Charitable Giving

Tab 11 Planning Topics

Basic Rules ..... Page 11-1
Maximizing Charitable Deductions ..... Page 11-1
Tangible Personal Property ..... Page 11-3
Stock Donations ..... Page 11-4
Real Property ..... Page 11-5
Other Property ..... Page 11-6
Qualified Written Appraisal ..... Page 11-8
Out-of-Pocket Expenses ..... Page 11-8
Bargain Sales ..... Page 11-9
Donor-Advised Funds ..... Page 11-9
Private Family Foundations ..... Page 11-10
Charitable Trusts ..... Page 11-11
Substantiating Charitable Donations ..... Page 11-12

Basic Rules

Deductible Contributions	Nondeductible Contributions
• Money or property given to: – Churches, synagogues, temples, mosques and other religious organizations. – Federal, state and local governments, if contribution is solely for public purposes. – Nonprofit schools and hospitals. – Public parks and recreation facilities. – Salvation Army, Red Cross, CARE, Goodwill, United Way, Boy/Girl Scouts, etc. – War veterans' groups. – Eligible charitable organizations listed in the IRS's online EO Select Check tool. • Charitable travel: transportation, meals and lodging. • Volunteer out-of-pocket expenses. • Housing exchange students (sponsored by a qualified organization): up to $50 per month.	• Money or property given to: – Civic leagues, social and sports clubs, labor unions and chambers of commerce. – Foreign organizations (except certain Canadian, Israeli and Mexican charities). – Groups run for personal profit. – Groups whose purpose is to lobby for law changes. – Homeowners' associations. – Individuals. – Political groups or candidates for public office. • Cost of raffle, bingo or lottery tickets. • Dues, fees or bills paid to country clubs, lodges, fraternal orders or similar groups. • Tuition. • Value of time or services. • Value of donated blood.

Limits on Charitable Contributions

The deduction for charitable contributions cannot exceed 50% of the taxpayer's adjusted gross income (AGI). A reduced limit of 30% or 20% applies for certain contributions. See the *Charitable Deduction Amounts and Limits* table on Page 11-2.

Five-Year Contribution Carryover

Contributions that exceed the AGI limit in the current year can be carried over to each of the five succeeding years [IRC §170(b)(1) and (d)(1)]. Carryover contributions are subject to the original percentage limits in the carryover years and are deducted after deducting allowable contributions for the current year. If there are carryovers from two or more years, use the earlier year carryover first.

Standard deduction claimed. Excess contributions can be carried forward even if the standard deduction is used in the contribution year. If the taxpayer claims the standard deduction in any of the carryover years, the carryover amount is reduced by the amount that would have been deductible if itemizing. (Reg. §1.170A-10)

Example: Susan's 2016 AGI is $6,000. She donates $3,100 to a 50% charity. Susan claims the standard deduction in 2016. If she had itemized deductions, she would have been allowed to deduct $3,000 of her contribution ($6,000 × 50%) and would have carried over the excess $100. Susan carries forward the $100 excess contribution to 2017 even though she claimed the standard deduction in 2016.

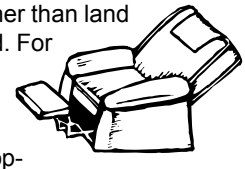
When to Deduct Donations

Donation made by or using . . .	When donation is made for tax purposes
Check	Date mailed.
Text message	When message is sent if donation charged to telephone or wireless account.
Credit card	When charge is made (not when credit card charge is paid).
Pay-by-phone account	Date paid by the financial institution.
Stock certificate	*Endorsed certificate:* Date of mailing or other delivery. *Transferred certificate:* Date the stock is transferred on the books of the corporation.
Promissory note	When note payments are made.
Option granted to buy property at bargain price	When charity exercises the option.
Borrowed funds	When donation is made (not when borrowed funds are repaid).
Conditional gift	No deduction unless there is only a negligible chance that the condition won't happen.

Property Donations

Special rules may apply, depending on the type of property:

- *Tangible personal property.* Property, other than land or buildings, that can be seen or touched. For example, furniture, books, jewelry, paintings and cars. See *Tangible Personal Property* on Page 11-3.



- *Intangible personal property.* Personal property such as stocks, bonds, patents, copyrights and other intellectual property. See *Other Property* on Page 11-6.
- *Real property.* Land and generally anything that is built on, growing on or attached to land. See *Real Property* on Page 11-5.

Maximizing Charitable Deductions

Cash

Transferring cash is the simplest way to make a tax-deductible donation because:

- Cash does not need to be valued.
- Costs associated with transferring title to property are avoided.
- The percentage-of-AGI limits on cash donations are generally higher than the limits on non-cash donations.

The cost of simplicity is giving up cash, which some donors find unappealing. These individuals may prefer to donate non-income-producing or illiquid property, or long-term capital gain property with a low tax basis.

Credit Card Charges

Charitable contributions made by credit card may be useful for taxpayers who want to deduct the contribution in the current year, but defer payment until the next year.

- Credit card contributions are deductible in the year the charge is incurred, even though paid in a later year. (Rev. Rul. 78-38)
- Interest paid on the credit card balance is not considered a charitable contribution.

Charitable Deduction Amounts and Limits						
Donated to →	50% Charities and Private Operating Foundations[1]		Private Nonoperating Foundations[2]		Other Charities	
Property Donated ↓	*Deductible Amount*	*AGI % Limit*	*Deductible Amount*	*AGI % Limit*	*Deductible Amount*	*AGI % Limit*
Cash	Amount given	50%	Amount given	30%	Amount given	30%
Short-term capital asset:						
Appreciated (FMV > Basis)	Basis	50%	Basis	30%	Basis	30%
Depreciated (FMV < Basis)	FMV	50%	FMV	30%	FMV	30%
Long-term capital asset (other than tangible personal property):						
Appreciated (FMV > Basis)	FMV	30%	Basis[3]	20%	FMV	20%
Depreciated (FMV < Basis)	FMV	30%	FMV	20%	FMV	20%
Election to claim basis[4]	Basis	50%	N/A	N/A	N/A	N/A
Tangible personal property (long-term):						
Unrelated use[5]	Basis[6]	50%	Basis[6]	30%	Basis[6]	30%
Related use	FMV	30%	Basis[6]	20%	FMV	20%
Ordinary-income property	Basis[6]	50%	Basis[6]	30%	Basis[6]	30%
Qualified conservation contributions[1]	FMV	30%	N/A	N/A	N/A	N/A

[1] Private operating foundations are not qualified organizations for deducting conservation contributions. See *Special Rules for Qualified Conservation Contributions* on Page 11-6.
[2] Other than those that qualify as 50% charities. Private nonoperating foundations that make qualifying distributions of 100% of contributions within 2½ months following the year they receive the contribution are treated as 50% charities.
[3] FMV, if qualified appreciated stock. See *Qualified Appreciated Stock* on Page 11-5.
[4] See Pub. 526 for more on the election.
[5] Use that is unrelated to the charitable organization's exempt purpose or function.
[6] FMV, if less than basis.
50% Charities: Include churches, religious organizations, educational organizations, hospitals, medical research organizations, publicly supported organizations, governmental units and certain private nonoperating foundations.
Private Operating Foundations carry out their own charitable activities (for example, non-publicly supported museums, libraries, etc).
Private Nonoperating Foundations are grant-making entities that support other charities.
Other Charities: Include veterans' organizations, fraternal societies and nonprofit cemeteries.

Ordinary Income and Short-Term Capital Gain Property

Ordinary income property is property that, if sold, would result in ordinary income or short-term capital gain. Ordinary income property includes:

- Capital assets held for 12 months or less.
- Property created by the donor (such as works of art, literary compositions, letters, etc.).
- Inventory.
- Property used in a trade or business to the extent of depreciation recapture (ordinary income) had the property been sold at FMV.

The charitable contribution deduction for ordinary income property is limited to its FMV less the amount that would be ordinary income. This generates a charitable contribution deduction essentially equal to the taxpayer's basis. [IRC §170(e)(1)(A)]

Strategy: Taxpayers who wish to donate appreciated short-term capital gain property should delay the contribution until the long-term holding period is met.

Example: Al bought stock for $4,000 and contributed it to charity 10 months later when it was worth $6,000. Because the $2,000 of appreciation is short-term gain, Al's charitable deduction is limited to $4,000 (his basis).

If Al had waited at least two more months (so the stock had been held for more than 12 months), he would have been entitled to a $6,000 contribution deduction (assuming the stock holds its value) and the $2,000 of appreciation would not be taxable.

Long-Term Capital Gain Property

Long-term capital gain (LTCG) property is property that would generate LTCG (including any Section 1231 gain on assets used in a trade or business) if it were sold it at FMV on the contribution date. The deduction for contributions of long-term capital gain property is summarized in the *Deduction for Contributing LTCG Property* table in the next column.

Deduction for Contributing LTCG Property		
Type of Property	Use By Donee	Contribution Deduction
Tangible personal property	Related use	FMV. *Exception:* If Section 1231 property, FMV less ordinary income that would have been recaptured if sold for FMV
	Unrelated use	Basis
Other long-term capital gain property (for example, stock or real estate)	Any	FMV. *Exception:* If Section 1231 property, FMV less ordinary income that would have been recaptured if sold for FMV
Note: This table does not apply to contributions to private nonoperating foundations.		

Strategy: Because it is generally deductible at FMV, donating long-term capital gain property is a tax-efficient way to fund charitable gifts. The donor avoids paying tax on the appreciation while deducting the property's full FMV.

Example: Harry and Sally would like to make an $8,000 charitable contribution. They can either (1) donate stock worth $8,000 or (2) sell the stock and donate the proceeds. The stock was purchased several years ago for $5,000. Harry and Sally itemize deductions. The effect on their income under the two scenarios is as follows:

	Gift Stock	*Sell Stock, Gift Cash*
Long-term gain on stock sale	$ 0	$3,000
Charitable contribution deduction	< 8,000>	< 8,000>
Net effect on taxable income	<$8,000>	<$5,000>

Harry and Sally would be better off donating the stock to charity because they will never be taxed on the $3,000 of appreciation. In addition, they avoid a $3,000 increase in AGI, which would have resulted from the stock sale and may have affected their AGI-sensitive items (such as itemized deductions, personal exemptions and certain credits).

Charitable Contribution Strategies		
Type of Property	***Amount Deductible (Subject to AGI Limitations)***	***Strategy to Maximize Charitable Contribution Deduction***
Cash	Amount given	Ensure cash contributions are made in a year when the taxpayer can itemize deductions. Consider charging donation to credit card to accelerate deduction and defer payment.
Appreciated Property—Fair market value (FMV) > adjusted basis:		
Short-term capital gain property, inventory or property created by donor.	Adjusted basis	Donation avoids inclusion of gain in gross income if the property would otherwise be sold. To maximize benefits: (1) limit donations to property for which FMV approximates cost or (2) delay contribution until property has been held over one year so that FMV can then be deducted.
Long-term capital gain property, other than tangible personal property donated for use unrelated to charity's exempt function.	FMV	Donate long-term capital gain property instead of cash and avoid tax on the unrealized gain.
Tangible personal property for charity's unrelated use.	Adjusted basis	Donate property with FMV that approximates cost. If LTCG property, sell at FMV (gain taxed at lower LTCG rates) and donate the proceeds (yielding a tax deduction at the ordinary income tax rate).
Gifts to private nonoperating foundations.	Adjusted basis; FMV for qualified appreciated stock.	Donate property with FMV that approximates cost or donate qualified appreciated stock eligible for FMV deduction. If long-term capital gain property (other than qualified appreciated stock), it might be beneficial to sell the property and donate the proceeds because of the tax rate differentials.
Depreciated Property—FMV < adjusted basis:		
Property used in a trade or business or for the production of income.	FMV	Sell the property, recognize the tax loss and donate the proceeds, thus generating combined deductions equal to entire tax basis.
Personal use property.	FMV	Loss on the sale cannot be recognized for tax. Donating the property or selling the property and donating the sales proceeds yield the same tax deduction.

Depreciated Property

Donating property with a FMV that is less than the taxpayer's basis should be avoided because:

- The deduction is limited to FMV.
- The donor cannot claim a tax loss for the decline in value.

It is almost always more beneficial to sell the property, deduct the loss and donate the sales proceeds.

Exception: If the donated property is not used in a trade or business or held for investment, a loss on its sale is generally not deductible, so donating the property would produce the same tax result as selling it and donating the resulting cash (for example, personal use items such as clothing and household goods).

Tangible Personal Property

Used Clothing and Household Goods

No deduction is allowed for contributions of used clothing and household items that are not in "good used condition or better" [IRC §170(f)(16)]. Household items include furniture, furnishings, electronics, appliances, linens and similar items (but not food, paintings, other art objects, antiques, jewelry, gems or collections). See the *Donated Goods Valuation Guide* on Page 11-14 for value ranges for specific items.

Exception: A deduction for a donation of a used household item or single item of clothing that is not in good used condition or better is allowed if the item is valued at more than $500 by a qualified appraisal (along with a Form 8283) that is filed with the return. See *Qualified Written Appraisal* on Page 11-8.

The term *good used condition or better* is not defined in the Code or IRS guidance. However, the preamble to Proposed Regulation Section 1.170A-18 states that the purpose of the "good used condition or better" requirement is to ensure that donated clothing and household items are of meaningful use to charities. A number of charities publish donation guidelines listing items they will and will not accept. The IRS may disallow deductions for items that charities have stated they will not accept.

Autos, Boats and Planes

Deduction limit. Charitable contributions of vehicles (generally autos, boats and planes but excluding inventory) valued at more than $500 may be deducted, but the amount of the deduction depends on the use of the vehicle by the charitable organization. If the donee charity sells the vehicle without significantly using it in the intervening period before the sale, the deduction is limited to the proceeds that the charity receives from the sale [IRC §170(f)(12)]. The actual FMV of the donated asset is irrelevant. No appraisal is required even if the vehicle is sold for more than $5,000.

Observation: Charities often sell vehicles at auction (and often in bulk) at prices significantly below car pricing guide values. This sales price limit will likely significantly limit the available deduction for vehicle donations.

Strategy: Taxpayers may be better off selling the vehicle (especially where a better-than-auction price is achievable) and donating the cash to the charity. Rarely will a taxpayer have a gain on the sale of a personal vehicle, so no taxable income will result from the sale, but (assuming a higher sales price) selling the vehicle will increase the charitable deduction (to the amount of proceeds contributed), and the taxpayer will know the amount of the deduction immediately.

Exceptions to the deduction limitation. The donor may deduct the lesser of the basis or FMV of the vehicle in the following circumstances: (IRS Notice 2005-44)

- The donee charity significantly uses the vehicle in the intervening period before its sale or makes material improvements to it.
- The donee charity gives or sells the vehicle to a needy individual at a price significantly below FMV in direct furtherance of the donee organization's charitable purpose of helping the underprivileged.

However, a qualified appraisal is required in these situations if the vehicle's FMV exceeds $5,000.

Note: The Form 1098-C, *Contributions of Motor Vehicles, Boats, and Airplanes*, that the charity issues to the donor includes information regarding the sales proceeds if the vehicle is sold or the donee's certification is one of the exceptions described above.

Significant use or material improvement. To meet the significant use test, an organization must actually use the vehicle to substantially further its regularly conducted activities, and the use must be significant. A donee will not be considered to significantly use a qualified vehicle if, under the facts and circumstances, the use is incidental or not intended at the time of the contribution. Whether a use is significant also depends on the frequency and duration of use.

A material improvement normally includes major repairs to a vehicle or other improvements that improve its condition in a manner that significantly increases its value. Cleaning, minor repairs (including painting and installing an alarm system) and routine maintenance are not sufficient. (IRS Notice 2005-44)

Example #1: As part of its regularly conducted activities, Meals-in-Cars (MIC) delivers meals to needy individuals. The use test would be met if MIC used a donated vehicle to deliver food to the needy. Use of the car to deliver meals substantially furthers a regularly conducted activity of the organization. However, the use also must be significant, which depends on the nature, extent and frequency of the use. If MIC used the car only a few times to deliver meals, the use would not be considered significant. If MIC used the car to deliver meals every day for one year, it would be considered significant. If MIC drove the car 10,000 miles during a one-year period while delivering meals, such use would be considered significant. However, use of a car in such an activity for only a few weeks or for several hundred miles generally would not be considered a significant use.

Example #2: George donates a car that will run (barely) to MIC. Although George's car will barely run, its FMV has been reliably determined to be $2,000. George's basis in the car is $20,000. MIC provides George with an acknowledgement certifying that it intends to make a material improvement to the car, describing in detail the engine replacement project. The acknowledgment also certifies that the car will not be sold before the engine replacement project is completed. George may claim a $2,000 charitable contribution deduction for the car.

Substantiating vehicle contributions. Specific substantiation requirements must be followed in order to claim the deduction for a vehicle donation. See *Donations Substantiation Guide* on Page 11-15.

Fractional Interests

Fractional interests in tangible personal property are generally not deductible unless the donor (or the donor and the donee) held all interests in the property immediately before the contribution. Also, the charitable deduction must be recaptured (plus interest and penalty charge) if the donor does not contribute all of the remaining interests in the property to the donee within 10 years after the date of the initial fractional contribution (or by the donor's death, if earlier). Likewise, the charity must have substantial physical possession of the property and use the property in a use related to its purpose or function during that time period. [IRC §170(o)]

Example: Suzanne owns a painting. She contributes an undivided one-third interest in the painting to a local art museum in 2016, followed by another undivided one-third interest in 2017 and 2018. The museum displays the painting (a use related to its tax-exempt purpose) starting on the date it received the one-third interest in 2016. Suzanne may deduct the FMV of the one-third interest donated in each of the three years.

When donors make a series of donations of fractional interests in tangible personal property, the deduction for the *initial* fractional interest contribution is based on the property's FMV at the time of the contribution. However the deduction for *additional* fractional interests in the property is based on the *lesser* of the property's FMV at the time of the (1) initial fractional contribution or (2) additional contribution. [IRC §170(o)(2)]

Strategy: If the property is likely to depreciate in value, and the donor is willing to relinquish control of the property, it is advantageous from a tax perspective to donate the entire property at once, rather than making a series of fractional interest donations.

Bulk Donation

If large quantities of the same item are contributed, the FMV is the price at which comparable numbers of the item are being sold.

Example: Bill purchases 500 Bibles for $1,000. The suggested retail value of these Bibles is $3,000. If the Bibles are contributed to a qualified organization, the deduction is limited to the price at which similar quantities of the same Bible are currently being sold. Consequently, the charitable contribution is limited to $1,000, unless it can be shown that similar numbers of that Bible were selling at a different price when contributed.

The IRS has provided informal guidance in a Chief Counsel Advice on determining the allowable charitable contribution deduction when a taxpayer donates many items of property, such as books, sheet music or works of art, after acquiring them in bulk.

Charitable contributions must be reduced by ordinary gain that would have been realized if the property were sold at its FMV. The CCA points out that the Tax Court has not followed two IRS rulings (Rev. Ruls. 79-256 and 79-419) that treated donors, who purchased items in bulk and later donated them, as dealers for characterizing the contributed property as ordinary income property. However, the Tax Court has held that a facts-and-circumstances analysis may be more appropriate for determining dealer status. In any event, though, an appropriate discount of the items should be considered for bulk donations. In the cases cited, charitable deductions have been reduced based on blockage discounts, ordinary income property sales and trade or business status. The IRS has required adjustments to donation amounts based on the effect of the donation on current retail prices. Thus, deductions for bulk items are often limited to their cost basis. (CCA 201443019)

Recapture Rule

Deductions for donations of appreciated tangible personal property (such as artwork) are subject to a recapture rule if the donee organization disposes of, exchanges or no longer uses the property within three years of the donation. This rule only affects donated property valued at over $5,000. To avoid the recapture rule, donee organizations can provide donors with certification statements regarding the intended use of donated property. [IRC §170(e)(1)(B) and (e)(7)(D)]

Stock Donations

Closely Held Stock

Closely held stock may not be the best choice for a donation because:

- The FMV of closely held stock can be difficult to determine.
- If the deduction exceeds $10,000, the donor must obtain a qualified appraisal [Reg. §1.170A-13(c)(2)]. Even if the gift is less than $10,000, an independent appraisal may help support the claimed value.
- If the stock is donated to a private nonoperating foundation, the deduction is the lesser of the donor's basis or FMV. *Exception*: See *Qualified Appreciated Stock* on Page 11-5.
- If the recipient cannot sell it (due to the lack of a market), the gift may have limited value. Also, the donor may not be able to give much stock without giving the recipient control or influence over voting matters.

Caution: The donor cannot limit the charity's ability to hold or sell the stock (to a third party) by requiring the recipient to sell it back to the donor (that is, donate stock subject to a "call"). If the donor obligates the charity to sell back the donated stock, the donor is treated as selling it himself and contributing the sales proceeds (Rev. Rul. 78-197). Therefore, tax on the appreciation is triggered.