PART XVII: CHARITABLE GIVING

8905. What deduction is an individual allowed to take with respect to gifts made to charitable organizations?

An individual may deduct certain amounts for charitable contributions.[1] The allowable deduction for a contribution of property other than money is generally equal to the fair market value of the property.[2] However, under certain circumstances, the deduction for a gift of property must be reduced (see Q 8917). See Q 8907 for a discussion of the fair market value determination.

The amount that may be deducted in any one year is subject to certain income percentage limits that depend on the type of property, the type of charitable organization to which the gift is made, and whether the contribution is made directly "to" the charity or "for the use of" the charity (see Q 8910). Taxpayers are required to itemize deductions in order to take a charitable deduction.

Generally, a gift of less than an individual's entire interest in property is not deductible, though certain exceptions to this rule exist (see Q 8916 and Q 8917).

For a charitable contribution to be deductible, the charity must receive some benefit from the donated property.[3] In addition, the donor cannot expect to receive an economic benefit (aside from the tax deduction) from the charity in return for the donation.[4] For instance, if a taxpayer contributes substantially appreciated property, and later reacquires it from the charity under a prearranged transaction, or if the charity sells the appreciated property and uses the proceeds to purchase other property from the taxpayer under a similar arrangement, the taxpayer is required to recognize gain on the contribution.[5] However, where there is no arrangement and no duty on the part of the charity to return the property to the donor, the taxpayer is entitled to the deduction. In addition, if the charity does return the property, the taxpayer receives a new basis in the property (i.e., the price he paid to reacquire it).[6]

In determining whether a payment that is partly in consideration for goods or services (i.e., a quid pro quo contribution) qualifies as a charitable deduction, the IRS has adopted the 2-part test set forth in *United States v. American Bar Endowment*.[7] Under these circumstances, for a charitable contribution to be deductible, a taxpayer must:

(1) Intend to make a payment in excess of the fair market value of the goods or services received; and

(2) Actually make a payment in an amount that exceeds the fair market value of the goods or services.[8]

1. IRC Sec. 170(a).
2. Treas. Reg. §1.170A-1(c)(1).
3. See *Winthrop v. Meisels*, 180 F.Supp. 29 (DC NY 1959), aff'd 281 F.2d 694 (2d Cir. 1960).
4. *Stubbs v. U.S.*, 70-2 USTC ¶9468 (9th Cir.), cert. den. 400 U.S. 1009 (1971).
5. *Blake v. Comm.*, 83-1 USTC ¶9121 (2nd Cir. 1982).
6. *Sheppard v. U.S.*, 361 F.2d 972 (Ct. Cl. 1966).
7. 477 U.S. 105 (1986).
8. Treas. Reg. §1.170A-1(h)(1).

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The deduction amount may not exceed the excess of (1) the amount of any cash paid and the fair market value of the goods or services over (2) the fair market value of the goods or services provided in return.[1]

The Tax Court has held that tuition payments paid by taxpayers to religious day schools for the secular and religious education of their children were not deductible as a charitable contribution, including amounts paid to one of the schools for after-school religious education classes.[2]

Certain goods or services received in return for a charitable contribution may be disregarded for purposes of determining whether a taxpayer has made a charitable contribution, the amount of any charitable contribution, and whether any goods or services have been provided that must be substantiated or disclosed.[3] These items include goods or services that have an insubstantial value under IRS guidelines, certain annual membership benefits received for a payment of $10.40 or less (in 2014, as indexed annually for inflation) and certain admissions to events.[4]

If a taxpayer makes an otherwise deductible charitable contribution to a university (or other institution of higher learning) that directly or indirectly entitles the donor to purchase tickets for athletic events in the institution's stadium, the contribution is only 80 percent deductible and to the extent that the contribution is not found to be a payment for the tickets themselves.[5] The IRS has determined that the portion of the payment made to a state university's foundation was deductible under IRC Section 170(l) even though the donor (an S corporation) received the right to purchase tickets for seating in a skybox at events in an athletic stadium of the university. The IRS reasoned that the portion of the payment to the foundation for the right to buy the tickets for seating was considered as being paid for the benefit of the university and, as such, 80 percent of such portion was deductible. The IRS found that the remainder of the payment (consisting of the ticket purchase, the right to use the skybox, the passes to visit the skybox, and the parking privileges) was not deductible.[6]

The IRS has found that contributions made to a university for the purpose of constructing a building providing meeting space for campus organizations qualified for a charitable deduction under IRC Section 170. With the exception of the meeting rooms leased to individual sororities, the facilities in the building would be open to all students. Because the facts indicated that the contributions were indeed gifts to the college, and not gifts to the sororities using the college as a conduit, the IRS determined that the requirements of Revenue Ruling 60-367,[7] which discussed the circumstances under which donations that benefitted a college fraternity would be considered a gift to an educational institution, had been satisfied.[8]

1. Treas. Reg. §1.170A-1(h)(2).
2. See *Sklar v. Comm.*, 125 TC 281 (2005); see also *Sklar v. Comm.*, 282 F.3d 610 (9th Cir. 2002), aff'g TC Memo 2000-118.
3. Treas. Regs. §§1.170A-1(h), 1.170A-13(f)(8).
4. Treas. Reg. §1.170A-13(f)(8). See also Rev Proc. 2013-35, 2013-47 IRB 537.
5. IRC Sec. 170(l).
6. See TAM 200004001.
7. 1960-2 CB 73.
8. Let. Rul. 9829053. See also Let. Ruls. 200003013, 199929050.

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8906. How is the value of property donated to charity determined?

Where property other than money is donated to charity, it is necessary to calculate the property's fair market value in order to determine the amount of the allowable charitable deduction.

As in other circumstances, fair market value for this purpose is "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts."[1] The willing buyer has often been viewed as a retail consumer, not a middleman.[2] However, there are certain circumstances where the retail consumer is not the proper benchmark. For example, in the case of unset gemstones, the ultimate consumer is generally a jeweler engaged in incorporating the gems into jewelry. Therefore, the fair market value is based on the price that a jeweler would pay a wholesaler to acquire such stones.[3]

Often, taxpayers rely on expert appraisals in determining the fair market value of property.[4] For some gifts to charity, an appraisal is required (see Q 8907). However, the value assigned by an appraiser is not always controlling and the IRS or the Tax Court may consider factors in addition to those considered by the taxpayer's appraiser(s) which may reduce the value of the gift and, thus, the charitable deduction.[5] The IRS has warned taxpayers that some promoters are likely to inflate the value of a charitable deduction for gemstones and lithographs, thus subjecting the taxpayer to higher taxes and possible penalties.[6] Earlier case law has indicated that an auction price may be helpful in determining the value of art.[7]

The taxpayer claiming the charitable deduction has the burden of proof in establishing the fair market value of the property donated.[8]

Evidence of what an organization is willing to pay for copies of a manuscript may be used by the taxpayer as evidence of the value of the original manuscript, but it is not conclusive.[9] Similarly, the price paid by a bankruptcy trustee may provide evidence of the fair market value, but in at least one case, the courts have found that the substantially higher value established by an appraiser was determinative of the property's value.[10]

For property that is transferred to a charity and subject to an option to repurchase, fair market value under IRC Section 170 is the value of the property upon the expiration of the option.[11]

1. Treas. Reg. §1.170A-1(c); Rev. Rul. 68-69, 1968-1 CB 80.
2. See *Goldman v. Comm.*, 388 F.2d 476 (6th Cir. 1967).
3. *Anselmo v. Comm.*, 80 TC 872 (1983), aff'd 757 F.2d 1208 (11th Cir. 1985).
4. See *Tripp v. Comm.*, 337 F.2d 432 (7th Cir. 1964); *Est. of DeBie v. Comm.*, 56 TC 876 (1971), acq. 1972-2 CB 1 and 1972-2 CB 2.
5. See *Williford v. Comm.*, TC Memo 1992-450 (involving oversized artwork), *Doherty v. Comm.*, TC Memo 1992-98 (involving artwork of questionable quality and authenticity), *Arbini v. Comm.*, TC Memo 2001-141 (involving newspapers and holding that the appropriate market for purposes of determining the fair market value of the newspapers is the wholesale market).
6. IR 83-89.
7. *Mathias v. Comm.*, 50 TC 994 (1968), acq. 1969-2 CB xxiv. But see *McGuire v. Comm.*, 44 TC 801 (1965), acq. in result 1966-2 CB 6.
8. See *Weil v. Comm.*, TC Memo 1967-78; *Schapiro v. Comm.*, TC Memo 1968-44.
9. *Barringer v. Comm.*, TC Memo 1972-234. See also *Kerner v. Comm.*, TC Memo 1976-12.
10. *Herman v. U.S.* and *Brown v. U.S.* (consolidated actions), 99-2 USTC ¶50,889 (E.D. Tenn. 1999).
11. TAM 9828001.

Guidelines for valuing property generally can be found in Revenue Procedure 66-49,[1] and Announcement 2001-22.[2] See also *Crocker v. Comm.*[3] (describing the three methods of determining fair market value of commercial real estate: (1) the replacement method, (2) the comparable sales method, and (3) the income capitalization method).

Planning Point: The fair market value of publicly traded securities is equal to the average value of the high and low stock values on the date of delivery of the stock multiplied by the number of shares given to charity. The date of delivery depends on how the stock was delivered: hand delivered, mailed or electronically transferred.

A taxpayer is not entitled to a charitable deduction for a contribution of clothing or a household item unless the property is in good used condition or better. A deduction for a contribution of clothing or a household item may be denied in circumstances where the donated item has minimal monetary value. These rules do not apply to a contribution of a single item if a deduction of more than $500 is claimed and a qualified appraisal is included with the return. Household items include furniture, furnishings, electronics, linens, appliances, and similar items; but not food, art, jewelry, and collections.[4]

Planning Point: It is a good idea to take photographs of household items prior to donation to document that they are in good used condition or better.

Intellectual property. The American Jobs Creation Act of 2004 (AJCA 2004) provides strict rules for charitable donations of patents and intellectual property.[5] For the temporary regulations providing guidance for the filing of information returns by donees relating to qualified intellectual property contributions, see Temporary Treasury Regulation Section 1.6050L-2T; TD 9206;[6] and Announcement 2005-49.[7]

8907. What verification is required to substantiate a deduction for a charitable donation?

A charitable contribution is allowable as a deduction only if verified as required under regulations.[8] The required substantiation varies based upon the type and value of the contribution.

A charitable deduction is not allowed for any contribution of a check, cash, or other monetary gift unless the donor retains a bank record or a written communication from the charity showing the name of the charity and the date and the amount of the contribution.[9]

A taxpayer who donates cash or property to charity that has a value of $250 or more must obtain substantiation in the form of a contemporaneous written acknowledgment of the

1. 1966-2 CB 1257, as modified by Rev. Proc. 96-15, 1996-2 CB 627.
2. 2001-11 IRB 895.
3. *TC Memo 1998-204*.
4. IRC Sec. 170(f)(16), as added by PPA 2006.
5. See IRC Secs. 170(e)(1)(B), 6050L; IRC Sec. 170(m). See also Rev. Rul. 2003-28, 2003-11 IRB 594; Notice 2005-41, 2005-23 IRB 1203; Notice 2004-7, 2004-3 IRB 310; and IRS News Release IR-2003-141 (12-22-2003).
6. 70 Fed. Reg. 29450 (5-23-2005).
7. 2005-29 IRB 119. See also Notice 2005-41, 2005-23 IRB 1203.
8. IRC Sec. 170(a)(1).
9. IRC Sec. 170(f)(17), as added by PPA 2006.

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contribution that is supplied by the charitable organization.[1] This acknowledgment must include the following information: (1) the amount of cash contributed and a description (excluding value) of any property contributed, (2) a statement of whether the charitable organization provided any goods or services in consideration for the contribution, and (3) a description and good faith estimate of the value of any such goods or services, or (4) a statement to the effect that the goods or services provided consisted solely of intangible religious benefits.[2] The acknowledgment will be considered "contemporaneous" if it is obtained by the taxpayer on or before the earlier of (1) the date the taxpayer files his return for the year, or (2) the due date (including extensions) for filing the return.[3] Substantiation is not required if the information is reported on a return filed by the charitable organization.[4] An organization can provide the acknowledgement electronically, such as via an e-mail addressed to the donor.[5]

For contributions of property other than money, the taxpayer is generally required to maintain a receipt from the donee organization showing the name of the donee, the date and location of the contribution, and a description of the property. The value does not have to be stated on the receipt.[6]

If a taxpayer donates property with a value that exceeds $500, the taxpayer must satisfy certain appraisal requirements in addition to the property description requirements outlined below.[7] The appraisal requirements that generally apply to property valued at more than $5,000 and at more than $500,000 do not apply to readily valued property, such as cash, publicly traded securities and certain qualified vehicles for which an acknowledgement is provided. Further, the general appraisal requirement does not apply if the taxpayer can show that the failure was due to reasonable cause and not willful neglect.[8] For purposes of the valuation thresholds, property (and all similar items of property) donated to one charity will be treated as one property.[9]

If the claimed value of the donated property exceeds $500, the taxpayer must include with the tax return a *description of the property*.[10] Specifically, the taxpayer must attach a completed Form 8283 to the relevant tax return (Noncash Charitable Contributions), which includes a property description and an acknowledgment by the organization of the amount and value of the gift. (The property description requirement does not apply to a C corporation that is not a personal service corporation or a closely-held C corporation). In addition, a *qualified appraisal* must be obtained when the claimed value of the property exceeds $5,000 or $500,000.[11] See Q 8908 for a detailed discussion of the appraisal requirements that must be satisfied for certain charitable donations.

1. IRC Sec. 170(f)(8)(A).
2. IRC Sec. 170(f)(8)(B); Treas. Reg. §1.170A-13(f)(2).
3. IRC Sec. 170(f)(8)(C); Treas. Reg. §1.170A-13(f)(3).
4. IRC Sec. 170(f)(8)(D).
5. Publication 1771.
6. Treas. Reg. §1.170A-13(b)(1).
7. IRC Sec. 170(f)(11)(A)(i).
8. IRC Sec. 170(f)(11)(A)(ii).
9. IRC Sec. 170(f)(11)(F).
10. IRC Sec. 170(f)(11)(B).
11. IRC Secs. 170(f)(11)(C), 170(f)(11)(D).

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Under the special rule for pass-through entities (partnerships or S corporations), the above requirements will be applied at the entity level; however, the deduction will be denied at the partner or shareholder level.[1]

8908. What appraisal requirements may be required in connection with substantiating a charitable deduction for donated property that exceeds certain valuation thresholds?

In addition to satisfying the requirements described in Q 8907, a qualified appraisal is required in connection with the charitable donation of certain highly valued property. The *qualified appraisal* requirement for contributions of property for which a deduction of more than $5,000 is claimed is met if the individual, partnership, or corporation:

(1) Obtains a qualified appraisal of the property; and

(2) Attaches to the tax return information regarding the property and the appraisal (as the Secretary may require).[2]

Donors who claim a deduction for a charitable gift of property (except publicly traded securities) valued in excess of $5,000 ($10,000 for nonpublicly traded stock) are required to obtain a qualified appraisal report, attach an appraisal summary (containing the information specified in regulations) to their return for the year in which the deduction is claimed, and maintain records of certain information related to the contribution.[3]

If a taxpayer fails to obtain the required appraisal for a gift of nonpublicly traded stock, the IRS may deny the deduction even if it does not dispute the value of the gift.[4] The Tax Court distinguished its holding in *Hewitt* from a 1993 decision in which it had permitted a deduction to a taxpayer who substantially, though not fully, complied with the appraisal requirement. In the earlier ruling, the taxpayer had obtained an appraisal from a qualified appraiser, completed and attached Form 8283, but had failed to include all the information required of an appraisal summary.[5] The Fourth Circuit agreed with the Tax Court's analysis, stating that "*Bond* does not suggest that a taxpayer who completely fails to observe the appraisal regulations has substantially complied with them."The Fourth Circuit further found that a deduction may still be permitted in situations where the taxpayers make a good faith effort to comply with the appraisal requirements, but that the deduction will be denied for taxpayers who ignore the requirement entirely. (For more information about the appraisal and summary, see the instructions for Schedule A, Form 1040, and IRS Publication 526, Charitable Contributions).

A qualified appraiser must not be the taxpayer, a party to the transaction in which the taxpayer acquired the property, the donee, an employee of any of the above, any other person who might appear not to be totally independent, or one who is regularly used by the taxpayer,

1. IRC Sec. 170(f)(11)(G).
2. IRC Secs. 170(f)(11)(C), 170(f)(11)(E).
3. Treas. Reg. §1.170A-13(c)(2).
4. *Hewitt v. Comm.*, 109 TC 258 (1997), *aff'd*, 166 F.3d 332 (4th Cir. 1998).
5. See *Bond v. Comm.*, 100 TC 32 (1993).

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a party to the transaction or the charity, and does not perform a majority of appraisals for other persons.[1] See, for example, *Davis v. Commissioner*,[2] where appraisals were upheld where the appraiser was determined to be financially independent of the donor, and no conspiracy or collusive relationship was established.

In *Wortmann v. Commissioner*,[3] the Tax Court substantially reduced the taxpayers' charitable deduction (from $475,000 to $76,200) after it concluded that the property appraisal was dubious and not well supported by valuation methodology.

An appraisal will not be upheld if the appraiser bases his fee on a percentage of the appraisal value, unless the fee is based on a sliding scale that is paid to a generally recognized association regulating appraisers.[4]

If the donor gives similar items of property (such as books, stamps, paintings, etc.) to the same donee during the taxable year, only one appraisal and summary is required. If similar items of property are given during the same taxable year to several donees, and the aggregate value of the donations exceeds $5,000, a separate appraisal and summary must be made for each donation.[5] The appraisal summary must be signed and dated by the donee as an acknowledgement of the donation.[6]

Taxpayers making contributions of art appraised at $50,000 or more may wish to request a "Statement of Value" from the IRS (which is the equivalent of a letter ruling as to the value of a particular transfer that is made at death, by inter vivos gift, or as a charitable contribution).[7] The request must include specified information, including a description of the artwork, the cost, manner and date of acquisition, and a copy of an appraisal (which meets requirements set forth in Section 8 of the revenue procedure). The IRS charges a fee of $2,500 for obtaining a Statement of Value that can cover up to three items of art.[8]

The regulations state that taxpayers are not required to obtain a qualified appraisal of securities whose claimed value exceeds $5,000 if the donated property meets the definition of "publicly traded securities." Publicly traded securities are (1) listed on a stock exchange in which quotations are published on a daily basis or (2) regularly traded in a national or regional over-the-counter market for which published quotations are available.[9]

Securities that do not meet the above requirements may still be considered publicly traded securities if they meet the following five requirements:

1. Treas. Reg. §1.170A-13(c)(5)(iv).
2. TC Memo 1999-250.
3. TC Memo 2005-227.
4. Treas. Reg. §1.170A-13(c)(6).
5. Treas. Reg. §1.170A-13(c)(4)(iv)(B).
6. Treas. Reg. §1.170A-13(c)(4)(iii).
7. See Rev. Proc. 96-15, 1996-1 CB 627, as modified by Announcement 2001-22, 2001-11 IRB 895.
8. Rev. Proc. 96-15, above, Sec. 7.01(2).
9. Treas. Reg. §1.170A-13(c)(7)(ix)(A).

(1) The issue is regularly traded during the computational period in a market that is reflected by the existence of an interdealer quotation system for the issue;

(2) The issuer or its agent computes the issue's average trading price for the computational period;

(3) The average price and total volume of the issue during the computational period are published in a newspaper of general circulation throughout the U.S. not later than the last day of the month following the end of the calendar quarter in which the computational period ends;

(4) The issuer or its agent keeps books and records that list for each transaction during the computational period involving each issue covered by this procedure the date of the settlement of the transaction, the name and address of the broker or dealer making the market in which the transaction occurred, and the trading price and volume; and

(5) The issuer or agent permits the IRS to review the books and records.[1]

The "computational period" is weekly during October through December and monthly during January through September. Taxpayers who are exempted from obtaining a qualified appraisal because the securities meet these five requirements must attach a partially completed appraisal summary (section B of Form 8283) to the appropriate returns. The summary must contain the information required by parts I and II of the Form.[2]

For property contributions for which a deduction of more than $500,000 is claimed, the individual, partnership, or corporation must attach the qualified appraisal of the property to the tax return for the taxable year.[3]

8909. Are the substantiation requirements impacted if the charity disposes of the donated property after the taxpayer has already claimed a charitable deduction?

If the charitable donee disposes of "charitable deduction property" that is subject to the rules set forth in Q 8908 within three years after its receipt, the donee must provide an information return to the IRS.

Charitable deduction property includes any property (other than publicly traded securities) for which a charitable deduction was taken under IRC Section 170 where the claimed value of the property (plus the claimed value of all similar items of property donated by the donor to one or more donees) exceeded $5,000.[4] The return must show the name, address, and taxpayer identification number of the donor, a description of the property, the date of the contribution,

1. Treas. Reg. §1.170A-13(c)(7)(ix)(B).
2. Ann. 86-4, 1986-4 IRB 51.
3. IRC Secs. 170(f)(11)(D), 170(f)(11)(E).
4. IRC Sec. 6050L.

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the date of disposition, and the amount received on disposition. A copy of the return must be provided to the donor.

> *Example*: If a charity accepts ownership of real estate worth $300,000 in 2015 from a donor as a charitable gift and later sells the real estate to another party in 2017, the charity will need to provide IRS Form 8282 to the IRS and the donor with the required information.

Failure to file the return may subject the donee to a penalty.[1] However, donee reporting is not required upon disposition of donated property within three years of receipt if the value of the property (as stated in the donor's appraisal summary) was not more than $5,000 at the time the donee signed the summary. In addition, no reporting will be required if the donee consumes or distributes property without receiving anything in exchange and the consumption or distribution is in furtherance of the donee's charitable purpose (such as the distribution of medical supplies by a tax-exempt relief agency).[2]

8910. What are the penalties if a taxpayer overvalues property donated to charity?

If a taxpayer underpays his tax because of a substantial valuation misstatement of property donated to charity, the taxpayer may be subject to a penalty of 20 percent of the underpayment attributable to the misstatement.[3] However, this penalty applies only if the underpayment attributable to the misstatement exceeds $5,000 ($10,000 for a corporation other than an S corporation or a personal holding company).[4] A "substantial valuation misstatement" exists if the value claimed is 150 percent or more of the amount determined to be correct.[5] If the value claimed is 200 percent or more of the amount determined to be correct, there is a "gross valuation misstatement," which is subject to a 40 percent underpayment penalty.[6]

8911. What are the income percentage limits for deductions of a charitable contribution?

The amount of a taxpayer's allowable deduction for charitable contributions will depend upon the taxpayer's adjusted gross income (AGI), the type of asset donated, as well as the type of organization to which the donation is made. Further, the IRC distinguishes between gifts "to" a charitable organization and gifts "for the use of" a charitable organization (see below).

50 percent limit. Generally, an individual is allowed a charitable deduction of up to 50 percent of AGI for cash and certain other contributions (other than certain property, see Q 8914) *to*: churches, schools, hospitals or medical research organizations groups that normally receive a substantial part of their support from federal, state, or local governments or from the general public and that aid any of the above organizations as well as federal, state, and local governments.

1. IRC Sec. 6721; Treas. Reg. §1.6050L-1. See SCA 200101031.
2. Instructions for IRS Form 8282.
3. IRC Secs. 6662(a), 6662(b)(3).
4. See IRC Sec. 6662(d).
5. IRC Sec. 6662(e)(1)(A), as amended by PPA 2006.
6. IRC Sec. 6662(h)(2)(A)(i), as amended by PPA 2006.

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Also included in this list is a limited category of private foundations (i.e., private operating foundations and conduit foundations)[1] that generally direct their support to public charities. The above organizations are often referred to as "50 percent -type organizations."[2]

30 percent limit. The deduction for contributions of most long-term capital gain property to the above "50 percent-type organizations," contributions *for the use of* any of the above organizations, as well as contributions (other than long-term capital gain property) *to* or *for the use of* any other types of charitable organizations (i.e., most private foundations) is limited to the lesser of (a) 30 percent of the taxpayer's AGI, or (b) 50 percent of AGI minus the amount of charitable contributions allowed for contributions to the 50 percent -type charities.[3]

20 percent limit. The deduction for contributions of long-term capital gain property to most private foundations is limited to the lesser of (a) 20 percent of the taxpayer's AGI, or (b) 30 percent of AGI minus the amount of charitable contributions allowed for contributions to the 30 percent -type charities.[4]

Deductions denied because of the 50 percent, 30 percent, or 20 percent limits may be carried over and deducted over the next five years, retaining their character as 50 percent, 30 percent, or 20 percent type deductions.[5]

Gifts are "to" a charitable organization if made directly to the organization. Even though the gift may be intended to be used by the charity, and the charity may use it, if it is given *directly* to the charity, it is a gift to the charity and not "for the use of" the charity, for purposes of the deduction limits. Unreimbursed out-of-pocket expenses incurred on behalf of an organization (e.g., unreimbursed travel expenses of volunteers) are deductible as contributions "to" the organization if they are directly related to performing services for the organization (and, in the case of travel expenses, there is no significant element of personal pleasure, recreation, or vacation in such travel).[6]

"For the use of" applies to indirect contributions to a charitable organization.[7] The term "for the use of" does not refer to a gift of the right to use property. Such a gift would generally be a nondeductible gift of less than the donor's entire interest. See Q 8918 for a discussion of the permissible deduction when a taxpayer donates only the right to use property, rather than an ownership interest in such property.

8912. When is the deduction for charitable donations taken?

Generally, the deduction for a contribution is taken in the year the gift is made.[8] However, if the contribution is a future interest in tangible personal property (such as stamps, artwork, etc.),

1. See IRC Sec. 170(b)(1)(E).
2. IRC Sec. 170(b)(1)(A).
3. IRC Secs. 170(b)(1)(B), 170(b)(1)(C).
4. IRC Sec. 170(b)(1)(D).
5. IRC Secs. 170(d)(1), 170(b)(1)(D)(ii); Treas. Reg. §1.170A-10(b).
6. IRC Sec. 170(j); *Rockefeller v. Comm.*, 676 F.2d 35 (2nd Cir. 1982), aff'g 76 TC 178 (1981), acq. in part 1984-2 CB 2; Rev. Rul. 84-61, 1984-1 CB 39. See Rev. Rul. 58-279, 1958-1 CB 145.
7. See Treas. Reg. §1.170A-8(a)(2). See *Davis v. United States*, 495 U.S. 472 (1990).
8. IRC Sec. 170(a)(1).

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the contribution is considered made (and the deduction allowable) only "when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired" or are held by parties unrelated to the donor.[1]

> *Example*:. If a donor creates a charitable remainder trust and funds it with a piece of artwork, the donor may not take a charitable income tax deduction for the contribution to the charitable remainder trust until the year the trustee sells the artwork.

This rule does not apply to gifts of undivided present interests, or to gifts of future interests in real property or in intangible personal property.[2] A grant of stock options by a company to a charitable trust resulted in a deduction in the year in which the options were exercised.[3] Where real estate was transferred to a charity and subject to an option to repurchase, the IRS determined that fair market value under IRC Section 170 was equal to the value of the property *upon the expiration of the option*.[4] A fixture that is to be severed from real property is treated as tangible personal property.[5] The deduction for a charitable contribution made by an accrual basis (see Q 8893) S corporation is properly passed through to shareholders and taken in the year that the contribution is actually paid.[6]

See Q 8917 for an explanation of the treatment given to gifts of partial interests.

8913. Can an individual deduct the fair market value of appreciated real estate or intangible personal property such as stocks or bonds given to a charity?

If an individual makes a charitable contribution of real property or intangible personal property to a public charity, the sale of which would have resulted in long-term capital gain (see below), the taxpayer is generally entitled to deduct the full fair market value of the property. However, the deduction for the gift is limited to the lesser of 30 percent of adjusted gross income or the unused portion of the 50 percent limit (see Q 8911).[7]

A deduction denied because it exceeds 30 percent of the individual's adjusted gross income may be carried over and treated as a contribution of capital gain property in each of the next five years.[8]

> *Example*: In 2014, Jaclyn had adjusted gross income of $600,000. She made a charitable contribution of long-term capital gain stock worth $200,000 to her church. Her deduction is limited to $180,000 (30 percent of $600,000). In 2015, Jaclyn's adjusted gross income is $700,000. She contributes $100,000 worth of long-term capital gain bonds to the church. She may deduct $120,000 in 2015 ($100,000 plus $20,000 carried forward from 2014), since the total does not exceed 30 percent of her adjusted gross income for 2015 ($210,000).

1. IRC Sec. 170(a)(3). See also Treas. Reg. §1.170A-5.
2. Treas. Regs. §§1.170A-5(a)(2), 1.170A-5(a)(3).
3. Let. Ruls. 200202034, 8849018.
4. TAM 9828001.
5. IRC Sec. 170(a)(3).
6. TAM 200004001. See also Rev. Rul. 2000-43, 2000-2 CB 333.
7. See IRC Sec. 170(b)(1)(C); Treas. Reg. §1.170A-8(d)(1).
8. IRC Secs. 170(b)(1)(C); Treas. Reg. §1.170A-10(c).

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An individual may elect to take a gift of long-term capital gain property into account at its adjusted basis instead of its fair market value. If the taxpayer makes this election, the income percentage limit for the contribution is increased to 50 percent instead of 30 percent. However, such an election applies to all such contributions made during the taxable year.[1] The election is generally irrevocable.[2]

If the charitable contribution consists of property that, if sold at the time of the contribution, would result in income that would not otherwise qualify for long-term capital gain treatment (such as short-term capital gain property), the deduction must be reduced by the amount of gain that would not be long-term capital gain.[3] If the entire gain would be income other than long-term capital gain, the allowable deduction would be limited to the taxpayer's adjusted basis in the contributed property.

Special rules apply to charitable contributions of S corporation stock in determining whether gain on the stock would have been long-term capital gain if the stock were sold by the taxpayer.[4]

Donors making charitable contributions of the long-term capital gain portion of futures contracts must mark the contracts to market as of the dates the contracts are transferred to the donee and recognize the accrued long-term capital gains as income.[5] The amount of taxable gain or deductible loss recognized by the transferor at the time of the charitable transfer equals the difference between the fair market value of the futures contract at the time of the transfer and the transferor's tax basis in the futures contract, as adjusted under IRC Section 1256(a)(2), to account for gains and losses already recognized in prior tax years under the mark to market rules.[6]

In one case, taxpayers who transferred appreciated stock to charitable organizations in the midst of an ongoing tender offer and merger were taxed on the gain on the stock under the "anticipatory assignment of income doctrine" where the charitable gifts occurred after the taxpayers' interests in a corporation had ripened into rights to receive cash.[7] But where taxpayers assigned warrants to four charities after receiving a letter announcing that all issued and outstanding stock of the company would be purchased, the Tax Court held that under Revenue Ruling 78-197[8] the IRS could treat the proceeds of the sales of the warrants by the charities as income to the donors *only if* at the time the assignments took place, the charitable donees were legally bound or could be compelled to sell the warrants.[9]

A taxpayer who donated stock to a supporting organization where the voting rights had been transferred for a business purpose to a third party many years ago, was permitted to claim a charitable deduction.[10]

1. IRC Secs. 170(b)(1)(C)(iii), 170(e)(1).
2. *Woodbury v. Comm.*, 90-1 USTC ¶50,199 (10th Cir. 1990), aff'g TC Memo 1988-272.
3. IRC Sec. 170(e)(1)(A); Treas. Reg. §1.170A-4(a).
4. IRC Sec. 170(e)(1).
5. *Greene v. U.S.*, 79 F.3d 1348 (2nd Cir. 1996).
6. *Greene v. U.S.*, 185 F. 3d 67, 84 AFTR 2d 99-5415 (2nd Cir. 1999).
7. See *Ferguson v. Comm.*, 174 F.3d 997 (9th Cir. 1999).
8. 1978-1 CB 83.
9. *Rauenhorst v. Comm.*, 119 TC 157 (2002).
10. Let Rul. 200108012.

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8914. Is a charitable deduction available for the donation of appreciated tangible personal property, such as art, stamps, coins and gems?

The amount of a deduction permitted for gifts of appreciated personal property depends on whether the use of the gift is *related* to the exempt purpose of the charity to which the property is given. Generally, if the sale of appreciated tangible personal property would result in long-term capital gain (see below), a taxpayer is entitled to deduct the property's full fair market value up to 30 percent of the individual's adjusted gross income, *if* the charity makes use of the property in a way that is related to its charitable purpose or function (i.e., it is a "related-use" gift).[1] The limit is generally 20 percent in the case of private foundations. However, if the use by the charity is unrelated to its charitable purpose or function, the amount of the charitable contribution taken into account is generally limited to the donor's adjusted basis in the donated property.[2]

The following example illustrates the meaning of "unrelated use": "[I]f a painting contributed to an educational institution is used by that organization for educational purposes by being placed in its library for display and study by art students, the use is not an unrelated use; but if the painting is sold and the proceeds used by the organization for educational purposes, the use of the property is an unrelated use." In addition, the regulations state that contributions of furnishings used by the charitable organization in its offices and buildings in the course of carrying out its functions will be considered a related use gift.[3]

Planning Point: The charitable organization will state on IRS Form 8283, Part IV (which the donor provides to the IRS as part of the donor's income tax return) whether it intends to use the item for an unrelated use.

The IRS has determined that a gift of seeds, plants, and greenhouses to an IRC Section 501(c)(3) school's plant science curriculum was a related use gift, and that a gift of a violin to a charitable organization whose exempt purpose included loaning instruments to music students was a related use gift.[4] The IRS has also found that contributions of art to a Jewish community center for use in the center's recreational, educational, and social activities were related use gifts.[5]

If the taxpayer contributes long-term capital gain "related use" property to public charities, the taxpayer may elect to value the gift at its adjusted basis instead of its fair market value. If this election is made, the 30 percent of adjusted gross income limit does not apply. Instead, the donor may deduct the amount of his adjusted basis in the gift, up to 50 percent of adjusted gross income. If the taxpayer makes the election, it applies to all gifts of long-term capital gain property during the year.[6] Such an election is generally irrevocable.[7]

The amount of the deduction for a contribution of tangible personal property must be reduced by the amount of gain that would *not* be long-term capital gain (gain on a capital asset

1. IRC Sec. 170(b)(1)(C); Treas. Reg. §1.170A-8(d)(1).
2. IRC Sec. 170(e)(1)(B).
3. Treas. Reg. §1.170A-4(b)(3)(i).
4. Let. Ruls. 9131052, 9147049.
5. Let. Rul. 9833011.
6. IRC Secs. 170(b)(1)(C)(iii), 170(e)(1).
7. *Woodbury v. Comm.*, 900 F.2d 1457, 90-1 USTC ¶50,199 (10th Cir. 1990), aff'g TC Memo 1988-272.

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held for more than one year, see Q 8567) if the contributed property had been sold at its fair market value at the time of the contribution. Thus, for example, if the entire gain would be ordinary income, the allowable deduction would be limited to the taxpayer's adjusted basis in the contributed property. It makes no difference whether or not the property is put to a related use.[1] Ordinary income property includes a work of art created by the donor.[2]

Planning Point: If an artist makes a charitable gift of the artist's own artwork, the artist will only be able to deduct the costs of creating the art (e.g., paper, paint, etc.).

The charitable deduction is recaptured by the donor on certain dispositions by the charity of tangible personal property identified by the charity as related use property for which a deduction in excess of basis was allowed. Unless the charity makes the appropriate certification, recapture applies if the charity disposes of the property after the taxable year the property was contributed, but before the end of the three-year period starting on the date of contribution (see Q 8909). The certification must be in writing and signed under penalty of perjury by an officer of the charity. The written statement must (1) certify that the use of the property was related and describe the use of the property or (2) state the intended use at the time of contribution and certify that the intended use has become impossible or infeasible to implement. The amount recaptured (included in income) in the year of disposition is equal to the amount of the charitable deduction minus the donor's basis in the property at the time of contribution.[3]

Example: Amy contributes a painting to an art museum in December 2014. The museum intends to display the painting. Amy claims a charitable deduction for the painting's fair market value of $100,000 for 2014. Amy's basis in the painting was $40,000. In 2015 (within three years of the contribution), the museum sells the painting. Amy must include $60,000 ($100,000 charitable deduction - $40,000 basis) in income in 2015.

A charity is required to report any disposition of property (other than publicly traded securities) within three years after its receipt to the IRS, if the claimed value of the property (plus the claimed value of all similar items of property by the donor to one or more charities) exceeds $5,000. A copy of the related use certification (see above) must be included with this return.[4] Any person who identifies tangible personal property as related use property and knows that the property is not intended for such use is subject to a $10,000 penalty.[5]

8915. How is the charitable contribution deduction computed when property is sold to a charity at a reduced price (in a "bargain sale")?

If property is sold to a charity for less than its fair market value (a bargain sale), the individual must first determine whether a charitable deduction is allowable under the general rules governing charitable deductions (see Q 8905). The taxpayer must then determine the amounts of the allowable deduction and gain (if any) that will result from the transaction. The taxpayer first calculates the percentage of the property's fair market value that is being contributed and what percentage is being sold. (The fair market value of the contributed portion is the fair market

1. See IRC Sec. 170(e)(1)(A); Treas. Reg. §1.170A-4(a).
2. Treas. Reg. §1.170A-4(b)(1).
3. IRC Sec. 170(e)(7), as added by PPA 2006.
4. IRC Sec. 6050L, as added by PPA 2006.
5. IRC Sec. 6720B, as added by PPA 2006.

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value of the entire property less the amount realized on the sale.[1] The fair market value of the portion sold is the amount realized on the sale).

To determine the permissibility and the amount of the deduction for the contributed portion, the value of the contributed portion must be reduced by any gain that would *not* have been realized as long-term capital gain had the contributed portion been sold, taking into account the basis allocated to it.[2] If the sale of the contributed portion by the donor would have resulted in long-term capital gain (see example 2, below), no reduction is required unless the gift is tangible personal property and the use of the gift will be unrelated to the function of the charity.[3]

After any such reduction required by IRC Section 170(e)(1) has been made, the remaining amount of the contribution is the allowable deduction.

The taxpayer's adjusted basis in the property is then allocated to each portion in these proportions.[4] It is allocated between the portions contributed and sold, based on their relative proportions of the property's fair market value.[5] Gain is recognized on the sale portion to the extent the amount realized exceeds the allocated basis. However, no loss is recognized if the sale amount is less than the allocated basis of the sold portion.[6] The amount of the deduction for the contributed portion is determined as if property having the allocated basis and allocated fair market value were given.

The end result of this analysis is that essentially two separate transactions take place: (1) a sale of property that may result in taxable income, and (2) a deductible contribution of property to the charity. In some cases, the application of these rules may result in a taxable gain in excess of the allowed deduction. If the property is subject to a liability, the amount of the liability is treated as an amount realized.[7]

> *Example 1*: Dale sells ordinary income property to his church for $4,000, which is the amount of his adjusted basis. The property has a fair market value of $10,000. The contribution portion of the transaction has a value of $6,000 ($10,000 fair market value less $4,000 amount realized) that represents 60 percent of the value of the property. The amount realized represents 40 percent of the value of the property ($4,000/$10,000). The adjusted basis ($4,000) is therefore allocated as follows: 40 percent of it ($1,600) becomes Dale's basis in the "sold" portion and 60 percent of it ($2,400) becomes his basis in the "contributed" portion. The $6,000 "contribution portion" of the transaction has an allocated basis of $2,400. If it were sold, he would recognize $3,600 of ordinary income. The deduction for the $6,000 contribution is therefore reduced by $3,600. Dale has a charitable deduction of $2,400. Because Dale is receiving $4,000 for the "sold" portion and has an allocated basis in it of $1,600, he recognizes $2,400 of ordinary income with respect to the sale part of the transaction. The church's basis in the property received will be $6,400; this consists of the sum of the bargain sale price ($4,000) and the amount of Dale's basis ($2,400) in the gift portion.[8]

1. Treas. Reg. §1.170A-4(c)(3).
2. IRC Sec. 170(e)(1)(A); Treas. Reg. §1.1011-2(a).
3. IRC Sec. 170(e)(1)(B).
4. IRC Sec. 1011(b); Treas. Regs. §§1.170A-4(c)(2)(i), 1.1011-2.
5. IRC Secs. 170(e)(2), 1011(b); Treas. Reg. §1.170A-4(c)(2).
6. Treas. Reg. §1.1001-1(e).
7. Treas. Reg. §1.1011-2(a)(3).
8. See Treas. Reg. §1.170A-4(d), Example 5.

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Example 2: The facts are the same as in Example 1, except that the property was long-term capital gain stock. Dale's allocations of basis are the same as above; therefore, he recognizes $2,400 on the sale portion of the transaction. However the contributed portion is not subject to a reduction; thus, he is permitted a deduction of $6,000. The church's basis in the stock will be $6,400, determined the same way as in Example 1.

A taxpayer who makes charitable contributions of long-term capital gain property may elect to apply the provisions of IRC Section 170(e)(1) to all such contributions, thus using adjusted basis instead of fair market value to determine the value of the gifts. This election permits the individual to take a higher proportion of income as charitable deductions than would otherwise be allowed (see Q 8911).

In the context of a bargain sale, the Tax Court has found that the charitable deduction was properly claimed in the year that the sale was completed, because sufficient benefits and burdens of ownership had passed to the charitable organization in that year.[1] Bargain sale treatment was denied to a taxpayer who inflated his valuation to a figure that would enable him to recover his original investment in his property (in the form of cash plus tax savings from the inflated tax deduction).[2]

8916. How is the amount of a charitable contribution determined when a taxpayer donates property subject to a mortgage or other debt?

When property subject to a liability, such as a mortgage or other debt, is contributed to a charity, the amount of the liability is treated as an amount realized, even if the charity does not assume or pay the debt.[3] The property is considered sold for the amount realized, and the contribution is subject to the bargain sale rules (see Q 8915).

If the charity assumes a liability or if property is donated that is subject to a liability, the amount of the charitable contribution may not include any interest paid (or to be paid) by the donor for any period after the contribution if the donor is allowed an interest deduction for the amount.[4] If the property is a bond, the contribution must be reduced by the amount of interest paid by the taxpayer on indebtedness incurred to purchase or carry the bond that is attributable to any period before the making of the contribution. However, the amount of such a reduction is limited to the interest or interest equivalent (e.g., bond discount) on the bond that is not includable in the donor's income.[5]

Example: (a) On January 1, 2004, Jen, an individual using the cash receipts and disbursements method of accounting, purchased for $9,280 a 5½ percent, $10,000, 20-year Omega Corporation bond, the interest on which was payable semi-annually on June 30 and December 31. The Omega Corporation had issued the bond on January 1, 2004, at a discount of $720 from the principal amount. On December 1, 2014, Jen donated the bond to a charitable organization, and, in connection with the contribution, the charitable organization assumed an indebtedness of $7,000 that Jen had incurred to purchase and carry the bond.

1. See *Musgrave v. Comm.*, TC Memo 2000-285.
2. *Styron v. Comm.*, TC Sum. Op. 2001-64.
3. Treas. Reg. §1.1001-2; Rev. Rul. 81-163, 1981-1 CB 433. See Let. Rul. 9329017; *Guest v. Comm.*, 77 TC 9 (1981), *acq*. 1982-2 CB 1; *Crane v. Comm.*, 331 U.S. 1 (1947).
4. IRC Sec. 170(f)(5); Treas. Reg. §1.170A-3(a).
5. IRC Sec. 170(f)(5)(B); Treas. Reg. §1.170A-3(c).

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(b) During the 2014 calendar year, Jen paid accrued interest of $330 on the indebtedness for the period from January 1, 2014, to December 1, 2014, and an interest deduction of $330 is allowable for such amount. Of the bond discount of $36 a year ($720 divided by 20 years), $33 (11/12 of $36) is includable in Jen's income. Of the $550 of annual interest receivable on the bond, she will include in income only the June 30, 2014, payment of $275.

(c) The market value of the Omega Corporation bond on December 1, 2014, was $9,902. This value includes $229 of interest receivable that had accrued from July 1 to December 1, 2014.

(d) The amount of the charitable contribution determined without regard to the reduction required by IRC Section 170(f)(5) is $2,902 ($9,902, the value of the property on the date of gift, less $7,000, the amount of the liability assumed by the charitable organization). In determining the amount of the allowable charitable deduction, the value of the gift ($2,902) must be reduced to eliminate from the deduction that portion for which Jen has been allowed an interest deduction. Although the amount of such interest deduction was $330, the reduction required by this section is limited to $229, since the reduction is not to exceed the amount of interest income on the bond that is not includable in Jen's income.[1]

8917. Can a deduction be taken for a charitable contribution of less than the donor's entire interest in property?

Generally, a taxpayer may not deduct a charitable contribution that is less than the entire interest in property unless the contribution is made in trust. (A deduction of a partial interest will be allowed to the extent a deduction would be allowed if the interest had been transferred in trust.[2]) However, a taxpayer may deduct contributions of partial interests if they are made to each of several charities, with the result that the entire interest in the property has been given to charitable organizations. An individual may make a gift of a partial interest in property if that is the individual's entire interest, but not if partial interests were created to avoid the application of the rule prohibiting gifts of less than the individual's entire interest.[3]

Exceptions: A deduction *is* allowed for a contribution of less than the donor's entire interest in property in the following instances:

(1) The taxpayer donates an irrevocable remainder interest in a personal residence or farm;[4]

(2) The taxpayer makes a qualified conservation contribution;[5] or

(3) The taxpayer donates an undivided portion of his entire interest.[6] An undivided portion is a fraction or percentage of each and every substantial interest or right owned by the donor in property and the fraction or percentage extends over the entire term of the donor's interest in the property and in other property into which

1. See Treas. Reg. §1.170A-3(d) Example (2).
2. IRC Sec. 170(f)(3)(A); Treas. Reg. §1.170A-7(a).
3. Treas. Reg. §1.170A-7(a)(2)(i).
4. IRC Sec. 170(f)(3)(B)(i); Treas. Regs. §§1.170A-7(b)(3), 1.170A-7(b)(4).
5. IRC Sec. 170(f)(3)(B)(iii).
6. IRC Sec. 170(f)(3)(B)(ii).

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that property is converted.[1] The *right* to possession of an undivided portion of the taxpayer's entire interest has been held sufficient to constitute a charitable gift, even where the donee did not actually choose to take possession.[2] The possibility that a charity's undivided fractional interest may be divested upon the occurrence or nonoccurrence of some event has been determined not to defeat an otherwise deductible contribution where the possibility is deemed so remote as to be negligible.[3]

The IRS has also found that a charitable gift of an "overriding royalty interest" or a "net profits interest" in an oil and gas lease did not constitute an undivided portion of the donor's entire interest in an oil and gas lease where the donor owned a working interest under the lease.[4]

The IRS has ruled privately that a donor's transfer of a life insurance policy to a charity, where the donor retained bare legal title, was not a retention of a substantial interest for purposes of the partial interest rule. Thus, the donor did not violate the partial interest rule, and was allowed to claim the charitable contribution deduction on the first day following the end of the 30-day cancellation period.[5]

In a case involving the contribution of a patent to a qualified charity, the IRS found that no deduction is allowed if: (1) the taxpayer retains any substantial right in the patent; or (2) the taxpayer's contribution of a patent is subject to a conditional reversion, unless the likelihood of the reversion is so remote as to be negligible. On the other hand, a contribution of a patent subject to a license or transfer restriction will be deductible, but the restriction *reduces* what would otherwise be the fair market value of the patent at the time of the contribution and, therefore, *reduces* the amount of the charitable contribution.[6]

A charitable deduction is not allowed for a contribution of an undivided portion of the donor's entire interest in tangible personal property unless, before the contribution, all interests in the property were held by the donor or the donor and the charity. In the case of any additional contribution of interests in the same property, the fair market value (FMV) of such contributions will be equal to the lesser of (1) the FMV at the time of the initial fractional contribution, or (2) the FMV at the time of the additional contribution.[7]

Example: Mark contributed 10 percent of a painting valued at $100,000 to an art museum in 2014 (a related use gift). The charitable deduction for the 10 percent interest was $10,000 in 2014. In 2015, Mark contributes another 10 percent interest in the painting to the art museum when the painting is valued at $110,000. However, for charitable deduction purposes, the fair market value of the painting cannot exceed

1. Treas. Reg. §1.170A-7(b)(1). See Rev. Rul. 57-293, 1957-2 CB 153 (undivided ¼ ownership and ¼ possession of art object); Rev. Rul. 72-419, 1972-2 CB 104 (undivided 20 percent remainder interest which was the donor's only interest in the property). See also See Let. Ruls. 8145055, 8639019.
2. See *Winokur v. Comm.*, 90 TC 733 (1988), acq. 1989-1 CB 1. See also Let. Ruls. 200223013, 200223014 (the gift of a fractional interest in any work of the donors' collection accepted by the donee (subject to the gift and loan agreement) would qualify as a gift of an undivided portion of the donors' entire interest in the work, relying on *Winokur*, above; thus, the undivided fractional interest would be deductible).
3. Let. Rul. 9303007.
4. See Rev. Rul. 88-37, 1988-1 CB 522.
5. Let. Rul. 200209020.
6. Rev. Rul. 2003-28, 2003-1 CB 594.
7. IRC Sec. 170(o), as added by PPA 2006.

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the $100,000 value at the time of the initial contribution. Therefore, the charitable deduction is limited to $10,000 (10 percent of $100,000) in 2015.

The charitable deduction for a contribution of an undivided portion of the donor's entire interest in tangible personal property is recaptured (plus interest) if the donor does not contribute all of the remaining interests in the property to charity within 10 years of the initial fractional contribution or before death, whichever is earlier. Recapture is also required if the charity did not have substantial physical possession or make related use of the property during that period. The income tax on the recaptured amount is increased by 10 percent of the amount recaptured.[1]

8918. What deduction is available when a taxpayer only grants the charity the right to use property, rather than donating an ownership interest in the property?

The right to use property is less than the entire interest in property owned by an individual and is subject to the rules governing a charitable contribution of less than the donor's entire interest (see Q 8917).[2] Therefore, generally no deduction will be allowed.

Example: Stephen owns a beautiful vacation home on the beach. He typically rents it for $3,000 per week. He offers his favorite nonprofit the right to use his vacation homes for a week-long board retreat. Stephen is not, however, able to deduct $3,000 for the nonprofit's use of the vacation home for the week.

However, in some cases, a deduction has been allowed for the costs of repairing and maintaining property owned by the taxpayer but used by the charity. These deductions have been allowed as contributions "for the use of" the charity.[3] Despite this, the IRS has denied a deduction for maintenance and repair costs in other situations.[4] To be deductible, the costs must be unreimbursed expenses "directly attributable to the performance of … volunteer services."[5]

A taxpayer was not permitted a deduction when he donated a week's use of his vacation home in connection with a charitable auction, the proceeds of which benefitted charitable organizations. The IRS also noted that the successful bidder would not be permitted a charitable deduction to the extent that valuable consideration is received in return (i.e., the bidder paid fair rental for a week's use of the home).[6]

Tenant-stockholders were allowed to exclude $500,000 of gain from the disposition of their shares of stock in their cooperative apartment which was coordinated with a donation of the same shares to a charitable organization.[7]

1. IRC Sec. 170(o)(3)(B).
2. IRC Sec. 170(f)(3)(A).
3. See *Est. of Carroll v. Comm.*, 38 TC 868 (1962); Rev. Rul. 58-279, 1958-1 CB 145.
4. Rev. Rul. 58-279, above; Rev. Rul. 69-239, 1969-1 CB 198.
5. Rev. Rul. 58-279, above.
6. Rev. Rul. 89-51, 1989-1 CB 89.
7. See FSA 200149007.

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8919. What are the tax consequences of a charitable contribution of a partnership interests?

A partnership interest is a capital asset that, if sold, would be given capital gain or loss treatment except to the extent of the partner's share of certain partnership property that, if sold by the partnership, would produce ordinary gain (i.e., the partner's share of "unrealized receivables" and "substantially appreciated inventory").[1] (See Q 8561 and Q 8562 regarding the treatment of capital gains and losses). Thus, if a taxpayer makes a charitable contribution of a partnership interest, and if the taxpayer has held the interest for long enough to qualify for long-term capital gain treatment (i.e., more than one year, see Q 8567), a deduction is permitted in the amount of the full fair market value of the interest less the amount of ordinary gain, if any, that would have been realized by the partnership for the partnership's share of "unrealized receivables" and "substantially appreciated inventory." (The deduction is subject to the applicable limits. See Q 8911.)

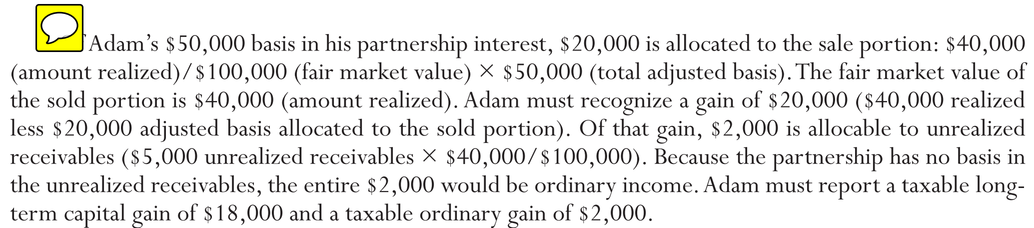
If the partnership interest includes a liability (mortgage, etc.), the amount of the liability is treated as an amount realized on the disposition of the partnership interest.[2] Thus, the contribution is subject to the bargain sale rules, and the transfer will be treated, in part at least, as a sale (see Q 8915).[3] (If the partner's share of the partnership liabilities exceeds the fair market value of his partnership interest, the partner may have taxable income, but no deduction under the bargain sale rules.) In *Goodman v. United States*,[4] the taxpayer contributed her partnership interest to charity, subject to her share of partnership debt. The district court held that the taxpayer recognized gain on the transfer that was equal to the excess of the amount realized over that portion of the adjusted basis of the partnership interest (at the time of the transfer) allocable to the sale under IRC Section 1011(b).[5]

The following steps must be taken to determine the taxpayer's taxable income and the amount of the charitable deduction under the bargain sale rules:

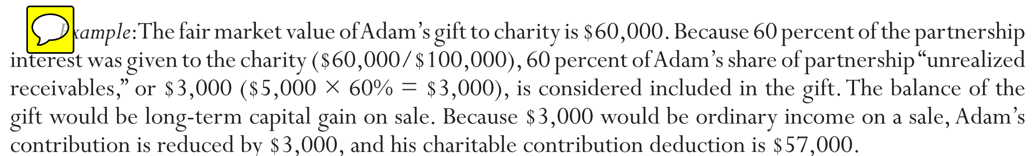
1. *Determine the taxable gain on the sale portion*. Under the bargain sale rules, part of the donor's basis is allocated to the portion sold. The basis allocated to the sold portion is the amount of basis that bears the same ratio to the entire basis as the amount realized bears to the market value of the property. Presumably, the sold portion includes the same proportionate part of the donor's share of unrealized receivables and substantially appreciated inventory as it does basis.

ample: Adam owns a 10 percent interest in a partnership that he has held for three years. The fair market value of his interest is $100,000 and his adjusted basis is $50,000. His share of a mortgage on partnership property is $40,000, and his share of "unrealized receivables" (potential depreciation recapture on the mortgaged property) is $5,000 in which the partnership's basis is zero. He donates his entire interest to charity. He is deemed to have received $40,000, his share of partnership liabilities, on the transfer. In effect there are two transactions–a sale for $40,000 and a contribution of $60,000.

1. IRC Sec. 741.
2. Treas. Reg. §1.1001-2. See *Crane v. Comm.*, 331 U.S. 1 (1947).
3. Rev. Rul. 75-194, 1975-1 CB 80.
4. 2000-1 USTC ¶50,162 (S.D. Fl. 1999).
5. Citing Rev. Rul. 75-194 and Treas. Reg. §1.1001-2.


Adam's $50,000 basis in his partnership interest, $20,000 is allocated to the sale portion: $40,000 (amount realized)/$100,000 (fair market value) × $50,000 (total adjusted basis). The fair market value of the sold portion is $40,000 (amount realized). Adam must recognize a gain of $20,000 ($40,000 realized less $20,000 adjusted basis allocated to the sold portion). Of that gain, $2,000 is allocable to unrealized receivables ($5,000 unrealized receivables × $40,000/$100,000). Because the partnership has no basis in the unrealized receivables, the entire $2,000 would be ordinary income. Adam must report a taxable long-term capital gain of $18,000 and a taxable ordinary gain of $2,000.

2. *Determine the charitable contribution deduction*. Generally, the fair market value of the portion given to charity is deductible except to the extent the property would have generated ordinary income if sold. Consequently, the allowable deduction for the gift portion must be reduced to the extent the portion of the partnership interest given to the charity would produce ordinary income if sold.


Example: The fair market value of Adam's gift to charity is $60,000. Because 60 percent of the partnership interest was given to the charity ($60,000/$100,000), 60 percent of Adam's share of partnership "unrealized receivables," or $3,000 ($5,000 × 60% = $3,000), is considered included in the gift. The balance of the gift would be long-term capital gain on sale. Because $3,000 would be ordinary income on a sale, Adam's contribution is reduced by $3,000, and his charitable contribution deduction is $57,000.

Other special rules may apply under certain circumstances, for example, if the partnership owns property subject to tax credit recapture, if it has made installment sales, or (as might occur in the case of an oil and gas partnership) if it is receiving income in the form of "production payments."

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