

SUBSTANTIATING CHARITABLE GIFTS



The federal government encourages your generosity by allowing you to deduct your gifts to charities on your income tax return if you itemize. However, you must follow the IRS's reporting and substantiation rules to assure your charitable deduction. I hope that this article highlighting the IRS's requirements will be helpful to you when preparing your federal income tax return for the year 2008 (due by April 15, 2009).

The rules are numerous—and overlapping. This article tells about:

- (1) Reporting requirements for noncash charitable contributions;
- (2) Rules for hard-to-value property; and
- (3) Receipts you need to substantiate cash and noncash contributions.

For some noncash charitable gifts, Form 8283 (Noncash Charitable Contributions) must be filed. Before filing your income tax return, we suggest that you check the IRS's latest forms and instructions for any last-minute changes at:

<http://www.irs.gov/app/picklist/list/formsInstructions.html>

If your noncash gifts for the year total more than \$500, you'll have to include Form 8283 with your income tax return. Section A, the simpler part of the form, is used to report gifts valued at \$5,000 or under. Section A can be completed by you or your tax return preparer.

When the property's value is more than \$5,000 (\$10,000 for closely held stock), you'll need to have it appraised. The appraiser's findings are reported in Section B of Form 8283. Those rules also apply if you give "similar items of property" with a total value above \$5,000, even if you gave the items to different charities. The IRS says that "similar items of property" are items of the same generic type, including stamps, coins, lithographs, paintings, books, nonpublicly traded stock, land and buildings. So, for example, if you have six paintings worth \$1,000 each and contribute each one to six different charities, the appraisal rules would apply.

Special rule for publicly traded securities. You don't need an appraisal or Section B of Form 8283 for gifts of publicly traded securities, even if their total value exceeds \$5,000. But you must report those gifts (when the value is more than \$500) by completing Section A of Form 8283 and attaching it to your return.

Closely held stock. For gifts of nonpublicly traded stock, an appraisal is not required as long as the value is not over \$10,000, but part of Section B of Form 8283 must be

completed if the value is over \$5,000. And if the gift is valued at over \$10,000, then both an appraisal and Section B of Form 8283 are required.



If you need an appraisal, the gift must be made within 60 days after the date of the appraisal. The property can be appraised after the date of the gift (the appraisal to state the property's value on the date of the gift). You must receive the appraisal by the due date (including extensions) of the return on which the deduction is first claimed.

Section B of Form 8283. It must be signed by the appraiser and by the charity that received your gift. It's essential to complete Section B of Form 8283 and to attach that Form to your tax return.

Qualified appraisal. A qualified appraisal is an appraisal document that is prepared by a qualified appraiser in accordance with generally accepted appraisal standards and otherwise complies with the qualified appraisal requirements.

Qualified appraiser. The requirements to be a "qualified appraiser" are stringent. The definition is critically important: no qualified appraiser, no deduction for property gifts valued over \$5,000 (over \$10,000 for closely held stock).

Under the current definition, a qualified appraiser is an individual who (1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements (established by the IRS in regulations); (2) regularly performs appraisals for which he or she receives compensation; and (3) can demonstrate verifiable education and experience in valuing the type of property for which the appraisal is being performed. An individual has education and experience in valuing the relevant type of property, as of the date the individual signs the appraisal, if the individual has: successfully completed (for example, received a passing grade on a final examination) professional or college-level coursework in valuing the relevant type of property, and has two or more years of experience in valuing the relevant type of property; or earned a recognized appraisal designation for the relevant type of property.

Ifs, ands, buts. A qualified appraiser may not be related to, or regularly employed by you, or the charitable donee, and may not be a party to the transaction by which you acquired the property being appraised, unless the property being appraised is donated within two months of the date of acquisition and its appraised value does not exceed the purchase price.

Appraisal fee. Generally, no part of the appraisal fee can be based on a percentage of the property's appraised value. An appraisal fee isn't a charitable gift. If you itemize,

the appraisal fee is deductible on your income tax return as a miscellaneous deduction. But it's only deductible if it, together with other miscellaneous deductions exceeds a 2% of adjusted gross income floor.

Special rule for art gifts. If you donate artworks with a total value of \$20,000 or more, your return has to include a copy of the signed appraisal itself, not just Section B of Form 8283. If any single artwork is worth \$20,000 or more, IRS may ask you for an 8 × 10 color photo (or a 4 × 5 color slide) of the donated property. You don't have to send the photo with your tax return, just have one ready.

Special rule for very large gifts. For gifts valued at over \$500,000, the donor must attach the qualified appraisal, as well as Section B of Form 8283, to his or her tax return. For purposes of the dollar thresholds, property and all similar items of property donated to one or more charitable donees are treated as one property. As noted above, a copy of the appraisal must be attached to the tax return when an artwork is worth \$20,000 or more.

Gifts of clothing or household items. No deduction is allowed for a contribution of clothing or a household item unless the item is in good condition or better at the time of the contribution and the donor meets the substantiation requirements. This rule doesn't apply to a contribution of a single item of clothing or a household item for which a deduction of more than \$500 is claimed if the donor submits with the return on which the deduction is claimed a qualified appraisal prepared by a qualified appraiser and a completed Form 8283 (Section B). The term *household item* includes furniture, furnishings, electronics, appliances, linens, and other similar items. Food, paintings, antiques, and other objects of art, jewelry, gems, and collections are not household items.

You might want an appraisal (even if your gift doesn't require one) in case you have to convince the IRS of the property's worth. Moreover, 8283 asks how you valued your gift.

Generally, if a charity receives a gift that is subject to the appraisal rules (and it signed Form 8283), the charity must report on Form 8282 to both the IRS and the donor if it disposes of the gift within three years. However, the charity needn't report its disposal of an item that you certify is worth \$500 or less. Form 8283 has a section for that purpose (Section B, Part II).

Bank record or written communication required. No income tax charitable deduction is allowed for a gift in the form of cash, check, or other monetary gift unless the donor substantiates the deduction with a bank record or a written communication from the donee showing the donee's name, the contribution date, and the gift amount.

Monetary gift includes a transfer of a gift card redeemable for cash, and a payment made by credit card, electronic fund transfer an online payment service, or payroll deduction.

Bank record includes a statement from a financial institution, an electronic fund transfer receipt, a canceled check, a scanned image of both sides of a canceled check obtained from a bank website, or a credit card statement. Written communication includes electronic mail correspondence.

Substantiation of charitable contributions of less than \$250. An income tax charitable deduction isn't allowed for noncash charitable contributions of less than \$250 unless the donor maintains for each contribution a receipt from the donee showing: (1) the name and address of the donee; (2) the date of the contribution; (3) a description of the property in sufficient detail under the circumstances (taking into account the value of the property) for a person who is not generally familiar with the type of property to ascertain that the described property is the contributed property; and (4) for securities, the name of the issuer, the type of security and whether the securities are publicly traded securities.

Substantiation requirements for contributions of \$250 or more. To deduct any gift of \$250 or more, you must have a written receipt from the charity describing (but not valuing) the gift. If any goods or services were given to you in exchange for your gift, the receipt must describe them and contain a good faith estimate of their value. If the charity provided no goods or services in consideration of your gift, the written receipt must so state. The receipt need not contain your Social Security number. Generally, separate payments are considered separate contributions for purposes of the \$250-or-more threshold unless the payments are made on the same day.

Cash gifts. For cash gifts, *regardless of the amount*, recordkeeping requirements are satisfied only if the donor maintains as a record of the contribution, a bank record or a written communication from the donee showing the name of the donee and the date and amount of the contribution. A bank record includes canceled checks, bank or credit union statements and credit card statements. Bank or credit union statements should show the name of the charity and the date and amount paid. Credit card statements should show the name of the charity and the transaction posting date. The recordkeeping requirements will not be satisfied by maintaining other written records. Donations of money include those made in cash, by check, electronic funds transfer, credit card and payroll deduction.



Contributions made by payroll deduction. For a charitable contribution made by payroll deduction, a donor is treated as meeting the substantiation requirements if no later than the date for receipt of

substantiation the donor obtains: (1) a pay stub, Form W-2, "Wage and Tax Statement," or other employer-furnished document that sets forth the amount withheld during the taxable year for payment to a donee; and (2) a pledge card or other document prepared by or at the direction of the donee that shows the name of the donee.

Transfers to charitable remainder trusts. The above substantiation requirements don't apply to a transfer of cash, check, or other monetary gift to a charitable remainder annuity trust or a charitable remainder unitrust. The requirements do apply, however, to a transfer to a pooled income fund. Therefore, it is necessary to get a timely receipt meeting the \$250-or-more substantiation rules for a gift to a pooled income fund.

Transfers to gift annuities. The proposed regulations don't deal specifically with gift annuities. However, existing regulations do. When the gift portion of a gift annuity or a deferred payment gift annuity is \$250 or more, a donor must have an acknowledgment from the charity stating whether any goods or services, in addition to the annuity, were provided to the donor. If no additional goods or services were provided, the acknowledgment must so state. The acknowledgment need not include a good faith estimate of the annuity's value.

Charitable remainder gifts in personal residences and farms. The proposed and existing regulations don't specifically deal with these gifts. However, to be safe, get timely receipts meeting the \$250-or-more substantiation rule.

Grantor charitable lead trusts for which an income tax charitable deduction is allowable. The proposed and existing regulations are silent. Charitable remainder trusts, as stated above, aren't subject to the substantiation rules. Charitable lead trusts may also exempt. Nevertheless, get timely receipts meeting the \$250-or-more rule.

The receipt-in-hand rule—this is crucial: You must have the receipt in your possession **before** you file your income tax return. If you file your return after the due date (or after an extended due date), the receipt must nevertheless have been in your hand by the due date (plus any extensions). If you made a gift of \$250 or more to a religious organization and received in return solely an intangible religious benefit that generally isn't "sold in commercial transactions outside the donative context" (e.g., admission to a religious ceremony), the receipt must say so, but need not describe or value the benefit. However, this exception doesn't apply, for example, to tuition for education leading to a recognized degree, travel services, or consumer goods. If a charity receives a gift of over \$75 from you for which you received or were entitled to a benefit (other than solely an intangible religious benefit), the charity must, in connection with the solicitation or receipt of the gift, give you a written statement that: (1) informs you that the gift deduction is limited to the excess of any money (and the value of any property other than money) contributed by you over the value

of the goods or services provided by the charity; and (2) provides you with a good faith estimate of the value of the goods or services.

However, both you and the charity may generally disregard token benefits you receive for a contribution. The IRS has ruled that a charitable gift is fully deductible if it is made in a fundraising campaign in which the charity informs its donors how much of their payment is a deductible contribution and: (1) the donor receives benefits having a fair market value of \$91 or 2% of the payment, whichever is less; or (2) the donor gives the charity at least \$45.50 and receives a low-cost or token item (e.g., a bookmark, mug or T-shirt). The item must bear the charity's name or logo and cost the distributing charity, or the charity on whose behalf the item is distributed no more than \$9.10. Further, donors needn't reduce their deductions when they receive unsolicited free items that cost the charity, or the charity on whose behalf the item is distributed. Those token benefit amounts are for 2008 charitable gifts. The dollar figures are adjusted annually for inflation.



Gifts from your IRA. An individual age 70½ or older can make direct charitable gifts from an IRA (including required minimum distributions) of up to \$100,000 in 2008 and also in 2009 to public charities (other than donor advised funds and supporting organizations) and not have to report the IRA distributions as taxable income on his or her federal income tax return. This favorable rule also applies to IRA gifts to operating (but not non-operating) foundations. It also applies to so-called conduit foundations, but until guidance is received from the IRS, play it safe and make sure that the conduit foundation's gifts to public charities are made by the end of the year (rather than within 3½ months after the end of the foundation's taxable year). The tax-free IRA gift is for outright gifts only, not life-income gifts. There is no charitable deduction for the distributions. However, not paying tax on otherwise taxable income is the equivalent of a charitable deduction. The exclusion won't be available if the IRA distribution to the charity isn't sufficiently substantiated. The charity must give the donor a written acknowledgment that it has received the IRA distribution and that no goods or services were given in connection with the IRA distribution. Please call us if you have any questions and the earlier the better so that last-minute problems can be avoided.



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