Fundamentals of the
Income Tax Charitable Deduction

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"All generalizations are false, including this one."

-- Attributed to Mark Twain

This presentation provides general tax information and should not be construed as legal advice.

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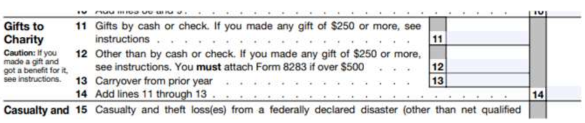
Which charitable deduction tax rules?

- This presentation reviews **income** tax charitable deduction rules for individuals and corporations
- For individuals, that means charitable deductions claimed on Form 1040, Schedule A
- In 2020, only about 10% of individuals itemized their deductions



Gifts to Charity	11	Gifts by cash or check. If you made any gift of $250 or more, see instructions	11
Caution: If you made a gift and got a benefit for it, see instructions.	12	Other than by cash or check. If you made any gift of $250 or more, see instructions. You **must** attach Form 8283 if over $500	12
	13	Carryover from prior year	13
	14	Add lines 11 through 13	14
Casualty and	15	Casualty and theft loss(es) from a federally declared disaster (other than net qualified	

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OVERVIEW

- What is a deductible charitable contribution
- Valuing return benefits
- What is the amount of the deduction
- Percentage limits on charitable deductions
- Substantiation requirements to claim a charitable deduction
- When is a gift complete and deductible
- Bargain sales
- Assignment of income

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What is a deductible contribution?

To be a deductible, a gift must be:

1. A gift of money or property
2. To (or for the use of) a qualified organization
3. No substantial benefit to the donor
4. Voluntary
5. Not disallowed as a deduction by some arcane tax rule.

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Deductible contribution – Rule #1
GIFT MUST BE MONEY OR PROPERTY

- No deduction for donated **services**.
  - **Out-of-pocket expenses** incurred to provide volunteer services to a charity are deductible (if correctly substantiated).
- No deduction for **pledges** or promises to give, even if legally enforceable.

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Deductible contribution – Rule #2

QUALIFIED RECIPIENT ORGANIZATION

- **Federal, state, or local governments** in the United States, for public purposes.
- **Section 501(c)(3) organizations**, if they are formed under US law.
- Posts or organizations of war veterans that are organized in the United States.
- For individual (but not corporate) donors, domestic fraternal societies operating under the lodge system, but only if the contribution is to be used exclusively for charitable etc. purposes.
- Section 501(c)(13) cemetery companies.

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Deductible contribution – Rule #2

QUALIFIED RECIPIENT ORGANIZATION

Gifts to individuals, no matter how needy or worthy, are not deductible

- Gifts **earmarked** to benefit a particular individual are also not deductible
- For a gift to be deductible, the **charity** (not the donor) must decide who benefits

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Earmarked Gifts

For a gift to be deductible, the **charity** (not the donor) must decide who benefits

Example 1:

Jane Generous gives the university money to fund a scholarship. She specifies that the scholarship recipient must be Joe, a needy teen in foster care who is totally unrelated to Jane.

Result: No deduction for Jane.

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Earmarked Gifts

For a gift to be deductible, the **charity** (not the donor) must decide who benefits

Example 2:

Jane funds a scholarship, but only <u>recommends</u> (and does not require) that the University consider awarding the scholarship to Joe Needy.

Result: Deduction for Jane
(but steer clear of donor advised fund rules).

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Earmarked Gifts

For a gift to be deductible, the **charity** (not the donor) must decide who benefits

Example 3:

The University selects 10 scholarship recipients and then asks Phil to "sponsor" a particular student.

Result: Deduction for Phil.

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Earmarked Gifts

- A deduction also can be denied if the donor earmarks a gift to hire a particular employee to perform the work.

Example 4:

Rita gives money to a university, specifically designated to support one particular professor's independent research.

Result: Probably no deduction for Rita.

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Earmarked Gifts

- For a gift to be deductible, the charity must have control over the funds and discretion over their use.

Example 5:

Maria gives money to the symphony to commission new orchestral music. The donor recommends (but does not require) that the orchestra hire a particular composer.

Result: Deduction for Maria.

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Deductible contribution – Rule #2

QUALIFIED RECIPIENT ORGANIZATION (cont'd)

- For a gift to be deductible, the qualified charity must have **discretion and control** over the use of the funds.
- **Conduit gifts** (earmarked by the donor to be passed through to another, non-qualified organization) are not deductible

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Conduit Gifts

Example 6:

Don gives money to a 501(c)(3) Arts League, and specifies that the League must use the money to make a grant to Dance Company. Dance Company is NOT a 501(c)(3) organization.

Result: No deduction for Don.

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Conduit Gifts

Example 7:

The Arts League Board decides to make a grant Dance Company for a production of Swan Lake.

The Arts League then accepts a gift from Don to support the League's pre-approved grant for Swan Lake, but the Arts League reserves the right to decide which dance company to fund.

Result: Deduction for Don (model C fiscal sponsorship).

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Conduit Gifts

Example 8:

Don gives money to the Arts League on condition that he retain the right to make non-binding suggestions to League on how the money is used.

Result: Deduction for Don (donor advised fund).

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Deductible contribution – Rule #3

NO SUBSTANTIAL BENEFIT

- Donative intent is required for a deductible charitable gift

"The *sine qua non* of a charitable contribution is a transfer of money or property without adequate consideration. The taxpayer, therefore, must at a minimum demonstrate that he purposely contributed money or property in excess of the value of any benefit he received in return."

US v. American Bar Endowment, 477 U.S. 105, 118 (1986)

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Deductible contribution – Rule #3

NO SUBSTANTIAL BENEFIT

A real estate developer donates land to create a public park. The contribution was necessary to secure permits to build houses on the remainder of the developer's land.

Result: No charitable deduction for developer.

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Deductible contribution – Rule #3

NO SUBSTANTIAL BENEFIT

- A charitable deduction can be denied if the donor gets substantial benefit as a result of the gift, **even if the benefit is not provided by the charity**.

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Deductible contribution – Rule #3

NO SUBSTANTIAL BENEFIT

A company donates land to build a public school. The company knows that the school district, to comply with state law, will build a second public road to the school site. The new road will greatly increase the value of the donor's remaining undeveloped land by giving it street frontage.

Result: No charitable deduction.

Ottawa Silica Co. v. US, 699 F.2nd 1124 (Fed. Circuit 1983).

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Deductible contribution – Rule #3

NO SUBSTANTIAL BENEFIT

Singer provides sewing machines to a public school in a bargain sale; the machines are for use in home economics classes. The school district doesn't promise any return benefit – but Singer builds its brand by having students learn on Singer machines.

Result: No charitable deduction for Singer.

Singer Co. v. US, 499 F. 2nd 413 (Ct. Claims 1972).

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Deductible contribution – Rule #3

Partially deductible gifts

- For any part of a payment to be deductible, the **donor must purposely contribute more** than the value of return benefits.
- The amount of the deduction is the value of the gift minus the value of the return benefits.

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Deductible contribution – Rule #4

PAYMENT MUST BE VOLUNTARY

Marcus buys a book. The publisher promises that $1 of the purchase will go to charity.

Result: No deduction for Marcus.

(But there is potentially a business deduction for the publisher. Treas. Reg. 162-15(a) allows a business deduction for payments charitable organizations where the payment is directly related to the taxpayer's business and is made with reasonable expectation of commensurate financial return.)

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Deductible Contribution – Rule #5

ARCANE DISALLOWANCE RULES

"Partial interest" rule:

- A gift of only part of the donor's interest in property is only deductible only if the gift takes specific, regulated forms.

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Deductible Partial Interests

- A gift to a **split interest trust** (with both private and charitable beneficiaries) is deductible only if it is in the form of a CRT, CLT, or pooled income fund.
- A **remainder interest in property** is only deductible if it is a remainder in a personal residence or farm.
- **Fractional interests** (a share of each and every property right) are deductible.
- **Conservation easements** meeting certain requirements are deductible.

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Partial Interest Rule

- The right to <u>use</u> property is a partial interest.
- Giving a charity the right to use real estate is not a deductible gift.
- A donor's retention of significant rights with respect to donated property (voting rights in stock, for example) can defeat the deduction.

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More Arcane Disallowance Rules

Disallowances related to **lobbying**:

- Out-of-pocket expenditures on behalf of a charity aren't deductible if the expenditure was for the purpose of influencing legislation.
- No deduction for contributions that are earmarked for influencing specific legislation.
- No deduction for a contribution to an organization that attempts to influence legislation "on matters of direct financial interest to the donor's trade or business, if a principal purpose of the contribution was [avoiding the rule that disallows business deductions political activity].

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More Arcane Disallowance Rules

- No deduction if the charity pays premiums on a personal benefit contract (insurance, annuity, etc.) benefiting the donor.
- No deduction for volunteer travel expenses "unless there is no significant element of personal pleasure, recreation, or vacation in such travel."
- No deduction for gifts to colleges/universities if the taxpayer directly or indirectly receives a preferential right to purchase athletic tickets.
- Special rules limit the deduction for fractional interests in tangible personal property.

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OVERVIEW

- What is a deductible charitable contribution
- **Valuing return benefits**
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Valuing Return Benefits

- When a donor <u>intentionally</u> gives a charity more than the return benefits are worth, the donor can deduct the difference
- The value of some "insubstantial" benefits can be ignored by the donor claiming the deduction (and by the charity in preparing receipts)

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Insubstantial Benefits

- **Naming rights** have traditionally been considered insubstantial and don't reduce the donor's deduction.
- **Public acknowledgements** of the donor's support are considered insubstantial as long as they don't cross the line into advertising.
- **Intangible religious benefits** are considered insubstantial for tax purposes.

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Insubstantial Benefits

Certain "token items" don't count:

1. When all benefits are worth less than 2% of the value of the gift, AND also worth less than $136,* the benefits are insubstantial.
2. If the gift is at least $68,* and the only benefits are token items bearing the charity's name or logo that cost in aggregate less than $13.60,* the token items are insubstantial.

* In 2025. These amounts are inflation adjusted each year.

These exceptions come from Rev. Proc. 90-12, incorporated by reference into Treas. Reg. 1.170A-13.

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Insubstantial Benefits

TOKEN BENEFITS – Example 1

Billy pays $500 to an environmental charity in return for a copy of "Fifty Simple Things Kids Can Do to Save the Earth," (available from Amazon for $9.95).

Result: Billy's deduction is $500. The return benefit is worth less than 2% of his gift (and also less than the upper cap of $136* dollars).

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Insubstantial Benefits

TOKEN BENEFITS – Example 2

Bettina pays $10,000 to a museum in return for a limited-edition print (donated by the artist) worth $175.

Result: Bettina's deduction is $9,825. The return benefit is worth less than 2% of her gift; but it is more than the upper limit of $136, so it falls outside the "token items" exception.

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Insubstantial Benefits

TOKEN BENEFITS – Example 3

Cassandra's $70 membership gets her a magnet and mug with charity's name and logo on them (cost for both is $8)

Result: Cassandra's deduction is $70. Her gift is more than $68,* the items she receives all have the charity's name on them, and the aggregate cost of the items is less than $13.60.

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Insubstantial Benefits

NEWSLETTERS and PROGRAM GUIDES

Newsletters or program guides (other than commercial quality publications) are an insubstantial benefit if

- their primary purpose is to inform members about the activities of the organization, and
- they are not available to nonmembers by paid subscription or through newsstand sales.

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Insubstantial Benefits

Membership benefits exception

- The membership must cost $**75 or less,** and
- The membership benefits consist of **recurring rights and privileges** such as
  - Discounted admission to events
  - Discounts from the gift shop
  - Free or discounted parking, or
  - Free or discounted admission to member-only events <u>if</u> the per-person costs of the event (not including overhead) is less than $13.60*

**In 2025. The cap on cost is adjusted for inflation.*

The $75 cap on the membership dues is <u>not</u> adjusted for inflation. Treas. Reg. Section 1.170A-13(f)(8).

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Valuing Return Benefits

- Benefits are in consideration for a gift "if, at the time [of the payment], the taxpayer receives or expects to receive goods or services from that entity or any other party in return."
- Donor may rely on the charity's good faith estimate of the FMV of benefits (unless the donor knows or should know the estimate is wrong or unreasonable).

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Valuing Return Benefits

- A charitable organization may use any reasonable method to estimate benefit value, provided it applies the method in good faith.
- If the goods or services are not commercially available, the value may be estimated based on similar goods or services (even if they lack the unique qualities of the charity's offerings).
- Celebrity presence doesn't have to be valued.

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Valuing Return Benefits

RAFFLES:

- There is no deduction for purchase of a raffle ticket; the donor is paying for the chance to win.

AUCTIONS:

- Those who donate goods for the auction get may get a deduction for the value of the property donated.
- Those who purchase items at the auction can only deduct the difference between their payment and and the fair market value of the item purchased.

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What about the

Qualified Sponsorship Rules?

- The IRS "qualified sponsorship" rules draw lines between advertising income (subject to unrelated business income tax) and sponsorship payments (that are not taxable).
- These regulations do <u>not</u> technically address charitable deduction rules.
- However, qualified sponsorship rules are a reasonable guide for deciding whether publicity for sponsors is an insubstantial benefit (mere recognition) that doesn't have to be valued for charitable deduction purposes.

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OVERVIEW

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Amount of the Deduction

In this section, we review the amount of the deduction allowed:

- **Without considering percentage limits** on a donor's overall charitable deductions
- **Without taking into account any return benefits** provided to the donor (the FMV of which may reduce the deduction)

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Amount of the Deduction

MONETARY GIFTS

For gifts of cash (i.e., donations of money, whether by cash, check, credit card, or wire transfer), the donor can deduct the face value of the cash.

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Amount of the Deduction

NON-CASH PROPERTY

For gifts of assets other than money, the deduction depends on:

1. Is the gift to a public charity or private foundation? (Private operating foundations are treated like public charities).
2. What would the donor's tax consequences be if s/he sold the property instead of donating it?
3. For gifts of tangible objects, how does the charity use the donated object?

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Gift of non-cash assets to a Public Charity (or POF)

General rule:

Deduction is the FMV of the donated property *minus*

- any ordinary income and/or
- Any short-term capital gain

that the donor would realize on a sale of the property.

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Gift of non-cash assets to a Public Charity (or POF)

What the general rule means:

- For investment assets or personal assets held more than a year, the deduction is FMV
- For short-term assets held less than a year, inventory or property held for sale to customers, or other ordinary income property, the deduction is basis or FMV, whichever is less.

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Gift of non-cash assets to a Public Charity (or POF)

Example 1:

Julia owns corporate stock that she bought in five years ago for $100 per share.

She donates the stock on day when the average trading price is $120 per share.

Result: Julia's deduction is $120 per share (fair market value).

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Gift of non-cash assets to a Public Charity (or POF)

Example 2:

Sandy owns corporate stock that he bought in five months ago for $100 per share.

He donates the stock on day when the average trading price is $120 per share.

Result: Sandy's deduction is $100 per share (his costs basis). From the $120/share FMV, he must subtract the amount that would be short-term capital gain if he sold the shares.

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Gift of non-cash assets to a Public Charity (or POF)

Example 3:

Kenji owns corporate stock that he bought for $150 per share.

He donates the stock on day when the average trading price is $120 per share.

Result: Kenji's deduction is $120 per share (FMV). This is true whether or not he held the shares for more than one year, because he would realize a capital loss (not gain) if he sold the property.

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Gift of non-cash assets to a Public Charity (or POF)

Tangible personal property

If the Charity **uses the item for a related purpose** (meaning the item is used by charity in carrying out its function) the rule is the same as for other non-cash property:

- The deduction is FMV minus any ordinary income or short-term capital gain the donor would recognize on a sale.

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Gift of non-cash assets to a Public Charity (or POF)

Tangible personal property

If the Charity puts the object to an **unrelated use** (for example, the charity sells the object for money)

- The deduction is limited to the donor's tax basis or FMV, whichever is less.

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Gift of non-cash assets to a Public Charity (or POF)

Example 4:

Emily donates her mint-condition antique Fiestaware tea set to charity. She bought it at a yard sale 25 years ago for $15; the charity sells it right away on EBay for $1,000.

Result: Emily's deduction is $15 (basis, since its tangible property that is not used by the charity for a purpose related to its mission).

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Gift of non-cash assets to a Public Charity (or POF)

Related Use of Tangible Property

- A donor can claim a FMV deduction based on a related use by the charity if, at the time of the contribution, it was reasonable to assume the charity would put the donated item to a related use.
- But there are recapture rules that apply to the donor if the charity then disposes of the property within 3 years without substantial related use. (This only applies if the claimed deduction was $5,000 or more).

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Gift of non-cash assets to a Public Charity (or POF)

Special rules for tangible property:

- **Motor Vehicles**: If the charity sells the vehicle without significant charitable use or material improvement, the donor's deduction is limited to the amount the charity actually receives from the sale.
- **Household objects**: No deduction unless the item is in good used condition or better. (Doesn't apply to art, jewelry, antiques, or any item worth more than $500 that is appraised).

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Gift of non-cash assets to a Public Charity (or POF)

Special rules for tangible property:

- **Enhanced deduction for certain business inventory gifts (generally twice basis)**:
  - Corporate donations that will be used to care for the ill, needy, or children
  - Any business that donates wholesome food that will be used to feed the ill, needy, or children
  - Contributions of book inventory to public schools
  - Contributions of scientific equipment made by the donor, and used by a charity for research

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Gift of non-cash assets to a Public Charity (or POF)

Special rules for tangible property:

- **Fractional interests in tangible property**: the deduction for gifts of subsequent fractional interests is capped at the value of the initial contribution. This mostly affects fractional interests in art donated to museums.
- **Taxidermy gifts**: If donated by the person who got the thing stuffed, the donation is limited to basis.

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Gift of non-cash assets to a Public Charity (or POF)

Special rules for INTELLECTUAL property:

- For gifts of patents, some copyrights, and some other intellectual property, the donor's initial deduction is limited to basis, but the donor can claim subsequent donations to the extent the charity earns income from the donated property within ten years of the gift.

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Gifts of non-cash assets to a Private (Nonoperating) Foundation

- **Publicly Traded Securities to a PF**

  For publicly traded stock held more than a year, deduction is FMV.

  (Applies to "qualified appreciated stock" meeting certain requirements).

- **Any other asset to a PF**:

  Deduction is basis or FMV, whichever is less.

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Deductions for Planned Gifts

Bequests

- No income tax charitable deduction
- But the value is excluded from the donor's taxable estate.
- If "income in respect of a decedent" is donated, estate or heirs are spared paying income tax

Charitable Remainder Trusts

- Deduction is actuarial value of remainder going to charity.
- Calculation is based on the deductible amount for an outright gift.

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Deductions for Planned Gifts

Charitable Gift Annuity

- Deduction is the amount transferred to charity, minus the present value of the annuity (value of annuity is calculated based on annuity amount, annuitant age, and interest rates published by the IRS).
- Calculation is based on the deduction amount for an outright gift.

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What assets should donors give?

For gifts to **public charities/POFs**:

- Appreciated, long-term capital gain property* is a sweet deal:
  - The donor gets a FMV deduction AND
  - Doesn't recognize any capital gain
  - Donor is better off giving the asset than if he or she had sold the property and given the proceeds.

*But not tangible property, unless the use is related.

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What assets should donors give?

For gifts to **private (nonoperating) foundations**:

- Qualified appreciated stock is still a sweet deal.
- But for any other property, the deduction is the lesser of FMV or basis, so property gifts are most attractive if the property's basis is close to or above FMV.

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What assets should donors give?

It rarely makes sense to give **depreciated investment property** (whether long- or short-term):

- Deduction is FMV, but donor misses the chance to claim a loss
- Donor is better off selling the asset and giving the proceeds, since she or he gets both the FMV deduction (on a gift of money) and the loss to offset other capital gains

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Percentage Limits on Charitable Deductions

- Overall limits on a donor's annual charitable deductions are based on donor's "contribution base" (AGI without net operating loss carrybacks).
- Limits differ for individual and corporate donors.
- **For C corporations**, the limit is 10% of taxable income.

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Percentage Limits on Charitable Deductions

Individual Donors:

For gifts to **public charities/POFs**

- 50% of AGI for cash gifts*
- 30% of AGI for appreciated property

(50% for property if deduction is limited to the donor's basis)

* The limit for cash gifts is increased to 60% of AG through the end of 2025.

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Percentage Limits on Charitable Deductions

Individual Donors:

For gifts to **private nonoperating foundations:**

- 30% of AGI for cash gifts
- 20% of AGI for appreciated property

Nongrantor Trusts:

- Have their own rules under Section 642(c) which differ

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Percentage Limits on Charitable Deductions

- Any deduction in excess of limits can be carried forward for five years
- Higher deduction limits apply to gifts of land for conservation – 50% of AGI for most taxpayers, 100% for ranchers / farmers, with a longer carry forward
- A 20% limit applies to gifts "for the use of" a charity, including the deduction for creating a grantor CLT

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Haircuts on itemized deductions

- Section 68 of the tax code reduces the aggregate amount of itemized deductions for higher-income taxpayers (including charitable contribution deductions).
- This section was suspended in 2018-2025, but will apply again in 2026 unless Congress amends the law.

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Substantiation

Monetary gifts below $250:

The donor must have either:

- a bank record OR
- a receipt from the charity showing the charity's name, date of the contribution, and amount of the contribution.

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Substantiation

Property gifts with deduction below $250:

The donor must have either:

- A receipt from the charity showing the charity's name and address, date of contribution, and a description of the property, OR
- The donor may maintain reliable written records containing the same information if the contribution is made in circumstances where it is impractical to obtain a receipt (such as by depositing items at a drop site).

The donor should also have records to support their determination of FMV.

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Substantiation

Gifts of money or property of $250 or more:

The donor must ALSO obtain a contemporaneous written acknowledgement from the charity stating:

- The amount of money (or a description of the property) donated;
- Whether the charity provided any goods or services to the donor in consideration of the donation;
- And, if goods or services were provided, a good faith estimate of their value.

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Substantiation

Gifts of property of $500 or more:

The donor must ALSO attach Form 8283 to the donor's tax return:

- The form asks the donor to report when and how the property was acquired, the donor's basis, and the method of determining FMV

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Substantiation

Gifts of property of $5,000 or more:

Unless the gift is publicly traded securities:*

- The donor must get a qualified appraisal of the donated property;
- The appraiser must sign the donor's Form 8283; and
- The charity must sign Form 8283 (but to acknowledge receipt of the property, not to confirm the claimed value).

* There are a few other exceptions to the appraisal requirement for certain IP, vehicles, or inventory (all situations where no FMV deduction is available).

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Substantiation

Gifts of Property of more than $500,000. The qualified appraisal (if required) must be attached to the return.

Gifts of Art of $20,000 or more. Appraisal must be attached to the return and the donor must keep a photo.

Gifts to Donor Advised Funds: not deductible unless the charity acknowledgement states that the sponsoring charity has exclusive legal control over the assets contributed.

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Substantiation

Motor Vehicles. See IRS pub. 4303 (A Donor's Guide to Vehicle Donation) and Pub. 4302 (A Charity's Guide to Vehicle Donation).

Conservation Easements. Special rules apply.

Household items / Clothing. If the item is not in good used condition or better, an appraisal and Form 8283 is required to claim a deduction of more than $500 for a single item.

Out-of-Pocket Volunteer Expenses. The charity "no goods and services" letter must describe the services (and the donor must have expense documentation).

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Contemporaneous Written Acknowledgements

- A contemporaneous written acknowledgment from the charity (with "no goods or services" language or a description and estimated value of the benefits) is **strictly required** to deduct a contribution of $250 or more.
- In general, a charity has no *legal* obligation to provide the acknowledgement to donors.
- Exception: Quid pro quo gifts over $75

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Quid Pro Quo Gifts

If the donor gives **$75 or more**, and receives goods or services in return, the charity must provide a written statement to the donor that:

- Provides a good-faith estimate of the fair-market value of the goods or services provided.
- States that the donor's deduction is limited the amount by which the amount of money (or value of property) contributed by the donor exceeds the fair market value of the goods or services provided in return.
- The charity can ignore insubstantial benefits

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Date of Gift

In general: A gift is made on the date that the donor gives up control over the property.

Mailbox rule: If a donor mails a check which clears in due course, the date of mailing is the date of gift.

Credit cards. A contribution made by credit card is deductible in the year in which the charge is made, regardless of when the donor pays the credit card company.

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Date of Gift

Publicly Traded Securities. If the donor transfers securities from the donor's brokerage account to the charity's account, the gift is complete when the securities are actually transferred.

Closely Held Stock.

- If the donor directs the company to transfer the stock in company records, its when the company records the transfer.
- If the donor executes a stock power of attorney or signs over physical shares, its when the documents are delivered (mailbox rule applies if sent by US mail).

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Date of Gifts

Real Estate

- Complete when the charity takes title under the law of the state where the real estate is located.
- This usually requires delivery of a signed deed, but not necessarily recording.

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Date of Gifts

Tangible Personal Property

- A gift of tangible objects requires delivery to the charity (or an agent of the charity).
- In some cases, constructive delivery can be shown if the donor gives the charity the means to obtain the property and gives up control.
- There is no deduction for a future interest in tangible property (so if an object is donated to a CRT, the deduction is deferred until sale).

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INCOMPLETE GIFTS

- If a gift is conditional (requires some act or occurrence or property will be returned to the donor) there is no deduction unless the possibility that the condition will not be fulfilled is so remote as to be negligible
- This type of condition will not affect the deduction if there is an unconditional "gift over" to another charity if the original donee cannot fulfill the condition.

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INCOMPLETE GIFTS

Francis donates land to her church on condition that it be used for a new building. If the land is not used for this purpose, it will revert to Francis. The church doesn't yet have financing in place to construct the new building.

Result: No deduction for Francis until the possibility that the new building won't be constructed becomes so remote as to be negligible.

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OVERVIEW

- What is a deductible charitable contribution
- Valuing return benefits
- What is the amount of the deduction
- Percentage limits on charitable deductions
- Substantiation requirements to claim a charitable deduction
- When is a gift complete and deductible
- Bargain sales
- Assignment of income

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Bargain Sales

Bargain sale: When a donor transfers property to charity, and receives consideration in return (but the consideration is worth less than the donor's gift)

- The donor can deduct the difference between the value of the property donated and the amount of money (or the value of the services or property) received in return.
- But the donor also must recognize gain on the "sale" part of the transaction.
- To calculate gain (or loss), the donor must allocate his or her basis between the "gift" and the "sale"

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Bargain Sales

Quincy sells his home to a hospital for $100,000. The appraised value is $1 million. (He has owned it for years, and his basis is $300,000).

- For the "gift" part, Quincy gets a $900,000 deduction (value of donated property minus the amount received).
- For the "sale" part, Quincy recognizes $70,000 in long-term capital gain. (Amount received minus the portion of his basis allocated to the "sale" part of the transaction).

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Bargain Sales

Charitable Gift Annuities

Transfer of property in exchange for a CGA is a bargain sale.

- The donor will have a deduction on the "gift" part of the transaction; but the donor will also recognize gain on the "sale" part if appreciated assets are donated.
- If the donor (and spouse) are the only annuitants, and if the annuity cannot be transferred to anyone but the charity, the donor can recognize this gain the donor's life expectancy, as annuity payments are received.

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Bargain Sales

Property Subject to Debt

If donated property is subject to a mortgage or lien, the donor is treated as if s/he had sold the property for the amount of the debt. It is therefore a bargain sale that triggers gain (or loss) recognition.

- This is true whether the debt is recourse or nonrecourse, and whether or not the charity agrees to pay it. Treas. Reg. 1.1011-2(a)(3).
- Beware of UBIT! With an intervivos gift, the property will be debt-financed in the hands of the charity unless the donor has owned it for 5 years and the debt is more than 5 years old.

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Bargain Sales

Property Subject to Debt

If donated property is subject to a mortgage or lien, the donor is treated as if s/he had sold the property for the amount of the debt, making the transaction a bargain sale that triggers gain (or loss) recognition.

- This is true whether the debt is recourse or nonrecourse, and whether or not the charity agrees to pay it. Treas. Reg. 1.1011-2(a)(3).

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Bargain Sales

Szu donates rental real estate to University. The property is worth $1,000,000 and is subject to a $200,000 mortgage. (Szu has owned the building for years, and her basis is $250,000).

- Szu gets an $800,000 charitable deduction (her equity in the property).
- Szu recognizes long-term capital gain of $150,000 (The $200,000 in minus the allocable portion of her basis).

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OVERVIEW

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Assignment of Income

Big Picture:

- A taxpayer cannot avoid being taxed on income by directing that the income be paid to someone else.
- An anticipatory assignment of income is disregarded and
  - The taxpayer still has to pay taxes on the income
  - And is then treated has having transferred the income to the assignee.

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Assignment of Income

In Charitable Giving:

- A donor is still taxed on income generated by his or her property, even if the donor directs that the income from the property be paid to charity.
- A donor is still taxed on compensation paid for his or her services, even if the donor directs that the compensation be paid to charity.

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Assignment of Income

Karl, a realtor, will receive a commission on the sale of his client's house. Karl directs the escrow company to pay his commission to his favorite charity.

Result:

- The commission is still included in Karl's taxable income.
- He will be entitled a charitable deduction (or possibly a business deduction, if this is a marketing technique that Karl uses to advertise his business.)

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Assignment of Income

Robert, an author, wrote a book about dog fighting. He assigned all his royalties to the Humane Society, but kept the underlying copyright.

Result:

- The royalties are taxable income to Robert, but he will get a charitable deduction as each payment is made to charity.

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Assignment of Income

Prearranged Sales

Once property is in contract for sale, it is too late for the donor to avoid recognizing capital gain by donating the property.

- Even if the donor transfers the property into the charity's name before the sale closes, the donor will still be taxable on the gain.
- The donor will be treated as if he or she donated the sales proceeds to charity (and may get a corresponding deduction of the gift is properly substantiated).

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Assignment of Income

Prearranged Sales

- How far a donor can go in negotiating a sale before the transfer will be an anticipatory assignment of income depends on the "realities and substance of the underlying transaction."
  Estate of Hoenshied, et ux, TC Memo 2023-34 (2023).
- Generally, the donor will not be taxed on gain from the sale so long as there is no binding commitment to sell at the time property is donated, and the charity is free to sell or keep the property (and to negotiate sale terms, if it sells).

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IRS Resources

- IRS Publication 526, Charitable Contributions
- IRS Publication 561, Determining the Value of Donated Property
- IRS Publication 1771, Charitable Contributions: Substantiation and Disclosure

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