

Summary of Informational Guidelines for receiving Charitable Gifts

Substantiation - General Rules

Gifts of \$250 or more to a charity require a receipt. The receipt issued by the charity must state that no goods or services have been transferred in exchange for the gift. Reg. 1.170A-13. If the donor receives a "quid pro quo" (i.e., something in return) from the charity, the deduction value is reduced by the value of the "quid pro quo." For "quid pro quo" gifts over \$75, the charity must make a good faith estimate of the value of the goods or services transferred to the donor and disclose the estimate. Reg. 1.170A-13(f). For gifts to a donor advised fund, there must be a contemporaneous written acknowledgment that the charity has "exclusive legal control" over the DAF assets. Sec. 170(f)(18)(B).

Records and substantiation are important. Taxpayers consistently are denied charitable deductions when the requested substantiation is not available. In addition, the taxpayer must receive the receipt from the charity prior to filing his or her tax return.

Recordkeeping and Substantiation for Cash Gifts

Gifts of money are substantiated by a receipt from the organization or reliable written records. Gifts of \$250 or more also require a "contemporaneous written acknowledgement" from the charity, typically a receipt. Cash gifts of any amount are deductible only if there are reliable written records. The reliable record must be a bank record or a receipt from the charity specifying the amount and date of the contribution. Sec. 170(f)(17).

IRS Form 8283, Noncash Charitable Contribution

If a person makes a noncash charitable contribution greater than \$500, he or she must include Form 8283 with his or her tax return. The first section of Form 8283 includes Part A, a description of the property. If the property is publicly traded stock or if the stock is closely held business stock worth less than \$10,000, only Part A is required. Reg. 1.170A-13(c).

Qualified Appraisal Requirements

With several exceptions, gifts of property over \$5,000 in value (\$10,000 for closely-held stock) will require a qualified appraisal or the charitable deduction may be denied. Reg. 1.170A-13(c). Qualified appraisal exceptions include stock traded on a public exchange, inventory and vehicles sold by the donee without significant intervening use or material improvement. Sec. 170(f)(11)(A)(ii).

The appraisal must be made not earlier than 60 days prior to the gift and not later than the date the return is due (with extensions). The qualified appraisal requirement applies to individual taxpayers, partnerships and corporations.

For gifts of art valued at over \$20,000 or if the noncash gift deduction exceeds \$500,000, the appraisal must be appended to the return. Sec. 170(f)(11)(D). If the appraised property is a home in an historic district, the appraisal must include photos of the four sides of the home, a \$500 fee and an agreement

with a qualified conservation charity. The appraisal must be submitted with the tax return. The agreement states under oath that the conservation charity is qualified to receive the easement and has the resources and commitment to enforce the agreement. Sec. 170(h)(4)(B)(ii).

Required Form 8283 Information

Form 8283 must include a description of the property. For tangible personal property, this description should include the general condition of the property. Any restrictions or reservations of income, voting rights, acquisition rights or limits on use should be disclosed. For example, all charitable remainder trust interests must be disclosed. One method of disclosure is to append a deduction calculation to IRS Form 8283. Reg. 1.170A-13(c)(3).

The appraisal document also should include the name, address and other applicable information about the appraiser. The appraiser must affirm that the appraisal was done on a specific date, that the property was valued as of the date of the gift, that the appraisal was done for income tax purposes and the appraisal must disclose the methodology used in deriving the property value. Reg. 1.170A-13(c)(3).

Appraiser Requirements and Penalties

There are specific requirements for the appraiser and substantial potential accuracy-related penalties. The appraiser will be qualified if he or she has an appraisal designation from a recognized organization, has otherwise met comparable education experience requirements, regularly performs and is paid for appraisals, has verifiable education and experience with the type of property appraised, has not been prohibited from practicing before the IRS and has not been excluded by Treasury regulations from serving as an appraiser. Sec. 170(f)(11)(E)(ii).

For real property gifts on returns filed after October 19, 2006, the appraiser meets the required standards if he or she is licensed or certified for the type of real property by the appropriate state agency. Some state agencies have a separate certification for residential real estate and other types of real estate such as commercial real estate. In these states the appraiser must have the appropriate designation for the type of real estate gifted to charity. Notice 2006-96; 2006-46 IRB 1.

For gifts that are not real property, on returns filed after February 16, 2007, the appraiser must fulfill three requirements. He or she must have completed "college or professional-level coursework," must have two years of experience in buying, selling or valuing the type of gifted property and must thoroughly describe in the appraisal his or her education and qualifying experience.

Generally, appraisals will qualify if consistent with the Uniform Standards of Professional Appraisal Practice set forth by the Appraisal Standards Board of the Appraisal Foundation. Notice 2006-96, Section 3.03.

Appraisals on returns filed after Feb. 16, 2007 must also include a statement that the appraiser recognizes that a substantial or gross valuation misstatement that he or she knew or reasonably should have known would be used on a tax document could lead to a civil penalty. Sec. 6695A(b). The appraiser penalties for incorrect appraisals are the greater of \$1,000 or 10% of the understatement from

a substantial or gross valuation misstatement, with a cap of 125% of the appraiser's gross income from the appraisal. Sec. 6695A(b). The IRS may also discipline appraisers after notice and a hearing. Disciplinary action may include suspending or barring an appraiser from preparing or presenting appraisals to the IRS.

Substantial and Gross Valuation Misstatement Penalties

Accuracy related penalties are applicable with specific floors. The substantial valuation misstatement floor is 150%. Sec. 6662(e)(1). The penalty for a substantial valuation misstatement is 20% of the underpayment. A gross valuation misstatement is 200% of correct value. Sec. 6662(e)(2). The penalty on a gross valuation misstatement is 40% of the underpayment. There is an exception for underpayments of \$5,000 or less and a reasonable cause exception to the accuracy-related penalty for substantial valuation misstatements, but it does not apply in the case of gross valuation misstatements.

Form 8283 Appraisal Summary - Part B

For gifts of property over \$5,000 in value, (\$10,000 for closely-held stock), Part B of Form 8283 must be completed. In addition, both the appraiser and the charitable donee must sign Form 8283. With a charitable remainder unitrust or annuity trust, there may not be a vested charitable donee as remainder recipient. Therefore, for all unitrusts or annuity trusts, the trustee must sign in place of the charitable donee.

The signature of the donee is merely to acknowledge that the donee has received the property. Furthermore, when the donee signs Form 8283, it incurs an obligation to file Form 8282 within 125 days of sale of the asset, if that sale date is within three years of the date of the gift.

Artwork Over \$20,000 in Value

If a deduction is claimed for a gift of artwork and the value is greater than \$20,000, then the complete signed appraisal must be submitted with Form 8283. In addition, either an 8" x 10" color photo or a 4" x 5" color transparency of the art object must be provided.

Property Gift Over \$500,000 in Value

If the noncash gift is over \$500,000 in value, then both the Form 8283 and the appraisal are required. The appraiser and the charity still must sign the Form 8283. However, the full appraisal must be attached to the donor's income tax return. Sec. 170(f)(11)(D).

Form 8282 Donee Information Return

For gifts of property over \$5,000 in value, (\$10,000 for closely held stock), the signer of Form 8283 must file Form 8282 if there is a disposition of the property within three years of the date of the gift. Sec. 6050L. A disposition is defined as the sale, consumption or gift of the "charitable deduction property." Reg. 1.6050L-1(c). There are exceptions for the sale of items up to \$500 in which the donor signs a statement so indicating, and for consumption of the gift property for the exempt purpose of the charity.

A failure to file Form 8282 may subject the charity to a penalty of \$50 per offense, up to a total of \$250,000. Sec. 6721(a). However, if the failure is intentional, the penalty is increased to \$100, with no total limit. Sec. 6722(c).

Filing Form 8283

Form 8283 may be filed electronically by one of two methods depending on the amount of the gift. If the gift is less than \$5,000 or if the gift is of publicly traded securities of any amount and no signature is required on page 2 of Form 8283, the donor may execute an electronic signature with a Form 8879 (IRS e-file Signature Authorization). If this method is used, nothing further must be sent to the IRS.

The second method is used when the gift is over \$5,000 or a signature is required on page 2 of Form 8283. In this instance, the donor can file Form 8283 electronically by executing Form 8453. However, Form 8453 (Individual Income Tax Declaration for an IRS e-file Return) must be mailed within three days of receiving acknowledgement that the IRS has accepted the electronically filed return. The donor must also attach a completed and signed Form 8283 when using this method of electronic filing.