift for reporting purposes?

The general rule is that one must report the *fair market value* of the gift.<sup>1</sup> For example, if a public official is treated to a meal at a restaurant, the official's portion of the tab (which may include the amount spent on the official's spouse, partner or guest; parking; tip, etc.) is the value of the gift.

Some other rules relating to valuing gifts:

- What the *gift giver paid* is not necessarily the value. If it would cost you more to pay for the gesture, that is the value that must be reported, even if the gift giver paid less.<sup>2</sup>
- If the item is not sold on the open market, reporting a good faith estimate of its value based on the price of comparable items is acceptable.<sup>3</sup> If one cannot determine the fair market value because the gift is unique or unusual, its value is the cost to the gift-giver if known, or a good faith estimate of that cost if unknown.<sup>4</sup>
- The value to be reported is pegged to the *date of receipt* (not, for example, the value on the date the official fills out their form 700).<sup>5</sup>

## Special Valuation Rules: Air Transportation

### Commercial Flights

The value of a ride on a commercial airline is the price the carrier charges the public for the same class seat on the flight.<sup>6</sup>

### Charter or Other Flights

For charter or private air transportation, the base value is what you would have to pay to charter or rent an airplane of comparable size.<sup>7</sup> The reportable share is determined by dividing the base amount by the number of passengers on the flight.<sup>8</sup> Meals,

refreshments or other benefits received while traveling on the flight must be reported as extra value received unless such benefits would have been included in the base charter fare.

## Special Valuation Rules: Fundraisers

The general rule for an admission ticket is that an official must report the face value of the ticket,<sup>9</sup> but there are exceptions.

## Political and Nonprofit 501(c)(3) Fundraisers

Officials may receive two free tickets to political and 501(c)(3) fundraising events without needing to worry about California's gift rules.<sup>10</sup> The Fair Political Practices Commission rules say that these tickets have "no value," as long as the official gets the tickets directly from the non-profit (or from the candidate or committee in the case of a political fundraiser).

### What's a "Gift" for Purposes of the Rules?

The concept is broad. A public official receives a gift for purposes of California's gift rules (see summary on next page) any time the official receives anything that

- ✓ Has a monetary value and
- ✓ Provides the official with a personal benefit
- ✓ For which the official doesn't pay full value.<sup>11</sup>

Gifts can be:

- ✓ Tangible or intangible
- ✓ Real property or personal property;
- ✓ Goods or services.<sup>12</sup>

Under some circumstances, gifts than an official's family receives are considered gifts to the official for purposes of California's gift rules.

Note that the Fair Political Practices Commission has recognized a variety of [exceptions](#) to what constitutes a gift.<sup>13</sup>

## California's Basic Gift Rules

The goal underlying California's gift rules is to prevent either the perception or the reality of gifts influencing public officials' actions. This is because public agency actions should always promote the *public's* interests, as opposed to narrow personal or political interests.

As a result, California public officials must:

1. **Report gifts worth \$50 or more on their [Statement of Economic Interests](#).**<sup>14</sup> Gifts from a single source must be added up over the course of a calendar year. An official's reporting obligation is triggered when the combined value of a series of gestures from a single gift-giver reaches \$50 or more.
2. **Not receive gifts that exceed \$440 from a single source per calendar year.**<sup>15</sup> This limit can be exceeded by accepting a single large gesture or a series of gestures over the course of a calendar year from the same gift-giver that total more than \$440 (2013-2014 amount).<sup>16</sup>
3. **Having accepted gifts may keep a public official from participating in the decision-making process.** If a public official accepts gestures with a value of more than \$440 from a single gift-giver in the twelve months preceding the official's involvement in a decision affecting that gift giver, the official may have to disqualify himself from participating in that decision-making process.<sup>17</sup>

More detail on these rules is available at [www.ca-ilg.org/GiftCenter](http://www.ca-ilg.org/GiftCenter). These rules apply to elected officials, top level managers and others who are covered in the agency's local conflict of interest code.<sup>18</sup>

Putting aside what the rules allow, public officials are well-advised to look beyond what the law allows in any situation involving a nice gesture. This includes considering how residents will view a public official's actions.

## Additional Tickets or Tickets for Other Kinds of Fundraisers

If an official receives more than two free tickets to an event, or the event is for a different kind of fundraiser (not a 501(c)(3) or political fundraiser), the question becomes what the value of the tickets.

If the official were paying face value for the ticket, typically the ticket value has two parts:

- 1) The part that represents the donation to the event organizer, and
- 2) The cost of putting on the event.

This latter cost is the cost to focus on for purposes of California's gift rules.

If the organization sponsoring the event says what portion of the ticket price is the donation, the math looks like this:

$$\text{FACE VALUE OF THE TICKET} - \text{STATED DONATION AMOUNT} \\ = \text{REPORTABLE VALUE.}^{19}$$

Otherwise, the value of the benefit the official receives is the per-guest share of the cost of food, entertainment and any other items provided to all guests at the event.<sup>20</sup> Other specific benefits attendees receive (for example, golf green fees) are valued at fair market value.<sup>21</sup> This is the same approach for valuing attendance at invitation-only events.<sup>22</sup>

### Compliance Strategy: Questions for Public Officials to Ask About Nice Gestures

A way to analyze one's likely obligations under California's gift rules is to ask:

1. [Did I or my family received something of value?](#)
2. [What's its value?](#)
3. [Who gave it to me?](#)
4. [Did I do something in exchange for what I received?](#)
5. [What kind of gift is it and do special rules apply as a result?](#)
6. [Which of the permitted courses of action do I want to take with respect to the gift?](#)

Explanations of each of questions are available at [www.ca-ilg.org/GiftCenter](http://www.ca-ilg.org/GiftCenter).

## Special Valuation Rules: Invitation-Only Events

### In General

For other events local officials may be invited to, the value of the free admission is the cost of all food, catering services, entertainment and items provided to attendees and then dividing that total by either the number of acceptances or attendees.<sup>23</sup> Note that, for purposes of this calculation, the value of “entertainment” only includes a feature show or performance; background music costs need not be included in the calculation.<sup>24</sup>

If the official takes a guest, the per-person cost resulting from this calculation then gets multiplied by two (for the official and the official’s guest) to get the value of what the official receives.<sup>25</sup>

A different rule applies if the official is performing a ceremonial role at the event.<sup>26</sup>

### “Drop in Visits”

If the local official (and any accompanying guest) do not consume a meal at the event or stay for any entertainment, the value is generally considered to be zero.<sup>27</sup> The exception is if the official (and guest) receive a specific item (in which case the value is the value of the item received).<sup>28</sup> The notion of a “drop in” visit contemplates that the official consumes only minimal appetizers and drinks.<sup>29</sup>

### Other Special Rules May Apply

As Question 5 (“What kind of gift is it and do special rules apply as a result?”) suggests, certain kinds of gestures (for example, informational materials, wedding gifts, home hospitality) are subject to [special rules](#).

### About This Resource

This document is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities.

ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on gift rules public officials go to <http://www.ca-ilg.org/GiftCenter>.

As part of its mission of promoting good government at the local level, the Institute tries to help local officials understand those rules.

These informational materials, however, are not legal advice. Attorneys can and do disagree on how to interpret the rules in this area. In addition, the rules can and do change over time.

Officials are encouraged to consult with an attorney or relevant regulatory authorities for up-to-date information and advice on specific situations.

### References and Resources

(Fair Political Practices Commission regulations are available online at <http://www.fppc.ca.gov/index.php?id=52> )

<sup>1</sup> 2 Cal. Code Regs. §§ 18940(c), 18946(a).

<sup>2</sup> See *In re Hopkins*, 3 FPPC Ops. 107, No. 77-022 (1977) (“the fair market value of a gift is the value that the gift would command in the open market”); Fair Political Practices Commission, *Bane* Advice Letter, No. A-92-579 (1992).

<sup>3</sup> Fair Political Practices Commission, *Bane* Advice Letter, No. A-92-579 (1992).

<sup>4</sup> 2 Cal. Code Regs. § 18946(b).

<sup>5</sup> 2 Cal. Code Regs. § 18946(a).

<sup>6</sup> 2 Cal. Code Regs. § 18946.5(a).

<sup>7</sup> 2 Cal. Code Regs. § 18946.5(b).

<sup>8</sup> 2 Cal. Code Regs. § 18946.5(b).

<sup>9</sup> 2 Cal. Code of Regs. §§18961.1(a), 18946(d)(1).

<sup>10</sup> 2 Cal. Code of Regs. § 18946.4(b)(c).

<sup>11</sup> See generally 2 Cal. Code Regs. § 18940(a).

<sup>12</sup> 2 Cal. Code Regs. § 18940(a).

<sup>13</sup> 2 Cal. Code Regs. § 18942.

<sup>14</sup> Cal Gov't Code § 87207(a)(1).

<sup>15</sup> Cal. Gov't Code § 89503; 2 Cal. Code Regs. § 18940.2 (the FPPC adjusts the limit biennially, and it will remain at \$440 until the end of 2012).

<sup>16</sup> If the limit is exceeded one has several options, any of which must be exercised within 30 days of receiving the gift. One may return the gift unused to the donor, reimburse the donor for all or a portion of the value of the gift or donate the gift, without claiming a tax deduction, to a 501(c)(3) charitable organization or government agency. 2 Cal. Code Regs. §18941(a)..

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<sup>17</sup> Cal. Gov't Code § 87103(e); 2 Cal. Code Regs. § 18703.4. This is because public officials may not make, participate in making, or influence governmental decisions which affect their personal financial interests. Cal. Gov't Code § 87100. The law makes a judgment that one is financially self-interested in a decision when one accepts gifts exceeding the \$440 gift limit from someone affected by that decision. Cal. Gov't Code § 89503; 2 Cal. Code Regs. § 18940.2(a).

<sup>18</sup> 2 Cal. Code of Regs. §§ 18940(d), 18730 (b)(8.1)(A) (application of the gift disclosure rules). *See also* 2 Cal. Code of Regs. §§ 18701(a), 18730 (b)(9)(A) (application of the disqualification/conflict of interest rules). *See also* 2 Cal. Code of Regs. § 18940.1 (definition of "official").

<sup>19</sup> 2 Cal. Code of Regs. § 18946.4(a)(1).

<sup>20</sup> 2 Cal. Code of Regs. § 18946.4(a)(2).

<sup>21</sup> 2 Cal. Code of Regs. § 18946.4(a)(2).

<sup>22</sup> 2 Cal. Code of Regs. § 18946.2.

<sup>23</sup> 2 Cal. Code of Regs. § 18946.2(c).

<sup>24</sup> 2 Cal. Code of Regs. § 18946.2(f) (may be intended to be "(g)").

<sup>25</sup> 2 Cal. Code of Regs. § 18946.2(b), (c).

<sup>26</sup> 2 Cal. Code of Regs. §§ 18946.3 (definition of ceremonial role and requirements public agency must satisfy for participation to qualify as a "ceremonial role"), 18942(12) (exception to gift rules for events at which an official performs a ceremonial role—exception also extends to one guest and any supporting staff).

<sup>27</sup> 2 Cal. Code of Regs. § 18946.2(e).

<sup>28</sup> 2 Cal. Code of Regs. § 18946.2(e).

<sup>29</sup> 2 Cal. Code of Regs. § 18946.2(e).

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