SIXTH ANNUAL HIGHER EDUCATION TAXATION INSTITUTE 2018
Charitable Contribution Essentials[1]

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I. Charitable Contribution - Defined

A. Section 170 of the Internal Revenue Code (IRC) provides for an income tax deduction for any charitable contribution completed within the taxable year. IRC 170(c) specifies that a charitable contribution is a "gift or contribution made to or for the use of a qualified charitable organization."

B. The *sine qua non* of a tax-deductible charitable contribution: a voluntary transfer accompanied by donative intent. A charitable contribution is "a transfer of money or property without adequate consideration." U.S. v. American Bar Endowment, 477 U.S. 105 (1986). The donor must intend to make a gift.

C. Essential elements:

1. Donor must be competent to make a gift;
2. Donee must be capable (qualified);
3. Intent by Donor must be a voluntary "donative" desire;
4. Complete and irrevocable delivery to and transfer of full title, control and dominion by Donor;
5. Acceptance by Donee.

Kaplan v. Commissioner, T.C. Memo. 2006-16 (2006).

D. Compare: business expense deductions. If a contribution bears a direct relationship to the contributor's trade or business and the contributor expects a return commensurate with the amount contributed. Treas. Reg. 1.170A-1(c)(5). And donors cannot treat mix a charitable contribution deduction with a business deduction, e.g., it is one or the other; if not fully deductible under IRC 170, due to percentage limitations, the remaining amount cannot be deducted as a business expense. Treas. Reg. 1.162-15(a).

II. Types of Charitable Contributions

A. Cash – Deductible up to 60% of Donor's Adjusted Gross Income (AGI) effective for CY2018 (increased from 50% per the TCJA).

B. Long Term Capital Gain (LTCG) Property – Such as real estate and securities: Deduction permitted of the fair market value (FMV) but limited to

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30% of Donor AGI. The limit may be increased to 60% if the donor reduces the contribution by the property's appreciated value and reduces the appreciation on any contribution carryovers.

C. Short Term Capital Gain (STCG) Property – Such as real estate and securities: Donors may only deduct the cost basis of such gifts and is limited to 60% of the Donor's AGI.

D. Ordinary Income Property – Such as property that would generate ordinary income if sold, e.g., inventory or Donor-created artwork: Deduction permitted for Donor's cost basis in the property and is limited to 60% of Donor's AGI.

E. Tangible Personal Property –

1. Property held long term: (i) if the property is used by Donee for its exempt activity, then the deduction is permitted for its full FMV; (ii) if property is not used for Donee's exempt activity, then the deduction must be reduced by the amount of gain that would have been Long Term Capital Gain if the property had been sold;

2. Property held short term: (i) deduction is limited to Donor's cost basis; (ii) related versus unrelated use is irrelevant.

F. The percentage limitations described above apply to Donees who are recognized under IRC 170(b)(1)(A), generally known as "public charities." Reduced percentage limitations (30% or 20%, depending upon the type of property contributed) apply to private foundations.

G. Services: No deduction is allowed for the donation of time or services. Treas. Reg. 1.170A-1(g); deductible contributions must be in the form of money or property under IRC 170. But note that unreimbursed out-of-pocket expenses directly connected with and solely attributable to the performance of gratuitous services for a Donee may be deducted. To substantiate, the Donee should issue a gift receive which (1) describes the services provided by the Donor and (2) states whether Donee provided any goods or services to the Donor (if so, state the value). But note! The receipt from the Donee should not include the amount of the unreimbursed expenses; rather, the donor should be instructed to retain receipts to support any a claimed charitable contribution deduction.

H. Qualified Vehicles: Airplanes, Boats and Cars (ABCs) – IRC 170(f)(12). If the value of the claimed deductible contribution exceeds $500, Donor must comply with special rules:

1. Qualified vehicle – (1) airplane; (2) boat; (3) motor vehicle manufactured primarily for use on public streets, roads, and highways;

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