

Giving Securities

The following information and references to additional resources are provided for those who assist you in your estate and financial planning.

Amount of Donor's Charitable Contribution

Securities held long term: In general, if an individual donates securities held long term to a public charity, such as a church, educational institution, health care organization or other cause, the amount he or she can claim as a charitable gift for federal income tax purposes is the securities' fair market value on the date of the gift. See Internal Revenue Code section 170(b)(1)(A).

"Long term" means longer than one year. See IRC section 1222(3). The holding period to qualify as long-term property for deduction of appreciated property gifts at full market value is more than one year.

Securities held short term: The amount that can be claimed as a charitable gift in the case of donated securities held short term, on the other hand, is the donor's cost basis in the securities if the cost basis is less than the securities' fair market value. See IRC section 170(e)(1)(A).

Securities that have declined in value: Shares that have gone down in value since being purchased generally should not be donated, because a gift of such an investment does not cause the potential capital loss to be realized for federal income tax purposes. Instead, the donor should sell the shares to realize the loss to the extent possible and give the cash from the sale.

Fair market value: For purposes of determining the amount of the donor's charitable gift, the fair market value of publicly traded securities is generally the average of its high and low trading prices on the date of the gift. See Regulation section 25.2512-2(b)(1).

Private foundations: Special rules may apply to gifts of appreciated property to private foundations.

See IRC section 170(e). Donors should be well advised regarding current rules before completing such gifts.

The Donor's Income Tax Charitable Deduction

The federal income tax charitable deduction is subject to various percentage limitations. Prior to the *Tax Cuts and Jobs Act of 2017* (TCJA), the charitable deduction was limited to 50% of adjusted gross income (AGI). Gifts to public charities of cash, personal property and short-term capital gain property of all types were generally deductible up to this 50% limit. See IRC section 170(b)(1)(A).

Gifts to public charities of appreciated real property held long-term (together with certain other types of long-term appreciated property contributions) are generally deductible up to 30% of AGI. See IRC section 170(b)(1)(C).

The TCJA increased the amount of cash that can be deducted to 60% of AGI for gifts made between January 1, 2018 and December 31, 2025. See IRC section 170(b)(1)(G).

"Excess" contributions may be carried forward for up to five subsequent tax years. See IRC section 170(d)(1).

The interplay of the 60% and 30% limits and the carry-over rules sets out a hierarchy that governs the order in which various types of gifts (to public charities) are to be deducted as follows:

1. Current gifts subject to the 60% limit (Note: Current gifts of cash for tax year 2021 may be deducted up to 100% of AGI.)
2. Current gifts subject to the 30% limit
3. Carried-over gifts subject to the 60% limit
4. Carried-over gifts subject to the 30% limit

See IRC section 170(b)(1)(B).

A Special Election

A contributor of appreciated stock or other appreciated assets subject to the 30% limitation may find the 30%

limit too tight a restriction and prefer that the higher limitation be applied to his or her gift.

For example, the donated asset may be only slightly appreciated. Or the donation may be quite large relative to the donor's income, with the result that a large portion of the gift will have to be carried over into years when the donor will not be able to make such good use of deductions.

Donors in these circumstances may wish to avail themselves of a special election under IRC section 170(b)(1)(C) (iii). The election permits the donor to deduct all "30%" gifts at cost basis but to take the reduced gifts as a charitable deduction subject to the 50% limitation.

The election can be useful in some situations but needs to be considered carefully. The election applies to all gifts otherwise subject to the 30% limit (including carried-over contributions).

Substantiating Gift Value

Ordinarily, no "qualified appraisal" (as that term is defined in [Reg. section 1.170A-13C.pdf](#) Reg. section 1.170A-13(c)) is needed to sustain a claim of an income tax charitable deduction with respect to a gift of publicly traded securities.

If, however, shares of stock are subject to a sale restriction—such as a restriction under [Securities and Exchange Commission \(SEC\) Rule 144](#)—then even though the stock itself is publicly traded, the shares are not considered to be publicly traded. They therefore fall within the requirement for a "qualified appraisal" if the donor claims a value of more than \$10,000 for the shares. See Reg. section 1.170A-13(c)(7)(xi)(C).

Substantiation rules: It is important for donors to keep any written acknowledgments they receive from charities for charitable gifts. Since 1994, donors have been required to have special receipts from charities to which they have made gifts valued at \$250 or more. Receipts must specify the value of any benefits received in exchange for gifts or state that no benefits were received.

"S" Corporation Stock

A provision in the "Small Business Job Protection Act of 1996" allowed charities to be shareholders of "S" corporation stock beginning in 1998. Note, however, that any income or gain realized by the donee organization with respect to "S" stock is unrelated business income.

Restricted Stock

Gifts of stock options, warrants or stock restricted under Section 144 of the IRC or subject to other restrictions are beyond the scope of this publication. Specialized advice should be obtained prior to making charitable gifts of such assets.

Gifts of U.S. Savings Bonds

Series E, H, EE and HH bonds accrue interest income over the period they are held. Generally, the donor is allowed to deduct the full value in the year the proceeds are given; however, he or she must also report the increase in value over the basis as income for that year. Therefore, it may be more advantageous to fund the gift with other stocks or bonds that have been held long term.

Funding Alternative Charitable Gifts With Securities

It can be advantageous to use appreciated securities to fund qualified charitable remainder trusts and certain other gift planning arrangements that feature income for life or another period of time. The deduction in such cases is generally based on the full value of the securities transferred, and gain on the sale of the assets has historically been avoided at the time of the sale. See IRC section 664, regulations promulgated thereunder, and other relevant code sections and regulations for additional information.

Gifts of Closely Held Stock

In some situations, a person may wish to make a gift of stock in a closely held corporation. A donor who owns highly appreciated stock in a company that has significant cash reserves may be in the best position to make a sizable gift. Sometimes referred to as a "charitable stock bailout," such a gift is often followed by a redemption of the stock by the corporation.

If the donor owns all stock in the company, the donor's ownership percentage is not lessened by the gift, but cash to make the gift has effectively been provided by the corporation.

In a case where a donor wishes to pass control to another group of people, this gift will serve to lessen the donor's percentage of ownership and increase the relative percentage of ownership by others, without incurring a gift tax or estate tax.

The IRS has also ruled, however, that neither the donor nor the corporation may be in a position to compel redemption of the stock (for example, under an agreement entered into before the gift is made). See [Revenue Ruling 78-197](#).

The donor will receive a deduction for the full value of the stock. The deduction for the gift is limited to 30% of the donor's adjusted gross income. See IRC section 170(b)(1)(C).

A "qualified appraisal" is required if the claimed value exceeds \$10,000. See Reg. section 1.170A-13(c)(2)(ii).

Other Information Available

See www.irs.gov for a variety of publications and forms, including: charitable contributions (#526), non-cash contributions form and instructions (#8283) and determining the value of donated property (#561).

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