

THE IRS AND APPRAISALS OF GIFTS AND DONATIONS

Appraisers are encouraged to keep current on IRS rulings and requirements. All IRS forms and related materials are posted on the IRS web site (<http://www.irs.gov>).

Remember, and remind the client that we are appraisers, NOT accountants. We are not qualified to advise our clients about whether the claimed FMV needs to be reduced because of considerations regarding ordinary income property versus capital gain property.

Appraisers have the fiduciary responsibility to remind clients about IRS regulations regarding when an appraisal is needed, and what related paperwork must be submitted with appraisals.

For any donation of personal property with a claimed deduction:

- *Art work(s) with a total claimed value deduction at or exceeding \$20,000* must have a complete, signed appraisal by a qualified appraiser attached to the return; and be sure to verify IRS requirements regarding photo-documentation;
- *Clothing and household items not in good used condition and valued at or above \$500* must have a qualified appraisal attached to the return (otherwise, clothing or household items NOT in good or better used condition may not be claimed);
- *Any personal property with a claimed deduction exceeding \$250*, must include with the return a written communication from the qualified organization containing the name of the organization, the date of the contribution and the amount of the contribution; and the client must have an acknowledgement stating whether the organization provided any goods or services in exchange for the gift and, if so, a description and a good faith estimate of the value of those goods or services.

The 8283 Form must be completed according to the nature and value of the property and attached to the tax return for the following:

- *Any personal property with a claimed deduction exceeding \$500 but less than \$5,000, the client must complete Section A of the Form 8283 and attach it to the tax return (this includes donation of household contents exceeding claimed \$500);*
- *Any personal property with a claimed deduction of \$5,000 or more, Section B of IRS Form 8283 must be completed (including “qualified appraiser’s” and donee’s signatures) and attached to the tax return. A qualified appraisal must be prepared for the donated property.*

Qualified appraisal: An appraisal document that is made, signed, and dated by a qualified appraiser (defined later) in accordance with generally accepted appraisal standards, and that

- Meets the relevant requirements of Regulations Section 1.17A-13(c)(3) and Notice 2006-96, 2006-46 I.R.B.902 (available at www.irs.gov/irb/2006-46_IRB/ar13.html),
- Relates to an appraisal made not earlier than 60 days before the date of contribution to the appraised property,
- Does not involve a prohibited appraisal fee, and
- Includes certain information as stipulated in IRS Document 561, page 10 (<http://www.irs.gov/pub/irs-pdf/p561.pdf>)

Paperwork must accompany the tax return, including IRS Form 8283 and any required appraisal reports. The appraisal may have been made at any time subsequent to the date of donation and preceding the tax filing, but must be effective as of the date of donation or no more than 60 days preceding the date of the deed of gift. Appraisals completed prior to the actual donation of the gift are limited to the date of the report, and only considered valid by the IRS up to no more than 60 days prior to the date of donation. If the donor completes the donation more than 60 days after the date

of the appraisal report, the donor must obtain an updated report from the appraiser with a revised date and reflecting any variances in the relevant market(s).

Form 8282 (Recapturing the Donation Deduction): It is important for a donor to understand that, if within 3 years of the donation, the organization sells, exchanges, or otherwise disposes of the donated personal property, the organization must file an information return to the IRS on Form 8282, Donee Information Return, and send the donor a copy of the form. There may be negative implications for the donor's claimed deduction. Donor always needs to clarify with the recipient institution that the gift must be kept for at least 3 years.

A person cannot deduct the following:

- A contribution to a specific individual,
- A contribution to a non-qualified organization,
- The part of a contribution from which the individual receives or expects to receive a benefit (such as sports tickets or a dinner),
- The value of time or services,
- Personal expenses,
- A qualified charitable distribution from an individual retirement arrangement (IRA),
- Appraisal fees (remind the client that these may be claimed as related business expenses),
- Certain contributions to donor-advised funds, or
- Certain contributions of partial interests in property.

One may not deduct a charitable contribution of a fractional interest in tangible personal property, unless all interests in the property are held immediately before the contribution by the donor or by the donor and the qualifying organization receiving the contribution. If one makes an additional contribution later, the fair

market value of that contribution is the smaller of the fair market value of the property at the time of the initial fractional contribution, or the fair market value of the property at the time of the additional contribution.

The donor may be able to deduct the value of a charitable contribution of a future interest in tangible personal property only after all intervening interests in and rights to the actual possession or enjoyment of the property have either expired or been turned over to someone other than the donor, a related person, or a related organization. (See IRS statements pertaining to *Fractional Interest in Tangible Personal Property* and *Tangible Personal Property Put to Unrelated Use*.) In other words, if you donate a painting to a museum, but keep it in your possession during your lifetime, you give up ownership but retain the right to keep it for a specified time. And since you have an interest in the property, you cannot deduct the contribution. The deduction may only be claimed at the time you turn the painting over to the museum and give up all rights to its use, possession, and enjoyment.

A donor can carry over his or her contributions that cannot be deducted in the current year because they exceed the donor's adjusted-gross-income limits. The donor can deduct the excess in each of the next 5 years until it is used up, but not beyond that time. The total contribution deduction for the year to which the donor

Fair Market Value is the type of value that must be concluded for appraisal of non-cash charitable contribution of personal property to a qualified institution. We all learned that the IRS definition of *fair market value* is "The price of exchange between willing buyer and willing seller, neither having to buy or sell, and both having reasonable knowledge of all the relevant facts." The market level determined most relevant for the item being appraised can vary,

and does not always occur only at the auction level. It is up to the appraiser to identify all the most relevant markets (also called most common markets) in order to determine appropriate fair market value.

If the donor contributes personal property that has a *fair market value less than the donor's basis in the item*, the claimed deduction is limited to the fair market value. Donor cannot claim a deduction for the difference between the basis and the fair market value.

If the donor contributes property with a *fair market value that is more than the donor's basis*, the donor may have to reduce the fair market value by the amount of appreciation (increase in value) when figuring the deduction to be claimed. Different rules apply to figuring the deduction, depending on whether the property is ordinary income property or capital gain property. (See IRS Publication 551 for additional information about basis.)

General rule regarding the amount of deduction to be claimed from donation of capital gain property: When figuring the deduction for a gift of capital gain property, the donor generally can use the fair market value of the gift. There are exceptions, in certain situations, whereby the donor must reduce the fair market value by any amount that would have been long-term capital gain if the donor had sold the property for its fair market value. This generally means reducing the fair market value to the property's cost or other basis.

Related-Use Rule: The donor may not be allowed to claim fair market value for the donated property if the contributed personal property is put to unrelated use by the charity, or has a claimed value of more than \$5,000, and is sold, traded, or otherwise disposed of by the qualified organization during the year of the donation, and the organization has not made the required certification of exempt use as outlined on Form 8282, Part IV.

Unrelated use means a use that is unrelated to the exempt purpose or function of the charitable organization. For example, if 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 related. But if the painting is sold and the proceeds from the sale of that painting are used by the organization for educational purposes, the use is considered unrelated use.

Donation of self-created works: Since the 1970s, an artist may not claim the fair market value of self-created works donated by the maker to a qualifying nonprofit organization. The artist may only claim the cost of materials used in creating the works. ASA is a leading supporter of legislation to eliminate this penalty to artists. Donation of other intellectual property such as patents and may be allowed as a deduction, but donor must verify whether the property is allowed, and what documentation will be required when claiming the deduction.

Check the IRS Art Advisory Panel section at the IRS web site for changes that do not appear in the IRS Form 526:

- Donations exceeding \$50,000 are automatically reviewed by the IRS Art Advisory panel; this is a change from the previous automatic review of donations exceeding \$20,000;
- Photographic requirements have been revised to allow submission of digital images as well as or instead of 35mm images;

Appraisals for donations exceeding \$20,000 should follow the format recommended by the Art Advisory Panel.