The Norton Tax Bulletin

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Charitable Donations of Cash and Property

Dear Clients, family and friends,

The filing season is over - *except for those taxpayers who have opted or were required (because they were too late in getting their act together to provide their data to the preparer….) to file an extension.* They will have until October 15th to file their returns to avoid being assessed a late filing penalty. Of course, interest and the late payment penalty (together averaging 9% a year) will continue to accrue on any amount of tax due that remains unpaid from April 16th through the date of payment.

During the course of preparing client returns this year, a significant number of them claimed as a charitable deduction the donation of property to charities – often the Salvation Army and Goodwill Industries. Most often, after asking more about their donation(s), I had to advise them that they lacked the required substantiation to be entitled to claim the amount they were seeking to deduct. Further, I told them if they did not heed my warning and proceeded to claim the deduction, they could be subject to a 20% penalty on the amount of additional tax owed if they were audited. Claiming high property contributions makes the return more likely to be flagged by the IRS computer system as having significant audit potential.

While I have addressed this topic in the past, I wanted to revisit it now while there are still many months left in 2015 so that clients who will be making property donations this year will take the steps necessary to ensure that they have the adequate documentation to support the claimed deduction.

CASH DONATIONS

While property donations are the main focus of this newsletter, I did want to mention briefly that there are specific rules for CASH DONATIONS that need to be followed. Basically, proof is required for ANY amount of cash donations. This can be in the form of a receipt from the organization, a canceled check or money order, or a credit card statement that clearly shows the name of the charity. If a single contribution is $250 or more, then a written receipt is required from the organization that reflects the date and amount of the gift received, and a statement that the donor (taxpayer) received nothing in exchange for the gift. In the circumstance where something was received, the letter or document prepared by the organization must provide a clear description of the item or items received and their value. In this circumstance, a deduction is allowed for the difference between the amount of the contribution and the value of the items received.

Receipts from organizations must be received BEFORE the return if filed or its due date – whichever is earlier. A taxpayer cannot wait for an audit notice, and then run to church or other charity and ask for a receipt. So, ALWAYS ensure that you get a required receipt BEFORE filing your return.

PROPERTY DONATIONS

Charitable contribution deductions are allowable only if the taxpayer satisfies substantiation requirements. The required substantiation depends on the size of the contribution and on whether it is a gift of cash or property. Any taxpayer making a PROPERTY contribution of an item or items worth less than $250 *must maintain a receipt from the charity organization*, except where doing so is impractical (e.g., deposits of property at a charity's unattended drop site), in which case the donor must maintain reliable written records. Here is a thought – take a picture in front of the drop-off place with you or another family member standing by the bags you are dropping off! Some camera will actually date-stamp the picture – even better evidence! The reliable written records with respect to each item of donated property must include the name of the charity, the date and location of the contribution, a description of the property, and the method used to determine its fair market value.

For contributions of $250 or more, you are required to obtain a contemporaneous (*means at the same time*) written acknowledgment from the charity. This acknowledgment must: (1) include a description (*but not the value – that is YOUR JOB to prove!*) of any property other than cash contributed; (2) state whether the charity provided any goods or services in exchange for the gift; and (3) if the charity did provide goods or services, include a description and good-faith estimate of their value.

An example of the latter could be a donation to an organization that will provide tickets to some event in exchange for a donation – and the donation is GREATER than the value of such tickets. As an example - if you make a contribution of $200, and the two tickets received had a street value of $50 for both, then the *net charitable deduction* would be $150.

The acknowledgment is considered ***contemporaneous*** if the taxpayer obtains it from the charity on or before the *earlier* of:

(a) the date the taxpayer files a return for the year of contribution; or

(b) the due date, including extensions, for filing that return.

For noncash contributions in excess of $500, taxpayers **are required** to maintain written records that must include, among other things: (1) the approximate date the property was acquired and the manner of its acquisition; (2) a description of the property in detail reasonable under the circumstances; (3) the cost or other basis of the property; (4) the fair market value of the property at the time it was contributed; and (5) the method used in determining its fair market value. The IRS has a form that must be filed with the return that lists such contributions – form 8283. I have included a copy of that 2-page form at the end of this newsletter.

For contributions of property valued in excess of $5,000, taxpayers must not only satisfy the substantiation requirements discussed above, they must also obtain a "**qualified appraisal**" of the items; and attach a copy a fully completed appraisal summary to the tax return.

It is important to mention that separate contributions of less than $250 are not subject to the above requirements, regardless of whether the sum of the contributions made by a taxpayer to a charity organization during a tax year equals $250 or more. For contributions exceeding $500 and $5,000, "*similar items of property*" are aggregated (combined) for purposes of the substantiation rules. The term "similar items of property" is defined to mean "*property of the same generic category or type,"* such as clothing, jewelry, furniture, electronic equipment, household appliances, or kitchenware.

There is another important rule to understand. No deduction is allowed for contributions of clothing or "household items" unless such items are "***in good used condition or better***." The term "household items" includes furniture, furnishings, electronics, appliances, linens, and other similar items. That is a pretty broad definition.

There was a recent U.S. Tax Court case[1] where a taxpayer attempted to support his deduction of over $30,000 in property contributions claimed on his return – and the Tax Court allowed ***NOTHING*** because the rules were not followed. So, take the time necessary to document your contribution! This is an excerpt taken from the Court's written opinion:

> *"The Court has no doubt that petitioners did donate some property to charitable organizations during 2011. But the Code imposes a series of increasingly rigorous substantiation requirements for larger gifts, especially when they consist of property rather than cash. Because petitioners did not satisfy these requirements, we are unable to allow a deduction for their claimed noncash gifts."*

Most often, charities like Salvation Army, Goodwill, Veteran organizations and such will issue a receipt that reads something like "6 bags of clothes" or something similar. While such a receipt documents that "*something*" was dropped off, it falls short of the specific requirements. There is no description of the individual items and their respective values. A shirt typically has a different value than a coat or a pair of dress slacks. An Armani sport coat is most likely worth more than one from Sears (*but be prepared to prove the value you want to deduct*!).

The only way to properly document the contribution of such items is to record each individual item on a spreadsheet, a Word document or other form of written record. For each item, a description should be provided (*grey sport coat or long sleeve white dress shirt*), a fair market value (*what it would be worth in a thrift store*), and how the value was determined *(the Salvation Army has a table*[2] *of thrift store values for most every type of property that could be contributed*). If in your opinion the item being donated is unique and worth more than the value listed in the Salvation Army's list, then you will be required to support your higher value *(e-bay or Craig's List are a couple of sources – print out and keep the ads*!).

The other element of the substantiation requirements is proving that the items donated are of *good, usable value*. How can a taxpayer meet this requirement? It is actually pretty easy - *pictures – and lots of them*! Whenever we decide to clean out our closets and plan to donate the items AND take a tax deduction, I lay them out on the back of a couch or on the floor and take pictures to show that they are still in good shape. Then, I prepare an Excel spreadsheet listing each item and its value using the Salvation Army list.

Here are a couple of suggestions. If you are donating a TV, *take a picture of it with the TV screen actually working*. Most camera phones take videos. There is no excuse for NOT taking this extra step to back up your contribution! If you are donating a stereo system, take a video of it actually playing. Without such evidence, you most likely will NOT be successful in keeping the value of your donation if you are audited.

With today's technology, it is fairly easy to transfer videos and pictures from a phone or camera to another media – such as a CD/DVD or a memory stick. I *STRONGLY* recommend that you make a back-up of whatever media you have taken on your phone or camera to support your deduction. Phones die – all the time. If that happens to you and it is your ONLY source of evidence of the

[1] Kenneth James Kunkel, TC Memo 2015-71

[2] http://satruck.org/donation-value-guide?_ga=1.49781091.491014816.1429199282&cm_mc_uid=20047237374314291992826&cm_mc_sid_51410000=1429199282

condition of your donation, then you are up a creek without a paddle if your phone dies! So – as soon as you have taken the pictures and/or videos, transfer them to another media – and put that media in a safe place – just in case you will need it to support your deduction.

DONATIONS OF CARS

There are additional rules to be followed when donating your old car to a charity *(for example, a local high school for use in their auto shop*). The IRS has a publication that addresses these specific donations - http://www.irs.gov/pub/irs-tege/pub4303.pdf. Read it if you are planning to donate a vehicle. If the charity keeps the vehicle, then its fair market value at time of donation will be the deduction you will get to take. If the charity SELLS the vehicle, then the amount they received will be your deduction (*and the charity must give you a written statement of what they received in their sale*).

DONATIONS OF BUSINESS PROPERTY

There are special rules when it comes to donations of property that has been used in a trade or business. Examples include computers, printers, desks, file cabinets, etc. If these items were already deducted (*expensed is the term we use*) when purchased, or the cost was already recovered through depreciation deductions, then you cannot take *another deduction* when you give it away as a charitable donation. Donations of business property can be tricky (*for example, donating property that has been subject to depreciation but donated before its stated useful life*) – and getting help from a professional would be advisable.

If an item was *partially* used for business (*a computer or cell phone for instance that was claimed as being used, say 75%, for business*), then it is certainly possible to take a donation for the "personal" portion of the computer or phone's fair market value. For example, if on the day of donation the old computer was worth $100, then a deduction of $25 (*the personal portion*), could be claimed. Of course, you need to establish that the computer works, and that it has a value for its age and condition of $100. As a reminder, you may find ads on ebay or Craig's List for similar computers being offered for sale. Make copies of those ads and keep them in a safe place if needed for an audit.

SUMMARY

I hope the above discussion helps you better understand the rules concerning deductions of cash and property donations. Charitable donations can be good tax write-offs, but understanding the proof that will be required if your return is challenged WILL make the difference in the outcome of an audit.

Very truly yours,

Dick Norton

This newsletter is not intended or written by me to constitute written advice that you may rely upon to avoid penalties that may be imposed by any taxing authority. Selection of a tax entity may have considerations beyond simply its tax treatment. Therefore, I advise clients to always first consult with an attorney who is intimately familiar with business forms and their relevance to potential future tax and financial issues.

Form **8283**
(Rev. December 2014)
Department of the Treasury
Internal Revenue Service

Noncash Charitable Contributions

► Attach to your tax return if you claimed a total deduction of over $500 for all contributed property.

► Information about Form 8283 and its separate instructions is at *www.irs.gov/form8283*.

OMB No. 1545-0908

Attachment Sequence No. **155**

Name(s) shown on your income tax return	Identifying number

Note. Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A. Donated Property of $5,000 or Less and Publicly Traded Securities—List in this section **only** items (or groups of similar items) for which you claimed a deduction of $5,000 or less. Also list publicly traded securities even if the deduction is more than $5,000 (see instructions).

Part I **Information on Donated Property—**If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description of donated property (For a vehicle, enter the year, make, model, and mileage. For securities, enter the company name and the number of shares.)
A		☐	
B		☐	
C		☐	
D		☐	
E		☐	

Note. If the amount you claimed as a deduction for an item is $500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A						
B						
C						
D						
E						

Part II **Partial Interests and Restricted Use Property—**Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ► ____________
If Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: **(1)** For this tax year ► ____________
(2) For any prior tax years ► ____________

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):

Name of charitable organization (donee)

Address (number, street, and room or suite no.)

City or town, state, and ZIP code

d For tangible property, enter the place where the property is located or kept ► ____________

e Name of any person, other than the donee organization, having actual possession of the property ► ____________

		Yes	No
3a	Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property?		
b	Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire?		
c	Is there a restriction limiting the donated property for a particular use?		

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 62299J Form **8283** (Rev. 12-2014)

Name(s) shown on your income tax return | **Identifying number**

Section B. Donated Property Over $5,000 (Except Publicly Traded Securities)—Complete this section for one item (or one group of similar items) for which you claimed a deduction of more than $5,000 per item or group (except contributions of publicly traded securities reported in Section A). Provide a separate form for each property donated unless it is part of a group of similar items. An appraisal is generally required for property listed in Section B. See instructions.

Part I Information on Donated Property—To be completed by the taxpayer and/or the appraiser.

4 Check the box that describes the type of property donated:

a ☐ Art* (contribution of $20,000 or more) **d** ☐ Art* (contribution of less than $20,000) **g** ☐ Collectibles** **j** ☐ Other
b ☐ Qualified Conservation Contribution **e** ☐ Other Real Estate **h** ☐ Intellectual Property
c ☐ Equipment **f** ☐ Securities **i** ☐ Vehicles

*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

**Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Note. In certain cases, you must attach a qualified appraisal of the property. See instructions.

5	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If tangible property was donated, give a brief summary of the overall physical condition of the property at the time of the gift	(c) Appraised fair market value
A			
B			
C			
D			

	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	See instructions (h) Amount claimed as a deduction	See instructions (i) Date of contribution
A						
B						
C						
D						

Part II Taxpayer (Donor) Statement—List each item included in Part I above that the appraisal identifies as having a value of $500 or less. See instructions.

I declare that the following item(s) included in Part I above has to the best of my knowledge and belief an appraised value of not more than $500 (per item). Enter identifying letter from Part I and describe the specific item. See instructions. ►

Signature of taxpayer (donor) ► Date ►

Part III Declaration of Appraiser

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). In addition, I understand that I may be subject to a penalty under section 6695A if I know, or reasonably should know, that my appraisal is to be used in connection with a return or claim for refund and a substantial or gross valuation misstatement results from my appraisal. I affirm that I have not been barred from presenting evidence or testimony by the Office of Professional Responsibility.

Sign Here Signature ► Title ► Date ►

Business address (including room or suite no.) | **Identifying number**

City or town, state, and ZIP code

Part IV Donee Acknowledgment—To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date ►

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file **Form 8282,** Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? . . . . ► ☐ Yes ☐ No

Name of charitable organization (donee)	**Employer identification number**	
Address (number, street, and room or suite no.)	City or town, state, and ZIP code	
Authorized signature	Title	Date