

Charitable Contribution Compliance

Based upon presentation given by Joseph R. Irvine at the 2010 Non-profit Conference in Washington, D.C.

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What is a Charitable Contribution?

- Section 170 of the Internal Revenue Code provides that an income tax deduction can be taken for any charitable contribution that is made within the taxable year.
- Subsection (c) defines a charitable contribution as a "gift or contribution made to or for the use of a qualified charitable organization."

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What is a Charitable Contribution?

- **Definition based on case law:**
 - A charitable contribution is a transfer of money or property without adequate consideration.
 - The taxpayer must at a minimum demonstrate that he purposely contributed money or property in excess of the value of any benefit he received in return.

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What is a Charitable Contribution?

Definition based on case law (continued):

-A taxpayer may not deduct a payment as a charitable contribution if the taxpayer receives a substantial benefit for a payment to a charitable organization.

-The taxpayer may claim a charitable contribution equal to the difference between a payment to the charitable organization and the market value of the benefit received in return.

Quid Pro Quo Transactions

- When a donor receives a privilege or benefit in return for a contribution, the presumption is that the payment is not a gift. The donor has the burden of proving that the payment is not the equivalent of the benefit's purchase price and that part of the payment qualifies as a contribution. See Rev. Rul. 67-246.

Quid Pro Quo Transactions

Examples:

- A payment for admission to an event is not deductible even if the charity uses the entire proceeds or if the taxpayer does not attend the event. However, a donor who properly rejects a charity-offered benefit may claim a deduction for the full amount of the gift. See Rev. Rul. 67-246.
- A deduction for the cost of raffle tickets purchased from a charitable organization is disallowed on the ground that the chance received is full consideration for the payment. See Rev. Rul. 83-130.

Charitable Contribution or Business Expense?

- No deduction is allowed as a business expense for any contribution or gift which would be allowable as a deduction under § 170 were it not for the percentage limitations or the requirements as to time of payment. This provision applies both to individuals and corporations. See IRC § 162(b).
- Where a charitable deduction is foreclosed because the donee is a foreign organization, the contribution may be deductible as a business expense.

Charitable Contribution or Business Expense?

- A business expense deduction is allowable if the payment is made with a reasonable expectation of a financial return commensurate with the amount of the donation. See Reg. § 1.162-15(b); Rev. Rul. 54-3.
 - a. Payment by a corporation to charitable organization for the use of its name and its cooperation in connection with the corporation's advertising campaign is deductible as a business expense.
 - b. Regular payments to charities by a stock brokerage business in order to promote business are not contributions, even though they place the charities under no binding obligation, where they are keyed to the amount, character, and profitability of business derived through the charities.
 - c. A product discount may be given for charitable or business purposes.

Reversionary Interest or Retained Rights

- Gifts with reversionary provisions may cause contributions to be non deductible.
- If the likelihood of reversion is "so remote as to be negligible" the deduction will be allowed. See Reg. § 20.2055-2(b)(1) and 1.170A-1(e).

Example: Transfer of land to a city government to be used as a public park. If the possibility that the city will not use the land for a public park is so remote as to be negligible then the donor is entitled to a deduction.

Reversionary Interest or Retained Rights

- In *Briggs v Comm'r* 72 T.C. 646 (1979) the court defined so remote as to be negligible as "a chance which persons would generally disregard as so highly improbable that it might be ignored with reasonable safety in undertaking a serious business transaction."
- A gift made contingent upon a charity raising a certain amount of funds was considered to be non-deductible in Rev. Rul. 79-249. The IRS ruled that the possibility of a return of the donor's funds was not so remote as to be negligible.

Earmarked Gifts

- A number of cases and IRS rulings have held that funds earmarked for a particular individual are not deductible as charitable contributions.
 - Most of the cases concern either payments made for tuition for particular individuals or payments made to religious organizations for individuals doing missionary work.

Earmarked Gifts (continued)

- Rule of thumb:** The charitable organization must have discretion and control over the contribution for it to be deductible. The donor must intend to benefit the charitable organizations rather than the particular individual.

Earmarked Gifts (continued)

- Conflicting case law: there are also a number of cases in which contributions specifically directed to certain individuals have been allowed as deductible charitable contributions.

-In Winn v. Commissioner, 595 F.2d 1060 (5th Cir. 1979), the Fifth Circuit reversed the Tax Court's denial of a deduction for a contribution specifically for an individual.

-In Peace v. Comm'r. 43 T.C. 1, (1964), the Court permitted a deduction for funds donated to a church mission society with the stipulation that specific amounts go to four designated missionaries. The funds went into a common pool and the church retained control of the actual distribution of the funds.

Earmarked Gifts (continued)

- Generally, earmarking a particular contribution for a purpose within the donee's charitable mission is still deductible.

-In PLR 200250029 ruled that contributions to a charitable organization were not impermissibly earmarked for a particular composer—even though the donors expressed interest to the charity in supporting the composition of the particular composer because:

- a.) The charity made no commitment to the donors to use the funds to commission the work of the specific composer; and
- b.) Thank you letters to the donors indicated that there was no assurance that the funds contributed would be used to support the work of the composer

Types of Charitable Contributions

- **Gifts of cash:** deductible up to 50% of the donor's adjusted gross income ("AGI").
- **Long-term capital gain property such as securities or real estate.**
 - Deduction for the fair market value
 - Limited to 30% of the donor's AGI.
 - Limit can be increased from 30% to 50%, if the donor reduces the contribution by the property's appreciation and reduces the appreciation on any contribution carryovers.

Types of Charitable Contributions

- **Short-term capital gain property such as securities or real estate.**
 - Deduction for the cost basis
 - Limited to 50% of the donor's AGI.
- **Ordinary Income Property:** Gifts of property that would generate ordinary income if sold (e.g., inventory or artwork created by the donor)
 - Deduction of donor's cost basis in the property.
 - Limited to generally 50% of the donor's AGI.

Types of Charitable Contributions-continued

Tangible Personal Property other than Ordinary Income Property

Property held long term:

Use of the property related to the donee's exempt function:
Deduction of FMV

Use of the property is unrelated to the donee's exempt function: Deduction reduced by the long term capital gain if sold.

Tangible Personal Property other than Ordinary Income Property

Property held short term
-deduction of donor's cost basis regardless of use

- These limits apply to section 170(b)(1)(A) organizations ("public charities"). Lesser limits (30% or 20%, depending upon the type of property contributed) apply to private foundations.

Receipts - "Substantiation" by "Written Acknowledgement"

- For tax years beginning on or after January 1, 2007 any contribution of cash, check, or other monetary gift must be substantiated by:
 - a.) A bank record
 - Bank statement without the name of the charity is not sufficient
 - includes a statement from a financial institution, an electronic funds 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

Receipts - "Substantiation" by "Written Acknowledgement"

- gift must be substantiated by (continued):
- b.) written communication from the donee charity showing the name of the donee organization, the date of the contribution and the amount of the contribution. I.R.C. § 170(0)(17).
 - includes electronic mail correspondence

Receipts - "Substantiation" by "Written Acknowledgement"

- Non cash contributions < \$250
 - Proposed regulation 1.170A-16 requires a Donor to obtain receipt with name, address, date, description of property
 - When impractical to obtain receipt, donor should maintain reliable written record including:
 - Name and address of donor
 - Date of gift
 - Description of property
 - FMV of property and method used to determine FMV
 - Condition of Property

Receipts - "Substantiation" by "Written Acknowledgement"

Non Cash Contributions continued..

- 170(f)(16) provides no deductions for contribution of good/clothing unless the item is in good used condition or better
- Rule is N/A with a deduction of \$500 or more where the donor submits a qualified appraisal and a completed Form 8283 with the return
- b/w \$500-\$5000 the donor must complete Form 8283- no appraisal
- Greater than \$5000, must complete Form 8283 and qualified appraisal

Receipts - "Substantiation" by "Written Acknowledgement"

- Per a USA today article dated 1/16/2004, Bill Clinton used this charitable deduction: he apparently deducted \$2 each on his tax return for used underwear that he donated to charity.

Quid Pro Quo Donations (QPQ)

Charitable organizations are responsible for:

- a.) informing donors that QPQ contributions >\$75 are deductible only to extent that exceed the value of the goods/services provided by the Organization
- b.) good faith estimate of value of goods/services provided by the organization
- c.) penalty for failure to disclose is \$10 per donation—not to exceed \$5,000 per fundraising event.

Quid Pro Quo Donations (QPQ) - Continued

- QPQ does not include:
 - a.) payment made to an organization exclusively for religious purposes in return for which the taxpayer receives solely an intangible religious benefit not generally sold commercially, or
 - b.) presence of a celebrity at event does not have to be valued by the charitable organization.

Receipts - "Substantiation" by "Written Acknowledgement"

- Gifts of \$250 or more
170(f)(8) denies the deduction unless the taxpayer "substantiates the contribution by a contemporaneous written acknowledgement by the donee organization"
 - For purposes of the \$250 threshold, donations will not be aggregated and it is for the contributory element of the donation (the amount that exceed the fair market value of the goods or services received from the donee organization)
 - Burden is on taxpayer to obtain acknowledgement from charitable organization- 170(f)(8) does not impose information reporting requirement on the charities.

Receipts - "Substantiation" by "Written Acknowledgement"

- Gifts of \$250 or more- 170(f)(8) continued
 - Substantiation should be retained in the donors records--not attached to the tax return
 - Substantiation must disclose the cash contributed and a description of any non-cash property contributed (but not the value)
 - If consideration was provided to donor as a result of the contribution, this must be disclosed (including a description and good faith estimate by donee organization of the value of goods or services provided)

Receipts - "Substantiation" by "Written Acknowledgement"

Examples of Written Acknowledgments

- "Thank you for your cash contribution of \$300 that (organization's name) received on December 12, 2006. No goods or services were provided in exchange for your contribution."
- "Thank you for your cash contribution of \$350 that (organization's name) received on May 6, 2006. In exchange for your contribution, we gave you a cookbook with an estimated fair market value of \$60."
- "Thank you for your contribution of a used oak baby crib and matching dresser that (organization's name) received on March 15, 2006. No goods or services were provided in exchange for your contribution"

Good or Services Disregarded as consideration under 170(A)-13(f)(8)

1.) Goods/Services that are Insubstantial

Payment occurs in context of fundraising campaign in which charitable organization informs the donor of the amount of contribution that is a deductible contribution and:

- a) FMV of benefits received does not exceed the lesser of 2% of the payment or \$96 OR
- b) payment is at least \$48, the only items provided bear the organization's name/logo and cost of these items is < \$9.60

Good or Services Disregarded as consideration under 170(A)-13(f)(8)

2.) Annual membership benefits offered to a taxpayer in exchange for a payment of \$75 or less per year that consist of:

- a.) Rights/privileges taxpayer can exercise frequently during membership period (ex. Free admission, discounted parking, discounts on goods and services, etc.)

Good or Services Disregarded as consideration under 170(A)-13(f)(8)

2.) Annual membership benefits (continued)

b.) Admission to events during the membership period that are open only to members of a donee organization and for which the donee organization reasonably projects that the cost per person (excluding any allocable overhead) attending each such event is within the limits established for "low cost articles" (\$9.60) under section 513(h)(2).

Dates of Contributions

Date of Delivery - a charitable gift is considered made on the "date of delivery."

- It determines the tax year in which the gift is deductible.
- It determines the value of the gift for assets that fluctuate in value (e.g., stock).
- In some cases it determines whether a gift is short-term or long-term property.

Dates of Contributions

-Securities:

- Delivery must be unconditional and the stock certificate must be properly endorsed.
- If a security is hand delivered the day the charity receives the securities is the date of the gift.
- If a security is mailed the date is the day postmarked, provided it is received in the "ordinary course of mail," is the date of the gift.

Dates of Contributions

-Securities (continued):

- If a security is delivered to the donor's broker the date the stock is transferred to the charity's name on the corporation's books is the date of delivery.
- The donor loses control over the delivery date and the amount of the deduction if the securities fluctuate in value. In Ferguson v Comm'r, 108 T.C. 244 (1997), the Tax Court held that a charitable contribution was made on the date the donor executed an authorization to transfer the shares to the charity.

Dates of Contributions

- Gifts by Check:

- Date of mailing is date of contribution (certified mail)
- If ISF, delivery date is not considered mailing date
- Post-dated checks are not gifts until date on check

- Real Estate:

- Delivery date is date charity receives properly executed deed

Dates of Contributions

- Pledges:

- Deductible in the yr. they are fulfilled, not made
- Pledges fulfilled after the donor's death are deductible as an estate debt, unless the pledge was non-binding and is fulfilled only in accordance with the will

Date of contributions

-Gifts of Tangible Personal Property:

- The date of delivery is the day the property is received. Title must be transferred also.
- Party's intentions will govern determinations in unusual circumstances. For example, if the donee simply does not have space to store the donation, the donor may transfer title but must take pains to indicate no intent to retain domain and control over the gift.
- State law usually determines the legal formalities necessary to constitute constructive delivery.

Dates of Contributions

- Options:

- Options, a promise to sell specified property at a certain price in the future, is treated like a donor's pledge.
- The amount of the contribution is the FMV of the property on the date the option is exercised, minus the exercise price

- Credit Card Gifts:

- Deductible when charge is made
- The same is the case when a donor uses "pay-by-phone" account with a bank: the date of the gift is the day the bank mails, transfers or delivers the funds to the charity

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

▪ Contributions Made by Payroll Deduction - Treas. Reg. § 1.170A-13(f)(1).

- A contribution made by means of withholding from a taxpayer's wages and payment by the taxpayer's employer to a donee organization may be substantiated by:
 - Pay Stub or W-2 Form showing the amount withheld, and
 - A pledge card or other document prepared by or at the direction of the donee organization, or

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

Payroll deduction substantiated by (continued):

- For contributions of \$250 or more, the pledge card must include a statement to the effect that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction.
- For purposes of the \$250 threshold, each deduction is considered a separate contribution.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- **Distributing Organizations as Donees - Treas. Reg. § 1.170A-13(0)(12)**
 - Such organizations are considered donees only for the purposes of substantiation by written acknowledgement and only if the distributee organization provides no goods or services to the donor.
- **Payments to a College or University for the Right to Purchase Tickets to Athletic Events - Treas. Reg. § 1.170A-13(f)(14).**
 - The right to purchase tickets is valued at 20% of the payment for that right

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- **Transfers to Certain Trusts - Treas. Reg. § 1.170A-13(0)(13)**
 - The substantiation requirements of § 170(f)(8) do not apply to a transfer of property to a trust described in section 170(f)(2)(B), a charitable remainder annuity trust or a charitable remainder unitrust

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- **Transfers to Certain Trusts - Treas. Reg. § 1.170A-13(f)(13) (continued)**
 - Do apply to transfer to pooled income fund; for such a transfer, the contemporaneous written acknowledgment must state that the contribution was transferred to the donee organization's pooled income fund and indicate whether any goods or services (in addition to any interest income in the fund) were provided in exchange for the transfer.
- The contemporaneous written acknowledgment is not required to include a good faith estimate of the interest income.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- **Annuities Purchased from a Charitable Organization - Treas. Reg. § 1.170A-13(f)(16)**
 - Written acknowledgement must state whether goods and services beyond the annuity were rendered to the donor. (no "good faith estimate" needed)
- **Matched Payments - Treas. Reg. § 1.170A-13(f)(17)**
 - Goods and services rendered by the donee are in consideration for the original donor only and not for the donation of the matching payment (i.e. employer match).
 - Thus, in the written acknowledgement to the matching entity, the donee must state that no goods or services were received in consideration for the payment

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- **Donations of Services**
 - I.R.C. § 170 permits the deduction of contributions made in money or property, but deductions are not allowed for donations of time or services. Treas. Reg. § 1.170A-OXg).
 - Unreimbursed out-of-pocket expenses directly connected with and solely attributable to the rendition of gratuitous service performed for a charitable organization may qualify as a deduction.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- However, Treas. Reg. § 1.170A-1(g). In *Work v. Comm'r.* T. C. Memo 2005-259, the Tax Court held that the taxpayer could not claim the amount he spent purchasing lunches while volunteering at a museum as a charitable contribution. "While away from home" has the same meaning for charitable purposes as it does for business purposes (travel must involve an overnight stay).

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

Donation of Services (continued):

- Individuals incurring unreimbursed expenses incident to their rendition of services on behalf of a charity must maintain substantiation of the expenses.
- The substantiation must include adequate records to support the deduction as well as a receipt from the charity.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

Donation of Services (continued):

- The receipt should include: a description of the services provided by the donor; a statement of whether or not the donee organization provided any goods or services to the donor; if any goods or services are provided to the donor, a description and good faith estimate of the value of such goods and services; and, if the donee organization provided an intangible religious benefit, a statement to that effect.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

▪ Tangible Personal Property

- If tangible personal property donated to a charity and intended to be used for a related use is sold within three years of the donation, there are adverse tax consequences to the donor.
- If the property is sold in the year of the donation, the deduction is limited to the taxpayer's basis.
- If the property is sold within three years of the donation, but not in the year of the donation, the donor must report ordinary income equal to the excess of the deduction claimed over the donor's cost basis in the property at the time of contribution.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

▪ Tangible Personal Property (continued)

- An exception to the above rules apply if the donee organization certifies that the property was used in a related way and describes how it was used, or states it was intended to be used in a related way, but the intended use became impossible or infeasible to implement.
- There is a penalty of \$ 10,000.00 on a donor who knowingly claims a deduction for fair market value when the donor knows the property will not be used in a related use.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

▪ Clothing and Household Items

- Contributions of clothing and household items made after August 17,2006, are deductible only if the items are in good used condition or better.
- The new rule does not apply to a single item for which a deduction of more than \$5,000.00 is claimed if the donor includes a qualified appraisal with his or her return.
- Household items include furniture, furnishings, electronics, appliances, linens and other similar items. They do not include food, paintings, antiques, art objects, jewelry and gems, and collections.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

▪ Fractional Gifts

- No deduction for a fractional interest is allowed unless immediately prior to the contribution all interests in the property were owned either by the donor or by the donor and the donee. Regulations may allow for an exception in cases where all persons who hold an interest in the property make proportional contributions of a fractional interest of their entire interest to the donee organization.
- If the donor does not contribute all remaining interest in the property within ten years of the initial gift or, if earlier, death, a recapture rule applies.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

▪ Fractional Gifts (continued)

- Recapture also applies if the donee fails to take substantial physical possession of the property and use the property in a related way.
- Appreciation in value following the initial fractional interest gift is disregarded in determining the deduction for subsequent fractional interest gifts. This could create estate tax issues for appreciated property.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

▪ Auctions

- The donor of an item to be sold at an auction will be treated as any donor of tangible personal property put to an unrelated use by the donee organization.
- The deduction will be reduced by the amount that would have been recognized as long-term capital gain had the donated property been sold at its fair market value. Thus, in-kind donations of appreciated tangible personal property to an auction do not make sense.
- Items donated are deductible and must be substantiated by written acknowledgement if they are valued at over \$250.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

Auctions (continued)

- The winning bidder of an auction item may be entitled to a charitable contribution deduction if the amount paid for the item exceeds the item's fair market value.
- The donee organization must make a good faith estimate of the item's fair market value. The donee should publish the estimated fair market value of the auction items prior to the auction.
- The winning bidder's purchase must be substantiated by written acknowledgement if the payment exceeds the fair market value of the item by \$75 or more.
- The donee organization is not required to use an independent appraiser to value the items sold at auction.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

Raffles

- Prizes donated for a raffle will be treated in the same manner as items donated to a charitable organization for an auction.
- The value of a donated raffle prize is deductible; however, payments for raffle tickets are not. Thus, only the donated prizes or payments for raffle tickets above the value of the ticket itself fall within the substantiation requirements.
- When no payment is required to enter a raffle, any amounts contributed remain deductible.

Internet Solicitation(corporate sponsorships, malls, auctions, contributions through a website).

- If a purchaser makes a purchase through a charity mall, pays an amount for an item that exceeds its fair market value, and gives the excess payment to an exempt organization, the excess payment to the organization should be deemed a charitable contribution that gives rise to a charitable deduction for the purchaser, regardless of any arrangement between the online vendor and the exempt organization.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- Charitable Contributions of Automobiles, Boats, Airplanes - § 170(f)(12)
 - "Qualified Vehicle" donated to charity, sold by charity include:
 - 1) Automobiles that are manufactured primarily for use on public streets, roads and highways;
 - 2) Boats; and
 - 3) Airplanes.

IRS Publication 4303 states that inventory of a vehicle dealer is not considered a qualified vehicle.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

Charitable Contributions of Automobiles, Boats, Airplanes - § 170(f)(12)(continued)

- If claimed value is over \$500, donor must comply with the rule.
- If charity sells the vehicle, deduction cannot exceed gross proceeds charity receives from sale (i.e., a "deduction cap").
- The deduction cap does not apply if the charity uses the vehicle in a significant manner before selling it or materially improves the vehicle before selling it.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- Contemporaneous Written Acknowledgment should be issued:
 - a.) Within 30 days of date vehicle is sold.
 - b.) Within 30 days of receipt of vehicle by charity if one of the exceptions apply.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

Receipt must contain:

- Donor's name, taxpayer ID, vehicle identification number.
- If vehicle is sold: gross proceeds, state that the deductible amount cannot exceed the price and state that the sale was conducted in an arm's length transaction between unrelated parties

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

Charitable Contributions of Automobiles...

- If vehicle retained for charity use: state planned use, duration, planned improvement
- If charity gives/sells vehicle to needy individual and this furthers mission of charity, this must be stated

Written Acknowledgement

- The donor must attach the acknowledgement and Form 8283 to the tax return.
- The charity is also required to provide a copy of the acknowledgement to the IRS.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

Charitable Contributions of Automobiles, Boats, Airplanes - § 170(f)(12) continued...

Penalties for:

- knowing failure to provide written acknowledgement.
- known falsity or fraud in acknowledgement.
- If the vehicle is sold without use or improvement, the penalty equals the gross proceeds from the sale multiplied by the highest federal income tax rate (currently 35%).

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- Contributions of Patents and Similar Property
 - For patents and similar property the deduction is limited to the lesser of:
 - Donor's basis in the property; or
 - Fair market value

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- **Additional Deduction: Income from contributed intellectual property can be treated as an additional charitable contribution**
 - Deductions allowed for "qualified donee income" received during period beginning the year of the contribution and ending 12 years later.
 - "Qualified Donee Income" is the amount of donee income attributable to a "qualified intellectual property contribution" (i.e., the royalties received).

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- **Additional Deduction: Income from contributed intellectual property can be treated as an additional charitable contribution**
 - Donor must notify the charity that the contribution was meant to be made in accordance with these rules.
 - Income is not "qualified donee income" if it is first received by the charity more than ten years after receipt of the initial contribution

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- Patents and Similar Property (continued...)
 - Percentage Limitations: Deduction is limited to a percentage of the qualified donee income
 - 100% for the first two years.
 - In each subsequent year, the percentage is reduced by 10% until it reaches 10% in the eleventh and twelfth years.
 - For all years, the deduction is available only to the extent that the aggregate of all otherwise qualified donee income exceeds the amount deducted for the initial contribution of property

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- Patents and similar property (continued)...
- No deductions are allowed after the end of the property's legal life
 - Contributions of intellectual property to non-operating private foundations are still limited to the lesser of the donor's basis or the property's fair market value
 - Charity must file annual return (Form 8899), sending a copy to donor

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

- Reporting Requirements for Non-Cash Property Contributions - § 170(f)(11)
 - C corporations must obtain qualified appraisals for certain non-cash contributions valued at more than \$5,000. This provision is retroactive to contributions made after June 3, 2004.
 - Individuals and corporations must now also attach their qualified appraisals, not just the Form 8283, to their returns for property with a claimed value that exceeds \$500,000.

Application of the Substantiation Requirements and Deduction Rules for Specific Types of Contributions

Reporting requirements for non cash property contributions (continued)

- The rule applies to the aggregate of similar contributions (regardless of whether they were donated to different charities). That is, a group of items donated (to whomever) is considered to be a single donation subject to the appraisal requirement for donations of \$5,000 or more.

Appraisals

- In General -Treas. Reg. §1.170A-13(c) and Prop. Reg. 1.170A-17
 - Deductions in excess of \$5,000 require a qualified appraisal to be made
 - An appraisal summary (form 8283) must be attached to the tax return.
 - The appraisal must be done not more than 60 days before the contribution is made and no later than the due date of the return

Appraisals

In general (continued)

- Neither a tax statement as to the value of the property nor an appraisal summary are adequate if the appraisal summary does not have all of the required information.
- narrow interpretation of the substantial compliance doctrine, applying it only where the "taxpayer had a good excuse (though not a legal justification) for failing to comply with either an unimportant requirement or one unclearly or confusingly stated in the regulations or the statute

Appraisals

- Property Excluded
 - gifts of publicly traded securities. Publicly traded securities are those for which market quotations are readily available on an established securities market.
 - Patents, copyrights, trademarks, and other similar property.
 - Inventory.
 - Motor vehicles, boats, and airplanes

Appraisals

- Information Required - Treas. Reg. § 1.170A-13(c)(3)(ii) and Prop. Reg. 1.170A
 - Description of property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the appraised property is the property to be contributed.
 - Condition of the Property - in the case of tangible property.
 - Date (or expected date) of contribution.
 - Terms of agreement entered into between the donor and donee regarding use, sale or other disposition of the property
 - Name, address and appraiser's identification number as well as the name, address and tax ID of the partnership or employer of appraiser.

Appraisals

- Information Required - Treas. Reg. § 1.170A-13(c)(3)(ii) and Prop. Reg. 1.170A
 - Qualifications of appraiser, including background, experience, education and membership in professional organizations.
 - Date of Appraisal.
 - Fair Market Value.
 - Method and Basis of Valuation.
 - Specific Basis for Valuation.
 - The declaration of the appraiser contained in the proposed regulation

Appraisals

- Appraisals Summary – Section B Form 8283
 - Must be: signed and dated by donee charity and qualified appraiser and attached to tax return
 - Required Info: donor name, TIN, sufficient description of property, condition of tangible property, date and manner of acquisition, cost or other basis of property, donee name and TIN, date property received, appraiser name and TIN, appraised FMV of property at date of contribution

Appraisals

- Appraisals Summary – continued...
 - can sometimes pass muster even if the donee does not sign it. If, for instance, the donor made a gift to a charity that later went out of business, the IRS may allow the deduction if the donor attaches a detailed statement explaining why he couldn't get the donee's signature.
 - can sometimes satisfy the IRS even if it does not tell how or when the donor acquired the donated property, or the cost basis. The donor must attach to the appraisal summary "an appropriate explanation" that shows reasonable cause for his inability to provide the information.

Appraisals

- Appraisals Summary – continued...
 - The donor must give the donee a copy of the appraisal summary when presenting it for signature.
 - Trusts: Who's the "donee" when the gift is in trust?
The trust is considered the donee, and thus the trustee must sign the appraisal summary. Reg. § 1.170A-13(c)(7)(v)(B).

Appraisals

Qualified Appraisers per 170(f)(11)(E)(ii) – defined as an individual who:

- Has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in the regulations;
- Regularly performs appraisals for which the individual receives compensation;
- Meets other requirements as may be prescribed by regulations or other IRS guidance;

Appraisals

Qualified Appraisers – continued:

- Demonstrates verifiable education and experience in valuing the type of property subject to the appraisal; and
- Has not been prohibited from practicing before the IRS anytime during the three year period ending on the date of the appraisal.

Declaration on Appraisal summary indicating they are a public appraiser, their qualifications, etc.

Appraisals

- The IRS issued Notice 2006-96 to provide transitional guidance under the PPA. The Notice points out that the existing requirements in the regulations continue to apply unless they are inconsistent with the new requirements

- An appraiser will be treated as having met minimum education and experience requirements for appraising real estate if the appraiser is licensed or certified for the type of property being appraised in the state in which the appraised real estate is located.

Appraisals

For other types of property the appraiser must have:

- 1.) Successfully completed college or professional level coursework that is relevant to the property being valued;
- 2.) Obtained at least two years of experience in the trade or business of buying, selling, or valuing the type of property being valued; and
- 3.) Fully describe in the appraisal the appraiser's education and experience that qualify the appraiser to value the property

Appraisals

▪ Qualified Appraiser" exclusions

- The donor or the taxpayer who claims or reports a deduction under IRC § 170 for the property that is being appraised.
- A party to the transaction in which the donor acquired the property being appraised unless the property is donated within two months of the date of acquisition and its appraised value does not exceed the acquisition price.

Appraisals

▪ Qualified Appraiser" exclusions (continued):

- The donee-charity.
- Anyone employed by, or related or married to, anyone related under IRC § 267(b) to any of the foregoing persons (e.g., if the donor acquires a painting from an art dealer, no persons employed by the dealer can be qualified appraisers regarding that painting).
- An appraiser who is regularly used by any person described above and who does not perform a majority of his or her appraisals during the taxable year for other persons.

Appraisals

- Payment for Appraisals
 - No part of the fee for a qualified appraisal can be based on a percentage of the property's appraised value.
 - If a fee is based in whole or in part on the amount of the appraised value of the property allowed as an income tax charitable deduction after IRS examination (or otherwise), it will be treated as "based on a percentage of the appraised value of the property," and the deduction may be disallowed for failure to comply with the substantiation regulations.

Appraisals

- Payment for Appraisals(continued)
 - Payment of an appraisal fee by the donee will reduce the amount of the charitable contribution.
 - The appraisal fee is deductible as a miscellaneous itemized deduction subject to the 2% rule.

Tax Forms

- 8283
- **Who Must File:** If an individual, partnership or corporation claims a deduction exceeding \$500 for non-cash gifts in excess of \$500, the Form 8283 must be filed.
 - The amount of deduction means the deduction before applying income limits that could result in a carryover (see the carry over rules in IRS Pub. 526).
 - Any required reductions to fair market value must be made before determining whether 8283 must be filed.

Tax Forms

8283 (continued)

- For C corporations, other than personal service corporations and closely held corporations, the threshold for filing is \$5,000 rather than \$500
- Groups of Items: Similar items of property are items of the same generic category or type, such as stamp collections, paintings, books, non-publicly traded stock, land or buildings
- Section A: Complete section A only for those items (or groups of items) for which a deduction of less than \$5,000 or less per item (or group of item)

Tax Forms

- Also include the following on Section A regardless of amount:
 - Securities on an exchange with daily published values
 - Securities regularly traded in national or regional over-the counter markets with published daily values
 - Securities that are shares of a mutual fund for which quotations are published daily in newspapers of general circulation.

Tax Forms

8283 (continued)

- Section B: Complete section B only for those items (or groups of items) for which a deduction of more than \$5,000 per item (or group of items) was claimed
 - Omit publicly traded securities reportable in Section A
 - Items reported in B will require appraisal
 - A complete copy of the signed appraisal must be attached for artwork valued at \$25,000 or more.

Tax Forms

Form 8282

- If an organization receives charitable deduction property for which it signed a Form 8283 and within 3 years sells, exchanges, or disposes of the property, the organization must file Form 8282, Donee Information Return within 125 days after disposition.

Tax Forms

8282

- However, an organization is not required to file Form 8282 if:
 - The property disposed of is valued at \$500 or less and was clearly identified on the Form 8283 (the \$500 threshold will only arise when an item was given as part of a larger group of items (i.e., one book out of a collection) because a Form 8282 is only required if a Form 8283 was initially signed by the donee organization).
 - The property is consumed or distributed for charitable purposes (i.e. for your tax-exempt purposes).

Tax Forms

- 8282 (continued)
 - There are penalties if the organization fails to file the required information return
 - Successor Donee. If the property is donated to another charity, that organization must be given the following information:
 - Name, address and Employer Identification Number of the organization.
 - A copy of the appraisal summary (Form 8283 received from the original donor).

Pension Protection Act Changes

- H.R. 4213, the Tax Extenders Act of 2009, also referred to as the American Workers, State and Business Relief Act of 2010, passed the House on December 9, 2009, and the Senate with amendments on March 10.
- This legislation would extend the IRA Qualified Charitable Distribution provision, the charitable deduction for contributions of food and book inventory, S Corp shareholder deduction of basis in appreciated property contributed to charity and conservation easement charitable deductions through the end of 2010. The differences between the two bills (bills as they've passed each chamber) have yet to be resolved.

Pension Protection Act Changes

- **IRA Rollovers**
 - IRAs of individuals who are age 70 or older may make contributions to certain charities during 2006 and 2007 without income tax consequences to the owner of the IRA. This provision was also extended through 2008 and 2009 with the enactment of the Emergency Economic Stabilization Act of 2008.
 - The distributions may be up to \$100,000.00 per year.
 - Pursuant to the Worker, Retiree and Employer Recovery Act of 2008, there is no required minimum distribution from IRAs for 2009. See Public Law No: 110-458.

Pension Protection Act Changes

- **IRA Rollovers (continued)**
 - Contributions must be made to public charities other than supporting organizations and distributions to donor advised funds held by public charities are not permitted.
 - The owner of the IRA may not receive any goods or services in return for the contribution. Also, distributions are not permitted for split interest gifts to entities such as charitable lead trusts, charitable remainder trusts or charitable gift annuities

Pension Protection Act Changes

- **Basis adjustment to stock of S Corporation contributing appreciated property to charity.**
 - Prior to this change an S Corporation shareholder was required to deduct the fair market value of his share of a charitable contribution from his basis. Under the PPA, a shareholder may now deduct his share of the basis in the contributed property rather than being required to deduct the fair market value. The change only applies to contributions made in 2006 and 2007 but was extended through 2008 and 2009 by the Worker, Retiree and Employer Recovery Act of 2008. Legislation is currently pending to extend this deduction through 2010.



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Pension Protection Act Changes

- **Conservation easements.**
 - Individual donors may take charitable deductions of up to 50% of their AGI for contributions of qualified conservation real property. For farmers and ranchers their limit is raised to 100% of AGI. Corporate donors may also claim deductions of up to 100% of taxable income (subject to special rules for determining taxable income). This change is only effective through the end of 2009, as extended by the Food Conservation and Energy Act of 2008. Legislation is currently pending to extend this deduction through 2010.



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