What donors need to know about appreciated property

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Individuals considering gifts of appreciated property to charity should be aware that not all property donations are treated equally for income tax purposes. Depending on the class of property, prior use, the donor's holding period and type of donee, the charitable contribution deduction could be based on fair market value, the donor's tax basis or another metric – or disallowed entirely. Donors contemplating major non-cash gifts should consult with their advisors early in the process.

APPRECIATED PROPERTY

With some exceptions, an individual's deduction for a charitable gift of property held as a capital asset for more than one year generally is based on the property's fair market value. In contrast, the deduction is limited to the lesser of fair market value and the donor's tax basis if the donor's holding period is one year or less, the property is 'ordinary income' property (such as inventory) or the donee is a private foundation other than an operating or 'distributing' foundation. Deductions are subject to income limitation thresholds, with a five-year carryover period for the unused portion.

- **Securities**. Gifts of stock, bonds and other securities to public charities generally are deductible at fair market value if held for more than one year. The deduction is limited to the lesser of fair market value and basis if the donor is a trader or dealer in securities and contributes securities held as inventory. Deductions are basis-limited for gifts of securities to most private foundations unless the security is publicly traded stock. Note: If property has lost value, the donor should consider selling it first to realize the loss and then donate the proceeds.
- **Real estate**. Real estate held for more than one year as an investment or business asset (other than inventory) generally is deductible at fair market value. The deduction is limited to the lesser of fair market value and basis if the property is inventory in the donor's hands or if (in most cases) the donee is a private foundation. If the donated property is subject to a mortgage, the donor could recognize gain, depending on her basis in the property.
- **Artwork and other tangible property.** Tangible personal property held for more than one year as an investment asset is deductible at its fair market value if the donee is a public charity and the donee's use of the property will be related to the donee's exempt purpose. Thus, an art collector could deduct the fair market value of artwork donated to a museum. (Disposition of the property by the donee within three years is reportable by the donee and potentially can trigger recapture of the donor's deduction.) An art dealer donating inventory or an artist donating her own work is limited to a basis deduction.
- **Patents and other intellectual property.** Charitable deductions for patents, copyrights and other intellectual property are limited to the donor's basis. Depending on the legal life of the property, the donor potentially may claim additional deductions based on forgone income (subject to certain percentage adjustments) for up to 10 years. The additional deductions do not apply to gifts to most private foundations.
- **Partial interest gifts.** With the exception of charitable remainder trusts and certain transfers of interests in personal residences and farms, donations of partial interests in property generally are not deductible unless the donor is transferring an undivided portion of her entire interest (i.e., there is no separation of present and future interests).

SUBSTANTIATING AND REPORTING NON-CASH DONATIONS

The donor must receive written acknowledgement from the donee for any gift of $250 or more by the earlier of the donor's filing deadline (including extensions) and the date the donor's tax return is actually filed. Non-cash charitable contributions of more than $500 must be reported on IRS Form 8283, which is filed with the donor's tax return. The form requires detailed information on the donor, donee and contributed property. A "qualified appraisal" is required for most items of property valued at more than $5,000, but is not required for publicly traded securities, most inventory and intellectual property and certain other assets. Both the donor and the donee (and the appraiser for items requiring a qualified appraisal) must sign the form. The appraisal itself must be attached for items or groups of similar items valued at over $500,000. ■