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Be Organized to Preserve Your Charitable Deductions for Property Donations

BY JULIA SATTI COSENTINO, JOHN A. MCBRINE AND TARALYNN CASPERSON ON APRIL 14, 2016

POSTED IN PHILANTHROPY

3 Things to Remember About Documenting Charitable Gifts of Property, Securities and Art.

Last month in this blog, we described five ways to be diligent about documenting charitable gifts of cash or out-of-pocket expenses to preserve your tax deduction. But what about gifts of property – does giving something other than cash change the taxpayer's responsibilities? According to the tax regulations, the answer is no and yes.

What does not change with charitable gifts of securities, art, vehicles, clothing and other property is that the burden is still on you. You must be sure that the recipient is a qualified non-profit organization and that you compile and file the necessary paperwork contemporaneously with the gift, meaning by the earlier of the date you file your return and the due date of your return, including extensions. *What does change* with these charitable gifts of property, however, is that the level of effort needed to meet the substantiation requirements is greater, especially as the value of the donation goes up. The IRS has published guides [here] and [here] to help taxpayers with the various substantiation and disclosure requirements. Here are a few points to remember regarding property donations.

1. The more you give, the more you need. The IRS will not reward an uptick in your philanthropy by cutting you slack on substantiation. In fact, the requirements on both you and the receiving charity are greater as you increase the value of your gifts of property. Below is an outline that shows you what we mean by this. (Tip: to determine which requirements apply if you made more than one gift, combine your claimed deductions for all similar items donated to any charity during the year.)

For deductions under $250

- You must retain in your files:
    - A contemporaneous receipt from the charity, with your name, the date and location of the gift and a reasonably detailed description of the property; and

- Your own reliable records, which, in addition to the information you received from the charity, should include the fair market value of the property (and how you determined the value).
    - If relevant, you also should document your cost basis in the property, any conditions attached to the gift, and, if you are making a gift of a partial interest, the amount you are claiming as a deduction.
- No receipt from the charity is required if it would be impracticable to obtain (e.g., if you leave clothing at an unattended drop box).

For deductions of $250 – $500

- In addition, the charity's receipt must detail whether the charity provided you any goods or services in exchange for the gift, with a description and value of any such goods or services, except when the goods and services are insubstantial in value.
    - For multiple gifts of $250 or more to the same charity in a single year, a single receipt from the charity reflecting your total gifts is sufficient.
- For gifts of $250 or more, a receipt from the charity is always required. (There is no "drop box" exception.)

For deductions over $500, up to $5,000

- In addition, submit IRS Form 8283 with your return, and your records must include:
    - How you acquired the property (e.g., by purchase, gift or inheritance);
    - Approximate date you acquired the property; and
    - Cost basis for property (not required for publicly traded securities and in certain other circumstances.)
- Gifts of cars, boats and airplanes require additional substantiation.
- Certain gifts of clothing or a household item valued over $500 require an appraisal.

For deductions over $5,000

- In addition, you must obtain a qualified appraisal and attach a summary of the appraisal to your return. (No appraisal required for publicly traded securities.)
- Attach the entire appraisal to your return if you are claiming a deduction of (i) $20,000 or more for gifts of art or (ii) over $500,000 for all other types of property.
- Gifts of art require additional substantiation.

2. Pay attention to details. When dealing with charitable contributions of property, it's important to anticipate that there may be IRS requirements particular to the *type* of property, in addition to those requirements driven by the *value* of the property. You must pay attention, then, to the details of the IRS rules. With property contributions, you are not only required to obtain statements from the charities, but you are also responsible for knowing which forms you need to file with the IRS, along with any appraisals that must accompany your return. These may seem like minor aspects of preserving a deduction for your charitable largesse, but they will become major stumbling blocks if you omit them from your records or income tax return. For instance, did you know that charitable organizations are not permitted to perform qualified appraisals for property they receive? Or that you cannot take a charitable deduction for an appraisal fee, though the fee may be deductible as a miscellaneous itemized deduction? There is more guidance concerning the rules around appraisals here.

3. Don't be afraid to ask for help. Cash is relatively simple to substantiate, because valuation is straightforward. But property can have complicating factors: basis, capital gains, depreciation, and fair market value, among others. If you are unsure about a nuance in substantiation, definitely take the time to do a little research. Or make it easier on yourself by asking a professional advisor for assistance. Being cavalier about the documentation will only open you up to a potential challenge by the IRS, which is never a good thing. You will preserve the value and spirit of your charitable contributions if you can stay smart, diligent and thorough with your substantiation, at gift time and at tax time.

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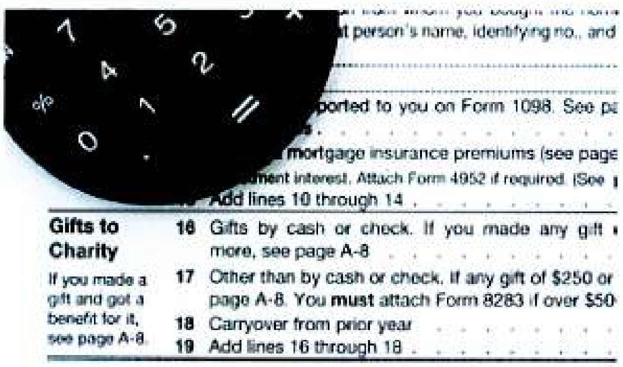
Act Now to Preserve Your 2015 Charitable Deductions

BY JULIA SATTI COSENTINO, JOHN A. MCBRINE AND TARALYNN CASPERSON ON MARCH 22, 2016

POSTED IN PHILANTHROPY



5 Ways to Be Diligent with Charitable Gifts of Cash

Remember that formal benefit dinner you attended last fall? The contentious battle for that golf package at the charity auction in the spring? Your donation to the bike-a-thon over the summer? For many, expenditures like these can add up to hundreds, even thousands, of dollars throughout the year. But – surprise! – income tax deductions are not always available or can easily be lost if you are not diligent about your recordkeeping. With the April 15th deadline to file (or extend) income tax returns fast approaching, many of us need a reminder of what is required to claim income tax deductions for the charitable contributions of cash we made last year.

How can you determine if you're allowed to claim a charitable deduction for amounts you paid to support your favorite charities? And what paperwork do you need in hand before you can claim that charitable deduction? Here are five ways to observe the requirements for charitable gifts of cash.

1. Do your homework on the recipient. Make sure you are claiming deductions only from qualified non-profit organizations under the tax code's section 501(c)(3). If you are unsure whether an organization is qualified, call the organization or do your research online. The IRS has a link that allows the public to confirm whether an organization falls within section 501(c)(3), as does Guidestar.org. Note, donations to funds set up to help specific individuals in need, like GoFundMe, are most probably not tax deductible because the fund is not a qualified organization.

2. Report and record-keep in the right way. So you've confirmed the tax-exempt status of the organization that received your gift. What must you do next to achieve the added benefit of a tax deduction?

For monetary gifts and out-of-pocket expenses, the rules are relatively straightforward. When you give a charitable gift of cash, the IRS wants you to obtain – within a limited timeframe – adequate information confirming the amount of the gift, the organization to which it was made, and in, some cases, whether goods or services were exchanged in connection with that gift. Specifically, all charitable receipts must be in hand *by the earlier of the date you file your return and the due date of your return, including extensions.* Written acknowledgements received by these dates will be considered "contemporaneous." The IRS has published guides [here and here] to help taxpayers with the various substantiation and disclosure requirements. Below are the highlights regarding cash gifts.

One-Time Cash Gifts

For each gift under $250

- You must retain in your records at least one of the following:
    - Canceled check;
    - Bank statement;
    - Credit card statement; or
    - Contemporaneous receipt from the charity.

For each gift of $250 or more

- In addition, you must have a contemporaneous note from the charity detailing:
    - Amount contributed; and
    - Whether the charity provided you any goods or services in exchange for the gift, with a description and value, of any such goods or services, except when the goods and services are insubstantial in value such as a tchotchke with a logo or a benefit stemming from a low-cost annual membership.
- Requirement easily missed: when a taxpayer has contributed cash to the family foundation she created, she must obtain the note from her foundation.

Payroll Deductions

- You must retain in your records:
    - Pledge card from the charity and, if a single contribution is $250 or more, the pledge card should provide that no goods or services were received in exchange for your gift; and
    - W-2 or paystub reflecting your gift.

Out-of-Pocket Expenses

For each unreimbursed expense under $250

- For unreimbursed out-of-pocket expenses you incurred while volunteering for a charity, such as mileage and travel expenses, you must keep in your files reliable and contemporaneous written records with:
    - Name of the charity;
    - Date of the expense incurred; and
    - Amount of the expense.

- Distinction easily missed: the standard mileage rate for charitable purposes (14 cents per mile in 2015) is lower than that for business purposes.

For each unreimbursed expense of $250 or more

- In addition, you must have a contemporaneous receipt from the charity detailing:
  - Description of your services; and
  - Whether the charity provided you any goods or services as reimbursement, with a description and value of any such reimbursement.

3. Remember that not all forms of support are deductible. There is a common misconception that everything you do for charity carries a tax benefit with it. This is simply not true. For example, you cannot claim a charitable deduction for the following:

- Value of your time or services donated to a charity;
- Cost of raffle or lottery tickets to support a charity; or
- Tuition payments.

4. Take responsibility. You bear the burden of proving that a charitable contribution meets the criteria for a deduction. While these may seem like small details, the IRS expects you to meet all substantiation requirements if you are claiming a deduction for a charitable contribution. The IRS has repeatedly disallowed deductions for donations, even when it is clear that the charity received the funds, when the taxpayer's substantiation failed to meet IRS standards.

5. Do a little each time you give. It is much easier to keep up with the substantiation requirements if you can do your due diligence each time you make a charitable contribution. Try to maintain up-to-date, organized records of your charitable contributions throughout the year. You'll be thanking yourself when next tax season rolls around.

Comparison of Charitable Giving Vehicles

	Donor Advised Fund	Private Foundation	Supporting Organization
Description	A philanthropic vehicle administered by a sponsoring charitable organization on behalf of organizations, families and individuals. Donors make an irrevocable contribution to the DAF, receive an immediate tax deduction, and then make nonbinding grant and investment recommendations to the sponsoring organization.	A religious, charitable, etc. domestic or foreign organization, often a corporation, which has tax exempt status but does not meet the definition of a public charity. Donors of private foundations exercise a high degree of control, but private foundations are subject to a more stringent tax regime than public charities, including rules governing mandatory distributions, excess business holdings, jeopardizing investments, taxable expenditures and lobbying.	A public charity that carries out its exempt purposes by providing programmatic, financial or other support to other tax exempt organizations, usually other public charities.
Start-Up and Administrative Costs	Funds can be established quickly by the sponsoring organization and accounts can often be set up online. Charitable deduction is available immediately. Investment management and administrative fees charged by sponsoring organization.	May take several weeks or months to set up. Must apply to the IRS for tax exempt status. Legal, accounting and filing fees due at inception and filing fees annually thereafter. May need to administrative support staff.	May take several weeks or months to set up. Must apply to the IRS for tax exempt status. Legal, accounting and filing fees due at inception and filing fees annually thereafter. May need to administrative support staff.

	Donor Advised Fund	Private Foundation	Supporting Organization
Tax Deduction Limits	50% of AGI for cash gifts; 30% of AGI for stock/real property	50% of AGI for cash gifts; 30% of AGI for stock/real property (private operating foundations) 30% of AGI for cash gifts; 20% of AGI for stock/real property (private non-operating foundations)	50% of AGI for cash gifts; 30% of AGI for stock/real property
Valuation of Gifts	Fair market value	Fair market value for publicly traded stock; cost basis for gifts of closely held stock, real property, etc.	Fair market value
Required Distribution	None	5% of net asset value annually	None, but must demonstrate ongoing support for other designated public charities
Excise Taxes	None (but 20% of any taxable distribution to an organization that is not a public charity)	1% to 2% of net investment income annually	None
Privacy	Individual donors can remain anonymous if their gift does not exceed the greater of $5,000 or 2% of the sponsoring organization's contributions reported for that year.	Must annually file detailed public tax returns (Form 990-PF) and other corporate filings (Annual Report). Donors who give $5,000 or more are identified by name on the grantee's Form 990-PF.	Must annually file detailed public tax returns