Sustainable Philanthropy

Advising and Representing Donors

Appreciated Stock Donations

What to give? – Five Guidelines

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Revised: 09/2022

Five Guidelines for Appreciated Stock Donations

Donate publicly traded, appreciated, long-term securities.

Publicly traded appreciated securities (e.g., stocks, bonds, exchange-traded funds (ETFs), and mutual funds) held for more than one year are the non-cash assets most frequently donated to charities. There are logistic, financial, and tax compliance reasons for this:

- Transfer Logistics: Publicly Traded securities can be transferred with little effort – often as little as two phone calls and a signature.

  There is often only a slow cumbersome and thinly traded market for privately traded securities (those that trade outside of established exchanges). For other non-cash assets, markets are often thin – sometimes non-existent - and beset by restrictive or cumbersome trade requirements (the procedures to sell a house, for example). Closely held securities, whether majority or minority interests are often subject to contractual impediments (e.g., non-disposal clauses in placement memoranda or operating agreements) and title issues (e.g., community property interests). Incentive or IPO share trades are equally restrictive and often subject to lock-in and vesting considerations. Valuing those shares is often as much an art as a science. C.f., IRS Revenue Ruling 59-60.

- Liquidity: Publicly Traded securities are widely owned and trade in easily accessible markets. That implies that both the donor and the donee have flexibility with respect to timing transfers and dispositions.

- Fungibility: Publicly Traded Securities can be transferred and sold in tranches of almost any size. And, you can choose specific lots that you wish to transfer.

- Known Valuation: (a logistic and tax virtue) Publicly traded shares are easily valued and generally immune to adjustment by Agency examination. The Value of a publicly traded share is the average of the opening and closing market quotes for that security on the transfer date – a readily determinable number.

  "Valuation Controversies" over non-cash assets are frequent, expensive, and intense. Controversies occur in a number of contexts, including non-cash charitable deductions. All non-cash contributions over $5,000 must be supported by a *Qualified Appraisal*. Your *Qualified Appraiser's* valuation may differ substantially from the Service's appraisal for a variety of reasons. When that happens, both sides dig in their heels and compromise becomes difficult or impossible. Donating Publicly Traded Appreciated Stock minimizes your exposure to this controversy.

- Long Term Gain Exclusion: Securities you hold for at least one year and one day (Long-Term Securities) receive preferential tax treatment when you donate them. A) The long-term capital gain is excluded from your taxable income, and B) You deduct the securities' Fair Market Value (FMV) on your return. Note the precise time threshold: Securities held for any less than one year and one day (Short Term Securities) do not qualify for this exclusion.

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Donate (Do not Sell) Your Long-Term Winners:

The rationale for donating *Long Term Appreciated Securities* is implicit in our discussion above: but just in case it isn't obvious: ***Do not sell your long-term gain securities and give the cash to charity.*** Selling a security that is held in a non-exempt portfolio – triggers Capital Gain Recognition. Gain Recognition, in turn, triggers Capital Gain Tax exposure. This defeats the tax rationale for donating *Appreciated Stock* in the first place.

Sell Your Losers and Give the Cash to Charity:

Similar to your winners, – selling a security that has lost value during the time you held it triggers Loss Recognition. Loss Recognition, in turn, immediately or eventually reduces your Capital Gain Tax exposure. This syllogism applies to both long-term and short-term losers. In fact, selling your short-term losers may be more advantageous than selling long-term losers.

Hold on to Your Short-Term Gains:

Short Term Holdings do not qualify for the Gain Exclusion. Put another way – you get a deduction, but only for your *Basis* in the Security. If the security is not wildly volatile, hold on to it to secure an enhanced deduction.

Transfer Specific Shares (If Possible):

If you give only a portion of a larger position and you accumulated the position in a series of transactions, ask your Advisor/Broker/Custodian to transfer specific lots or positions to your charity. Ideally, give away the lots with the biggest gains – keep the lots with smaller gains. This maximizes tax savings but doesn't compromise the value of your remaining holdings. Give very specific instructions to transfer "the lot purchased on MM/DD/YYYY" to charity.

This assumes that your broker/advisor/custodian maintains a lot-by-lot inventory. This may not be practical for Mutual Funds or Electronically Traded Funds – which are often inventoried at average cost.

Transfer Organizations and Donor Advised Funds

Many charities (and/or their Supporting Organizations) accept stock donations through their websites and execute them by direct transfer to their own securities accounts. Check with your intended charity before seeking a transfer agent or DAF administrator.

For Organizations that do not have the ability to accept direct transfers, consider using a Transfer Organization or Donor Advised Fund to facilitate the donation.

Nothing in this segment should be construed as an endorsement of the transfer organization or its services. Potential Donors who wish to transfer stock or other non-cash assets to charity by means of an intermediary must perform their own due diligence on both the charity and the intermediary.

American Endowment
https://www.aefonline.org/
Primarily, DAF services to Donors. Accepts simple assets such as cash and publicly traded securities, as well as privately held stock, real estate, life insurance, and interests in LPs and LLCs that other charities and DAFs or charities cannot accept. Does not require immediate liquidation. Has size limits for some assets. Provides institutional service via TD Ameritrade

Cocatalyst
https://www.cocatalyst.org/
Accepts shares from Donor's Broker, Liquidates, Sends to Charity – Searches for Employer Matching Programs.

Charityvest
https://www.charityvest.org/
Operates as a DAF or clearing-transfer portal. Accepts shares from Donor's Broker, Liquidates, Sends to Charity. No minimum transfer size.

DonateStock
https://donatestock.com/

Donor's Trust
https://www.donorstrust.org/
"Donors Trust was the first donor-advised fund established to safeguard the charitable intent of donors committed to the principles of limited government, personal responsibility, and free enterprise." *SJR: Donor's Trust has been an active facilitator for charitable giving to climate change denial organizations and Organizations that take other extreme right ESG positions.*

Fidelity Charitable
https://www.fidelitycharitable.org/
Institutional provider. Their service profile emphasizes DAFs (under their management).

National Philanthropic Trust
https://www.nptrust.org/
Primarily, DAF services to Donors. Accepts simple assets such as cash and publicly traded securities, as well as privately held stock, real estate, life insurance, and interests in LPs and LLCs that other charities and DAFs or charities cannot accept. Does not require immediate liquidation. Has size limits for some assets.

Overflow
https://www.Overflow.co/ (careful, its dot co, not dot com)
Indirect Transfer agent. Accepts Cash, Stock, and Crypto

Renaissance Charitable Foundation
https://www.rcgf.org/
Also provides institutional service via TD Ameritrade

Schwab Charitable
https://www.schwabcharitable.org/public/charitable/donor_advised_funds
Institutional provider. Their service profile emphasizes DAFs (under their management).
Schwab has lower capital and donation requirements than either Vanguard or Fidelity.

Stock Transfers
Note – this is a clothing company, not a transfer or DAF administrator.

Stock Donator
https://stockdonator.com/
Indirect transfer agent and DAF administrator. Appears to accept only publicly traded stock.

Vanguard
https://www.vanguardcharitable.org/
Institutional provider. Their service profile emphasizes DAFs (under their management).
Their website has some collateral resources that may help vet your organization.

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Appendix: Charitable Contributions: General Statutory Requirements

Overview

To claim a charitable contribution deduction for any contribution, the Donor must meet both the statutory requirements for charitable contributions, and the specific requirements for that particular type of property. Before the Donor makes a large contribution, it is useful to review what the IRS says about the subject.[1] According to the IRS, A charitable contribution[1] is:

- a voluntary gift of money or property,
- made with Charitable Intent
- without receipt of adequate consideration
- to or for the use of a qualifying organization,

Charitable Intent

A charitable contribution is a donation that is voluntary and made without receipt, or the expectation of receipt, of anything of economic value – i.e., a transfer or gift that proceeds from "disinterested generosity."[1]

A transfer of money or property is not voluntary if it is required or it is made with the expectation of a direct or indirect benefit. A benefit received or expected to be received because of a payment or transfer is called a Quid Pro Quo.

For most donations there is no "transfer," and therefore no deductible charitable contribution, **unless** there is:

- A transfer of title and possession of the property,
- Delivery of the property to a Qualified Charitable Organization, and
- Acceptance of the gift by the Qualified Charitable Organization.

If the IRS examines the Donor's deduction, the IRS's Agent (and possibly an IRS Appraiser) will interview the Donor to ascertain their Charitable Intent when making the contribution.

For real Property a Transfer Deed must be recorded in public records. The donation is not complete unless and until the deed is recorded. This may be a "problem" if the deed is recorded too soon, too late, or not-at-all. It can also be a tool that allows the Donor to time the deduction by timing the transfer's recordation.

Qualified Organization

Donors may only deduct contributions made to organizations eligible to accept tax-deductible contributions. Those organizations are described in IRC § 170(c). Qualified Charitable Organizations are listed in the IRS Charity Search algorithm.

Any organization that accepts conservation easement contributions must meet additional requirements. See *Qualified Organization* (above) for additional guidance on Qualified Charitable Organizations in the context of conservation easements.

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Partial Interest Rule

Usually, Donors must contribute their entire interest in property to take a contribution deduction.[1] This is known as the "partial interest" rule.

Qualified Conservation Contributions are an exception to the partial interest rule.[1]

Conditional Gifts

If the Donor makes a conditional contribution, they cannot take a deduction until the condition is satisfied:

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Example: J transfers land in Maine to a city government on condition that the land is used by the city for an unlikely use (e.g., alligator habitat). J cannot deduct the charitable contribution until the specified use occurs.

If there is only a negligible chance the gift will be defeated, the deduction is allowed.[1]

Example: S transfers land to a city government on condition that the land is used by the city for a public park. If, on the date of the gift, the city government plans to use the property as a park, and the possibility that it will not be used as a park is so remote as to be negligible, the deduction is allowed at the time of the transfer to the city government.

Earmarking

Earmarked donations are treated as transfers to the earmarked beneficiary - not as transfers to the Qualified Charitable Organization. Thus, Donors may not deduct contributions earmarked. (e.g.) for the benefit of a specific individual or family.

Example: S made payments to a church, earmarked for J, a needy individual. S cannot deduct the payments since the funds are specifically designated for J.

Year of Donation

Donors may deduct contributions paid or completed within their taxable year.[1]

A promise or pledge to pay cash or transfer property in the future is not deductible. Donors may deduct payments made by check when the check is mailed or delivered to the Qualified Charitable Organization.[1] Note, however, that a charge to the Donor’s credit card is deductible in the year in which it is charged to their account… even if they carry a balance on the account and even if they do not receive an account statement that reflects the payment until after the close of their tax year.

For real property donations, the year of the deduction is the year in which the real estate is transferred under the law of the state where the real estate is located. Deduct the value of most real property donations in the year the property transfer is recorded.

Example: D grants a conservation easement to a Qualified Charitable Organization on December 20, Year 1, as evidenced by the dated signatures on the Deed of Conservation Easement. However, the easement was not recorded in public records until March 12, Year 2. D claims the deduction in Year 2.

Substantiating Noncash Contributions

A charitable contribution is not deductible unless it is properly substantiated. The documentation required varies depending on the date of contribution, nature of the contribution (noncash in the case of a real property), type of property contributed, and the dollar amount claimed.

Amount of Deduction

Several factors affect the amount Donors may claim as a charitable contribution deduction.

- Quid Pro Quo and Charitable Intent
- Bargain sale elements present in the transaction
- Type of property (ordinary income, short-term capital gain, long-term capital gain)
- Donor's basis in the property
- Percentage (of AGI or Taxable income) limitations
- Type of Donee organization

See IRS Publication 526, Charitable Contributions (PDF) for additional guidance on charitable contribution limitations.