

# THE WELL-DESIGNED CHARITABLE GIFT

gift<sup>1</sup>

\ 'gift\  
noun

- 1: a notable capacity, talent, or endowment
- 2: something voluntarily transferred by one person to another without compensation
- 3: the act, right, or power of giving

For a nonprofit to accept a gift from a donor, having a well-defined gift acceptance policy can help facilitate a smooth transfer of ownership of property. Property can be divided into two sub-categories: *real* and *personal* property. Personal property can be further divided into tangible and intangible. The income tax charitable contribution deduction that a donor can receive is dictated by a taxpayer's adjusted gross income for a given year, the type of property gifted, and the type of charity receiving the gift.

In the following discussion, we highlight how gifts are transferred and valued and some considerations for nonprofit organizations to evaluate before accepting a charitable contribution.

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## TYPES OF PROPERTY

### **Real Property:**

- *Agricultural Property*
- *Commercial Buildings*
- *Condominiums*
- *Easements*
- *Houses*
- *Land*
- *Mineral Rights*
- *Timber*
- *Water Rights*

### **Intangible Personal Property:**

- *Cash*
- *Copyrights*
- *Life Insurance*
- *Partnership Interests*
- *Patents*
- *Stocks & Bonds*

### **Tangible Personal Property:**

- *Antiques*
- *Art*
- *Boats and Yachts*
- *Coin, Gun or Wine Collection*
- *Equipment*
- *Horses and other animals*
- *Rugs*
- *Vehicles*

## DONOR CONSIDERATIONS AND STRATEGIES

Since the passage of the 2017 Tax Cuts and Jobs Act, many donors continue to evaluate how the increase in the standard deduction will impact their charitable giving goals. Here are a few strategies that can be employed by donors who have stopped itemizing or who want to give in a more tax efficient way:

- An outright gift of appreciated marketable securities can still avoid capital gains tax to the donor. If the gift is large enough to allow the donor to itemize, it can be a double tax benefit with a charitable deduction on the current fair market value of the asset. For maximum tax efficiency, shares of marketable securities must be held for more than one year.<sup>2</sup>
- Even though the standard deduction was nearly doubled, donors may still be able to itemize contributions by a technique called “bunching.” This approach involves consolidating charitable contributions into a single tax year that otherwise would have been made over multiple tax years. In the giving year, based upon the amount, the donor may be able to itemize deductions. One way to maximize this technique might be to put their lump sum charitable contribution into a donor advised fund and elect to grant distributions over subsequent years. In the off-years, the donor takes the standard deduction.<sup>3</sup>
- Donors over age 70½ may make qualified charitable distributions directly from a traditional Individual Retirement Account to a qualifying charity. The distribution will count toward their required minimum distribution for the year. In addition, the distribution will generally be excluded from their adjusted gross income. However, if the individual also makes a tax deductible contribution to a traditional Individual Retirement Account, in order to avoid “double dipping,” the contributions will offset the amount excluded from income.<sup>4</sup>
- Donors can also demonstrate their charitable intent in their estate planning documents. Estates continue to enjoy an unlimited estate tax deduction on charitable gifts. Donors can also name charities as beneficiaries of their IRA or qualified retirement plans.<sup>5</sup>

Giving is emotional. Working with legal counsel and tax advisors, donors can find the most tax-efficient solution for satisfying their charitable goals.

## TRANSFER OF OWNERSHIP

The transfer of ownership happens during lifetime and/or at death. During a donor's lifetime, the gift might be an outright gift, a partial gift with restrictions provided in an agreement or a gift to set-up a charitable gift annuity or a charitable trust. The transfer will be deemed completed when the gift is delivered and there has been a change in control. Transfers may involve re-registration of the title or ownership.

Gifts transferred at death are by bequest or by provisions in a trust. The estate tax, in contrast to the income tax, allows an unlimited charitable deduction for all properly structured transfers, whether in cash or in-kind. A skilled financial planner or tax or legal advisor will know how to guide the donor in establishing such gift transfers to a charity.

## VALUATION OF GIFTED ASSETS

The valuation of gifted assets is generally based on the fair market value which is the price at which the property would change hands between a willing buyer and a willing seller. For listed securities and bonds, the fair market value is based on the mean of the high and low prices on the date of the gift. For bonds donated, accrued interest is also included in the gift amount. If no selling prices are available for the valuation date, it is acceptable to take the mean between the bidding and asking prices. The value of a gift of closely-held stock and in-kind property must be determined by an appraisal by a qualified appraiser. The IRS requires a qualified appraisal for donated property over \$5,000 in value with the exception of cash or publicly traded securities.

## VALUING DONATED PROPERTY AND NONCASH CONTRIBUTIONS

If the value of the donated property exceeds \$5,000, the donor must get a qualified appraisal for contributions of property (other than money or publicly traded securities). The donee organization is not a qualified appraiser for the purpose of valuing the donated property. For more information, review the IRS *Publication 561, Determining the Value of Donated Property*.<sup>7</sup>

For noncash donations over \$5,000, the donor must attach IRS [Form 8283, Noncash Charitable Contributions](#), to the tax return to support the charitable deduction. The donee must sign Part IV of Section B, Form 8283 unless publicly traded securities are donated. The person who signs for the donee must be an official authorized to sign the donee's tax or information returns, or a person specifically authorized to sign by that official. The signature does not represent concurrence in the appraised value of the contributed property. A signed acknowledgment represents receipt of the property described on Form 8283 on the date specified on the form. The signature also indicates knowledge of the information reporting requirements on dispositions. A copy of Form 8283 must be given to the donee.<sup>8</sup>

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Many donors are surprised to learn that the size of their income tax charitable deduction depends not only on the value of their gifts but on the type of assets used to fund them. In addition, in some deduction circumstances the deduction is limited to basis.<sup>6</sup>

If an organization receives charitable deduction property and within 3 years sells, exchanges, or disposes of the property, the organization must file [Form 8282, Donee Information Return](#). However, an organization is not required to file Form 8282 if:

- The property is valued at \$500 or less, or
- The property is distributed for charitable purposes.

Form 8282 must be filed within 125 days after the disposition and a copy of Form 8282 must be given to the previous donor. If the organization fails to file the required information return, penalties may apply.<sup>9</sup>

The IRS [Publication 526, Charitable Contributions](#), explains how individuals claim a deduction for charitable contributions.<sup>10</sup>

## TYPES OF GIFTS

### GIFTS OF CASH, PUBLICLY TRADED SECURITIES AND MUTUAL FUNDS

*Refer to the instructions of your organization's financial institution when accepting shares of publicly traded securities or mutual funds.*

Cash is acceptable in any form with checks made payable to the nonprofit organization's legal name. Publicly traded securities, which are traded on the NYSE, NASDAQ or other readily available exchanges, are typically accepted and can be transferred to the nonprofit's brokerage account. As a general rule, all marketable securities and mutual funds are sold as soon as practicable upon receipt.

### GIFTS OF RESTRICTED STOCK

*Closely examine documentation, including any agreement restrictions, before accepting restricted securities.*

Before accepting restricted stock held by executives of publicly traded companies, the charity should request and examine all relevant documents including all shareholder documents and lock-up agreement restrictions to confirm whether the charity can receive the shares and what restrictions may bind the holding and selling of shares. If a charity accepts these shares as donations, it will have to find an exception under the Securities Act in order to sell them. The exceptions available will depend on a number of factors. One common exception used to sell restricted securities is Rule 144, which allows sales provided that certain requirements are met with respect to the shares including a holding period before transfer and limitations on the volume of shares that can be sold during specific periods.<sup>11</sup>

Contributions of restricted stock to a public charity are generally deductible at fair market value on the date of the contribution; however, it is important for a donor to seek legal advice to fully understand any restrictions and limitations before donating the stock.<sup>12</sup>

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### Gifts that require review by the nonprofit prior to acceptance:

- Art, Coins and Other Tangible Personal Property
- Closely Held Stock
- Intellectual Property
- Life Insurance
- Mineral Interests
- Real Estate
- Restricted Stock
- Virtual Currencies

## GIFTS OF CLOSELY HELD STOCK

*Understand the implications of holding illiquid assets before accepting gifts of closely-held stock.*

Donating closely held stock can deliver tax advantages to a donor and benefit a charitable organization. However, the charity should determine if its gift acceptance and investment policies allow for the acceptance of closely held stock and the implications, if any, of holding an illiquid position and the feasibility of its liquidation. For the donor who is a business owner of closely held stock, this gift is possible, if the constituting documentation for the business permits additional owners and it is debt free. Since a gift of closely held stock requires special handling, the donor should consult with legal or tax counsel to maximize the benefits of tax strategies to support a nonprofit during lifetime in an outright gift or contribution of the asset to a charitable remainder trust.<sup>13</sup>

## GIFTS OF REAL ESTATE

*Conduct a thorough property evaluation, including whether a property carries any debt or if there is intent to sell, before accepting gifts of real estate.*

If a charity is in a position to accept real estate, a preliminary evaluation of the property is prudent to help ensure the success in closing the potential gift as well as in achieving the philanthropic goals of the donor. General acceptance considerations should be outlined in the gift acceptance policy for real estate and detailed in a real estate checklist. Preliminary items for review include value and condition of the property, the location, the conditional terms of the gift and the ownership interest. Additional considerations include encroachments, deed restrictions, license, easements and access. Furthermore, there are environmental issues that may need to be reviewed, such as, but not limited to, lead paint, asbestos contamination, and any other due diligence topics including remediation plans.<sup>14</sup>

If a property has debt or if the donor has a compressed timeline, particularly toward the end of the calendar year, the charity may consider declining the gift. Other circumstances that might impact the acceptance are a pre-arranged sale, unrelated business income tax issues if the property is not related to the organization's exempt purpose or if there is intent to sell the property within three years of receipt.<sup>15</sup>

For additional information on how Northern Trust can assist with a nonprofit's acceptance and management of real estate, please review [Accepting In-Kind Gifts of Real Estate by Mike Papierski](#).

## GIFTS OF MINERAL INTERESTS

*Consider which business structure would provide the maximum liability protection if you wish to retain a working interest in gifts of mineral rights.*

A mineral interest is defined as the ownership of the right to exploit, mine, or produce minerals lying beneath the surface of a property. Some charities will sell mineral interests as soon as practical, while others will hold and manage them. However, many charitable organizations stipulate in their gift acceptance policies that they will not accept any mineral interest that represents an operating interest or a working interest. By adopting a policy that precludes any type of mineral gift other than a royalty interest, charities will be safeguarded from the potential consequence of an expensive environmental clean-up. Fortunately, for tax-exempt organizations, royalties are considered passive income and are not subject to unrelated business income tax. Should a charity wish to retain a working interest, the organization should consider an appropriate business structure that would provide the greatest possible liability protection for the charity.<sup>16</sup>

Donors who contribute a royalty interest or a net profits interest may claim a charitable deduction for the fair market value of the interest, if they have held the interest for more than one year. A rule of thumb for a quick estimate of the fair market value will closely approximate the annual income produced by the interest multiplied by a factor of four. Any such contribution that exceeds \$5,000 in value must be substantiated by a qualified appraisal.<sup>17</sup>

Accepting gifts of mineral rights can provide substantial financial rewards for a nonprofit. As with all noncash contributions, the specialized nature of mineral interests requires internal and external expertise to manage. Our Northern Trust experts can manage day-to-day operations, navigate volatile pricing structures and determine the best course of action to sell or to lease.<sup>18</sup>

For additional information, please review [\*Nonprofits Should Take an Interest in Mineral Interests\*](#) by Josh Ryan Bibb and Leslie Tipping.

## GIFTS OF LIFE INSURANCE

*Know that the impact may vary based on whether the donor lists the charity as a beneficiary or transfers ownership of the policy.*

Life Insurance typically provides money to a spouse, children or other relatives upon the death of the insured person. However, a donor can make a significant impact on a favorite charity by designating a charity as a beneficiary or transferring ownership of an existing policy.

By transferring full ownership of an existing policy with cash value, the charity can cash out the policy immediately and the donor can receive an immediate income tax charitable deduction for the lesser of the policy's fair market value or the net premiums already paid. If the donor wishes to keep the policy in force by paying additional premiums owed on the policy, for each additional payment, an immediate income tax charitable deduction is available to the donor.<sup>19</sup>

### GIFTS OF ART AND OTHER TANGIBLE PROPERTY

*Consider how tangible assets may align with your organization's tax-exempt purposes to maximize these types of gifts.*

Donations of collections of art, coins and other tangible personal property have always been subject to a higher level of scrutiny. Generally, a donor will receive a higher income tax deduction if the collection has appreciated in value and has been held for more than one year. However, all of the appreciated value of the donated tangible personal property will be lost as a charitable income tax deduction if the Related-Use-Rule is not satisfied. The Related-Use Rule will limit the income tax deduction to a donor's cost basis unless the donated personal property is related to the charity's tax-exempt purpose. The Internal Revenue Code limits the deduction for donations of works of art or similar property created by the donor to the cost of materials used in the project. The Rule does not apply to the estate tax deduction for donations at death.<sup>20</sup>

### GIFTS OF VIRTUAL CURRENCIES

*Evaluate the, as of yet, unsettled legal and tax implications before accepting gifts of cryptocurrencies.*

Virtual currencies have also entered the landscape of the charitable gift. Although Bitcoins and any other such currencies exhibit the characteristics of both legal tender and more traditional securities, they lack the regulation that both these forms of property possess. Thus, it is logical to think of virtual currencies as collectible property which fluctuates in value. The IRS issued Notice 2014-21 that states, for tax purposes, virtual currencies are property and not currency. Supplemental guidance is provided in IRS Revenue Ruling 2019-24. Although the unsettled legal, tax and regulatory framework may give some organizations pause in the acceptance of cryptocurrencies, the establishment of sound practices in its acceptance and conversion to cash are imperative. Alternatively, the charity could refer its donor to a donor advised fund that accepts virtual currencies and have the donor recommend a grant back to the charity.<sup>21</sup>

## GIFTS OF INTELLECTUAL PROPERTY

*Make sure donors have consulted an intellectual property lawyer before accepting gifts of intellectual property.*

Gifts of intellectual property, including patents, copyrights, trademarks and other forms of intangible property, can be complex and potentially confusing yet one of many creative paths by which a donor may contribute to a charity. These contributions are subject to a matrix of tax rules and extensive reporting between the donee, the donor and the IRS. The initial charitable contribution deduction is limited and reduced by the amount of gain that would have been long-term capital gain if the property had been sold by the donor. Special rules apply for copyrights created and subsequently donated by the donor. Plus, a donor who makes a qualified intellectual property contribution may claim an additional deduction for a percentage of qualified donee income derived by the charity from its exploitation of the property subsequent to the contribution.<sup>22</sup>

It is prudent for the charity to advise the donor to seek the legal advice from an intellectual property lawyer prior to contemplating such a donation. In contrast, a transfer of intellectual property at death rather than during lifetime will receive an estate tax charitable deduction for the fair market value of what is transferred.<sup>23</sup>

## CONCLUSION

Accepting any gift is at the discretion of the charitable organization. The charity should not accept a gift unless it can be used or expended consistently with its purpose and mission. While a nonprofit should accept gifts of cash or cash equivalents and publicly traded marketable securities, a nonprofit's gift acceptance committee should review any noncash charitable gift before it can be accepted. Although a noncash charitable gift may appear to be complicated, the benefits to a charity and the donor will more than outweigh any issues confronted. Sound gift acceptance policies and comprehensive gift acceptance procedures are imperative to guide the donor through the gifting process. The result is a gift that supports the mission of the charity due to the successful collaboration of the gift officer, the donor and their legal counsel and tax advisors.

## ACKNOWLEDGMENTS

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## ENDNOTES

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- <sup>7</sup> <https://www.irs.gov/charities-non-profits/charitable-organizations/charitable-organizations-substantiating-noncash-contributions>
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- <sup>22</sup> David Wheeler Newman, "Gifts of Intellectual Property," Proceedings of the Northern California Planned Giving Council Masters Course, San Francisco, August 2015.
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