

Overview of Charitable Giving Techniques

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Overview of Charitable Giving Techniques

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Charitable Giving Substantiation Rules

Charitable Giving Substantiation Rules

- Cash gifts
 - Cash gifts of less than \$250
 - No deduction unless there is a bank record or a written communication in the form of a written receipt or e-mail communication showing the name of the donee organization, date, and amount of the contribution. IRC § 170(f)(17); Treas. Reg. § 1.170A-15(b)

Charitable Giving Substantiation Rules (continued)

- Cash gifts (continued)
 - Cash gifts of \$250 or more
 - No deduction unless the donor acquires a “contemporaneous written acknowledgement” from the donee organization. IRC § 170(f)(8); Treas. Reg. § 1.170A-15(a)(2)

Charitable Giving Substantiation Rules (continued)

- Cash gifts (continued)
 - Cash gifts of \$250 or more (continued)
 - The contemporaneous written acknowledgement must include:
 - The contribution amount
 - A statement of whether or not the donee organization provides any goods and services in consideration for the contribution
 - A description and good faith estimate of the value of such property or services
 - If only intangible religious benefits are supplied, a statement to that effect
- IRC § 170(f)(8) Treas. Reg. § 1.170A-13(f)(8)

Charitable Giving Substantiation Rules (continued)

- Cash gifts (continued)
 - Cash gifts of \$250 or more (continued)
 - The donor must have possession of the contemporaneous written acknowledgement before filing the original return for the year the contribution was made, or the due date, including extensions, for filing such returns. Treas. Reg. § 1.170A-15(c)
 - A single document (e.g., an annual gift statement) is permitted. Treas. Reg. § 1.170A-15(a)(3)
 - There is no requirement that gifts below \$250 be aggregated to apply this requirement. Treas. Reg. § 1.170A-13(f)(1)

Charitable Giving Substantiation Rules (continued)

- Noncash gifts
 - Noncash gifts of less than \$250
 - No deduction is allowed unless the donor obtains a receipt from the donee that includes:
 - The name and address of the donee
 - The date of the contribution
 - A description of the property in sufficient detail, taking into account the property's value, for a person who is not generally familiar with the type of property to ascertain that the described property is the contributed property

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of less than \$250 (continued)
 - No deduction is allowed unless the donor obtains a receipt from the donee that includes (continued):
 - For securities, the name of the issuer, the type of security, and whether the securities are publicly traded. Treas. Reg. § 1.170A-16(a)(1)
 - Contributions at an unattended drop site can be substantiated by a reliable written record. Treas. Reg. § 1.170A-16(a)(2)(i)

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$250 or more but less than \$500
 - No deduction is allowed unless the donor obtains a contemporaneous written acknowledgement that includes:
 - A description, but not necessarily the value, of the property
 - A statement of whether or not the donee organization provides any goods and services in consideration for contributions

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$250 or more but less than \$500 (continued)
 - No deduction is allowed unless the donor obtains a contemporaneous written acknowledgement that includes (continued):
 - A description and good faith estimate of the value of such property or services
 - If only intangible religious benefits are supplied, a statement to that effect

IRC § 170(f)(8); Treas. Reg. § 1.170A-13(f)(8); Treas. Reg. § 1.170A-16(b)



Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$500 or more but less than \$5,000
 - No deduction is allowed unless the donor obtains a contemporaneous written acknowledgement (see previous slide). IRC § 170(f)(8); Treas. Reg. § 1.170A-16(c)(1)

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$500 or more but less than \$5,000 (continued)
 - Donor must attach a completed [Form 8283, Noncash Charitable Contributions](#), to the return on which the deduction is claimed
 - Complete Section A
 - No appraisal required

Charitable Giving Substantiation Rules (continued)

Form 8283 (Rev. December 2020) Department of the Treasury Internal Revenue Service	Noncash Charitable Contributions ▶ Attach one or more Forms 8283 to your tax return if you claimed a total deduction of over \$500 for all contributed property. ▶ Go to www.irs.gov/Form8283 for instructions and the latest information.	OMB No. 1545-0074 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** an item (or a group of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities and certain other property 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 and condition of donated property (For a vehicle, enter the year, make, model, and mileage. For securities and other property, see instructions.)
A		<input type="checkbox"/>	
B		<input type="checkbox"/>	
C		<input type="checkbox"/>	
D		<input type="checkbox"/>	
E		<input type="checkbox"/>	

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).

A	(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						

IMPORTANT!
 Make sure to complete all the form boxes.



Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$5,000 or more
 - No deduction is allowed unless the donor obtains a contemporaneous written acknowledgement (see previous slide)

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$5,000 or more (continued)
 - Donor must attach a completed [Form 8283, Noncash Charitable Contributions](#), to the return on which the deduction is claimed
 - Complete Section B
 - A qualified appraisal is required

Charitable Giving Substantiation Rules (continued)

Section B. Donated Property Over \$5,000 (Except Publicly Traded Securities, Vehicles, Intellectual Property or Inventory Reportable in Section A)—Complete this section for one item (or a group of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions reportable in Section A). Provide a separate form for each item donated unless it is part of a group of similar items. A qualified appraisal is generally required for items reportable in Section B. See instructions.

Part I Information on Donated Property

2 Check the box that describes the type of property donated.

a <input type="checkbox"/> Art* (contribution of \$20,000 or more)	e <input type="checkbox"/> Other Real Estate	i <input type="checkbox"/> Vehicles
b <input type="checkbox"/> Qualified Conservation Contribution	f <input type="checkbox"/> Securities	j <input type="checkbox"/> Clothing and household items
c <input type="checkbox"/> Equipment	g <input type="checkbox"/> Collectibles**	k <input type="checkbox"/> Other
d <input type="checkbox"/> Art* (contribution of less than \$20,000)	h <input type="checkbox"/> Intellectual Property	

* 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.

3	(a) Description of donated property (if you need more space, attach a separate statement)		(b) If any tangible personal property or real 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) 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 and attach a separate statement.	(h) Amount claimed as a deduction (see instructions)	(i) Date of contribution (see instructions)
A						
B						
C						

IMPORTANT!
Make sure to complete all the form boxes.

Charitable Giving Substantiation Rules (continued)

Name(s) shown on your income tax return	Identifying number				
Part II Partial Interests and Restricted Use Property (Other Than Qualified Conservation Contributions) — Complete lines 4a through 4e if you gave less than an entire interest in a property listed in Section B, Part I. Complete lines 5a through 5c if conditions were placed on a contribution listed in Section B, Part I; also attach the required statement. See instructions.					
4a Enter the letter from Section B, Part I that identifies the property for which you gave less than an entire interest ▶ _____ If Section B, Part II applies to more than one property, attach a separate statement.					
b Total amount claimed as a deduction for the property listed in Section B, 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 ▶ _____					
5a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property?	<table border="1" style="border-collapse: collapse; width: 100px;"> <tr> <th style="padding: 2px;">Yes</th> <th style="padding: 2px;">No</th> </tr> <tr> <td style="width: 50px; height: 20px;"></td> <td style="width: 50px; height: 20px;"></td> </tr> </table>	Yes	No		
Yes	No				
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?	<table border="1" style="border-collapse: collapse; width: 100px;"> <tr> <th style="padding: 2px;">Yes</th> <th style="padding: 2px;">No</th> </tr> <tr> <td style="width: 50px; height: 20px;"></td> <td style="width: 50px; height: 20px;"></td> </tr> </table>	Yes	No		
Yes	No				
c Is there a restriction limiting the donated property for a particular use?	<table border="1" style="border-collapse: collapse; width: 100px;"> <tr> <th style="padding: 2px;">Yes</th> <th style="padding: 2px;">No</th> </tr> <tr> <td style="width: 50px; height: 20px;"></td> <td style="width: 50px; height: 20px;"></td> </tr> </table>	Yes	No		
Yes	No				
Part III Taxpayer (Donor) Statement —List each item included in Section B, 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 Section B, 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 Section B, Part I and describe the specific item. See instructions. ▶ _____ _____					
Signature of taxpayer (donor) ▶ _____	Date ▶ _____				

IMPORTANT!
 Make sure to complete all the form boxes.

Charitable Giving Substantiation Rules (continued)

Part IV 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). I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c).

Sign Here	Appraiser signature ▶	Date ▶	
	Appraiser name ▶	Title ▶	
Business address (including room or suite no.)		Identifying number	
City or town, state, and ZIP code			

Part V Donee Acknowledgment

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

IMPORTANT!
Make sure to complete all the form boxes.

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$5,000 or more (continued)
 - Failure to complete all the boxes on Form 8283 **will result** in the loss of the income tax deduction
 - See
 - *Blau v. Comm'r*, 924 F.3d 1261, (D.C. Cir. 2019) (Donor's deduction in excess of \$33 million denied because the donor failed to include the adjusted cost basis of contributed property on Form 8283)

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$5,000 or more (continued)
 - See (continued)
 - *Mohamed v. Comm'r*, T.C. Memo 2012-152 (2012) (Donor's self-prepared appraisal was not a qualified appraisal because it wasn't prepared by an independent appraiser; result: loss of a deduction for a contribution to a charitable remainder trust based on property valued in excess of \$18 million)
 - *Todd v. Comm'r*, 118 T.C. 334 (2002) (Donor's failure to obtain a qualified appraisal of non-publicly traded stock and failure to attach an appraisal summary to Form 8283 resulted in no income tax deduction)

Charitable Giving Substantiation Rules (continued)

- Noncash Gifts (continued)
 - Noncash gifts of \$5,000 or more (continued)
 - See (continued)
 - *Hewitt v. Comm’r*, 166 F3d 332, (4th Cir. 1998) (Donor’s failure to obtain a qualified appraisal for non-publicly traded stock resulted in denial of a charitable income tax deduction)
 - *Village at Effingham LLC v. Comm’r*, T.C. Memo 2020-102 (2020); *Riverside Place LLC v. Comm’r*, T.C. Memo 2020-103 (2020); *Englewood Place, LLC v. Comm’r*, T.C. Memo 2020-105 (2020); *Maple Landing, LLC v. Comm’r*, T.C. Memo 2020-104 (2020) (Court denied charitable deduction in these related cases because the adjusted basis of the contributed property was omitted from the Form 8283)

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$5,000 or more (continued)
 - Qualified Appraisal, Treas. Reg. § 1.170A-17(a), effective January 1, 2019
 - There are **15 separate content requirements** for a qualified appraisal
 1. A description of the property (see the regulation for the level of detail required)
 2. For real property and tangible personal property, the condition of the property
 3. The valuation effective date
 4. The fair market value of the contributed property on the valuation effective date

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$5,000 or more (continued)
 - Qualified Appraisal (continued)
 - 15 separate content requirements (continued)
 5. The terms of any agreement or understanding between the donor and the donee related to the use, sale, or other disposition of the contributed property
 6. The date or expected date of the contribution to the donee
 7. The appraiser's name, address, and taxpayer identification number
 8. The appraiser's qualification to value the type of property being appraised, including the appraiser's education and experience

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$5,000 or more (continued)
 - Qualified Appraisal (continued)
 - 15 separate content requirements (continued)
 9. The name, address, and taxpayer identification number of the entity employing the appraiser or which the appraiser is a partner
 10. The signature of the appraiser and the dated signed by the appraiser
 11. A declaration by the appraiser that the appraisal will be used in connection with a return or a claim for refund (use IRS language)

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$5,000 or more (continued)
 - Qualified Appraisal (continued)
 - 15 separate content requirements (continued)
 12. A statement that the appraisal was prepared for income tax purposes
 13. The method of valuation used to determine fair market value
 14. The specific basis for the valuation (e.g., specific comparables used)
 15. A declaration by the appraiser that the appraiser is qualified to value the property being appraised



Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$5,000 or more (continued)
 - Qualified Appraisal (continued)
 - The valuation effective date must be no earlier than 60 days before the date of contribution and no later than the date of contribution

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$5,000 or more (continued)
 - Qualified Appraisal (continued)
 - Must be obtained no later than the due date, including extensions, of the return on which a deduction is first claimed or reported
 - If the deduction is first claimed on an amended return, then on the date the amended return is filed
 - The fee for a qualified appraisal cannot be based to any extent on the appraised value of the property



Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$5,000 or more (continued)
 - Qualified Appraiser
 - A qualified appraiser must have verifiable education and experience in valuing the type of property being valued

Charitable Giving Substantiation Rules (continued)

- Noncash gifts (continued)
 - Noncash gifts of \$5,000 or more (continued)
 - Qualified Appraiser (continued)
 - Verifiable education and experience means:
 - Successful completion of college-level course work and at least two years of experience in valuing property of the type being valued; **or**
 - A recognized appraiser designation for the type of property being valued



Relevant Topics for Another Day

- AGI limits for cash, noncash, and gifts “for the use of” a charitable organization (income tax only)
- Application of AGI limits to gifts to private foundations
- Ordering rules regarding application of various AGI limitations (income tax only)
- Charitable contribution carryover and ordering rules (income tax only)



Relevant Topics for Another Day (continued)

- Reduction rules for gifts of tangible personal property (income tax only)
- Reduction rules for non-cash gifts to private foundations (income tax only)
- Written substantiation rules for intellectual property gifts



Sources of Authority

- I.R.C. §§ 170, 2055, and 2522
- Treas. Reg. § 1.170A-6, Charitable contributions in trust
- Treas. Reg. § 1.170A-8, Limitations on charitable contributions by individuals
- Treas. Reg. § 1.170A-13, Recordkeeping & return requirements for deductions for charitable contributions



Sources of Authority (continued)

- Treas. Reg. § 1.170A-15; Substantiation and reporting requirements for cash contributions
- Treas. Reg. § 1.170A-16; Substantiation and reporting requirements for noncash contributions
- Treas. Reg. § 1.170A-17; Qualified appraisal and qualified appraiser



Helpful Reading Material

- [IRS Publication 526, Charitable Contributions](#)
- [IRS Publication 1771, Charitable Contributions – Substantiation and Disclosure Requirements](#)
- [IRS Publication 4302, A Charity’s Guide to Vehicle Donation](#)
- [IRS Publication 4303, A Donor’s Guide to Vehicle Donation](#)



Charitable Bequests



Charitable Bequests

- “Bequests” can take several forms
 - A revocable or irrevocable bequest by will
 - An “at death” distribution instruction in a donor’s living trust
 - A beneficiary designation on an IRA, 401(k) plan, 403(b) plan, life insurance policy, annuity policy, or other similar contract
 - Transfer on Death (TOD) designation (in some states)



Charitable Bequests (continued)

- Charities often encourage donors to notify them of bequests by creating donor recognition societies
- Note that bequests by will are dependent on the testator possessing assets subject to his or her probate estate



Charitable Bequests (continued)

- Bequests are useful:
 - When the donor is uncertain whether they will need assets to live on if they have a long life
 - For assets, like a personal residence, that the donor will need while they are living
 - When income tax deductions are less important than estate tax deductions
 - For assets, like life insurance, that will realize their full potential value at death



Gifts of Life Insurance



Charitable Gifts of Life Insurance

- To obtain an income tax deduction, donors may contribute:
 - Existing life insurance policies
 - Funds to buy a policy on the donor's life
- A beneficiary designation on a life insurance policy, even if irrevocable, does not qualify for an income tax deduction

Charitable Gifts of Life Insurance (continued)

- A policy may be a “paid up” policy or a policy that still requires premiums be paid
 - “Paid up” status may be guaranteed or may depend on future investment performance
 - Donors may contribute cash for premiums or make premium payments directly to the insurance company
 - Payments made directly to the insurance company are payments “for the use of” the charitable organization
 - An existing policy should be free of a policy loan to be eligible for a gift

Charitable Gifts of Life Insurance (continued)

- Life insurance gifts may be appropriate when:
 - There is an existing policy that is no longer needed
 - Policy supporting a buy/sell agreement after the business has been sold
 - Key man policy after liquidity event
 - Policy previously purchased to supply estate liquidity for an estate that is now below the estate tax exemption
 - To leverage insurability to make a larger charitable gift (e.g., to fund an endowment, endow a chair or scholarship, or otherwise make a significant future gift)



Donor Advised Funds



Donor Advised Fund

- A Donor Advised Fund (DAF) is:
 - A segregated fund or account
 - Separately identified as to a donor or group of donors



Donor Advised Fund (continued)

- A Donor Advised Fund (DAF) is (continued):
 - Owned and controlled by a sponsoring organization
 - The sponsoring organization must be a public charity
 - Commonly offered by community foundations
 - Fidelity, Schwab, Vanguard, Morgan Stanley, and others offer programs



Donor Advised Fund (continued)

- A Donor Advised Fund (DAF) is (continued):
 - Over which the donor or another individual has **advisory privileges** with respect to:
 - Grants
 - Investments

Donor Advised Fund (continued)

- A DAF is generally created by executing a simple agreement with the sponsoring organization
- Because the sponsoring organization is a public charity, a contribution is eligible for favorable AGI contribution limits
- At present, there is no statutory minimum distribution requirement
 - Some DAF programs may require a nominal annual distribution
 - This is a subject of debate that has been included in some legislative proposals



Donor Advised Fund (continued)

- A DAF:
 - Facilitates anonymous giving
 - Is a cost-effective alternative to a private foundation
 - May be used when the dollars available don't justify a private foundation
 - May be used when the administration of a private foundation is inconsistent with a family's goals and objectives



Donor Advised Fund (continued)

- A DAF (continued):
 - Is a good way to create a current income tax deduction when additional time is needed to make decisions on charitable recipients
 - Facilitates “bunching” as an income tax savings plan
 - If permitted by the sponsoring organization, may facilitate multi-generational philanthropy



Charitable Gift Annuities

Charitable Gift Annuity

- A charitable gift annuity (CGA) is an unsecured contract between a donor and a charity
- It must qualify for a deduction under IRC § 170
- It must be issued for no more than the life or lives of one or two individuals
 - There is no term of years option

Charitable Gift Annuity (continued)

- The present value of the annuity stream must be less than 90% of the value of the contributed property
- The contract cannot guarantee a minimum or specify a maximum number of payments

IRC §§ 501(m), 514(c)(5)

Charitable Gift Annuity (continued)

- The annuity amount cannot be subject to adjustment by reference to income received from the contributed property
 - e.g., the annuity amount cannot be set by reference to rents from contributed real estate
- The American Council on Gift Annuities periodically publishes suggested annuity rates
 - Some states require that these rates be used



Charitable Gift Annuity (continued)

- Charitable gift annuities are regulated by the insurance commissioners in states where they are regulated
 - Some states require that the charitable issuer maintain a reserve fund



Charitable Gift Annuity (continued)

- A CGA may be funded with appreciated property
 - To spread the gain over the life of the annuity:
 - The donor must be an annuitant
 - The annuity must be non-assignable except to the issuing organization

Charitable Gift Annuity (continued)

- Each annuity payment includes a taxable portion (taxed at ordinary income rates) and a non-taxable portion
- The non-taxable portion is calculated to return the donor's basis over the donor's life expectancy
- If the annuity is funded with appreciated property, then the non-taxable portion is bifurcated into a capital gain portion and a non-taxable portion



Charitable Gift Annuity (continued)

- A charitable gift annuity is:
 - An alternative to CDs and other fixed-income securities for retirement
 - A good way to leverage making a split-interest gift with appreciated securities or real property



Charitable Remainder Trusts

Charitable Remainder Trusts

- Irrevocable Trust
- Exempt from income tax (IRC § 664(c)(1))
 - Exception: Unrelated business taxable income (UBTI) is taxed at a rate of 100% (IRC § 664(c)(2)(A))
- Income tax deduction is allowed for the present value of the remainder interest (IRC § 170(f)(2)(A))
 - Special substantiation rules apply to charitable remainder trust (CRT) gifts



Charitable Remainder Trusts (continued)

- Gift tax deduction allowed (IRC § 2522(c)(2)(A))
- Estate tax deduction allowed (IRC § 2055(e)(2)(A))
- Must use the calendar year as the tax year



Charitable Remainder Trusts (continued)

- Two different payment structures:
 - Fixed (annuity) amount (CRAT)
 - Additional contributions not permitted
 - Fixed percentage (unitrust) amount (CRUT)
 - Additional contributions permitted



Charitable Remainder Trusts (continued)

- Permitted payout rate:
 - Minimum: 5%
 - Maximum: 50%

Charitable Remainder Trusts (continued)

- Trust term may be for:
 - Life or lives of “lives in being” on date of funding
 - When there are multiple lives, the lives can be layered so long as all persons are living at the time the trust is funded
 - e.g., to mom and dad while either or both are living, followed by children so long as any child is living
 - A term certain of not more than 20 years

Charitable Remainder Trusts (continued)

- Trust term may be for (continued):
 - The shorter of one or more “lives in being” on the date of funding or a term certain of not more than 20 years
 - A term defined by one or more “lives in being” on the date of funding, followed by the shorter of one or more “lives in being” on the date of funding or a term certain of not more than 20 years



Charitable Remainder Trusts (continued)

- 10% remainder test
 - Impacted by:
 - Age of measuring lives at funding
 - Number of measuring lives at funding
 - Trust payout rate
 - Frequency of required distributions



Charitable Remainder Trusts (continued)

- Short-year payments are prorated on a daily basis
 - For unitrusts, additional contributions = prorated increase in the amount due in the year of contribution

Charitable Remainder Trusts (continued)

- There are four basic types of CRUT
 - **Standard CRUT:** Simply pays beneficiaries a fixed percentage of trust value redetermined annually
 - **Net Income CRUT (NICRUT):** Pays beneficiaries an amount equal to the *smaller* of —
 - The unitrust amount
 - The trust's accounting income as determined under state trust law and the terms of the trust agreement

Charitable Remainder Trusts (continued)

- There are four basic types of CRUT (continued)
 - **Net Income with Make-up CRUT (NIMCRUT):** Pays beneficiaries in the same manner as a NICRUT but allows for an additional payout of prior year shortfalls to the extent of a current year excess

Charitable Remainder Trusts (continued)

- There are four basic types of CRUT (continued)
 - **Flip-CRUT:** Two distribution phases (Treas. Reg. § 1.664-3(c)) –
 - Begins life as a NIMCRUT until a “triggering event”
 - Changes to a standard CRUT on January 1 of the year following the “triggering event”

Charitable Remainder Trusts (continued)

- There are four basic types of CRUT (continued)
 - **Flip-CRUT:** Two distribution phases (Treas. Reg. § 1.664-3(c)) (continued) –
 - Permissible triggering events include:
 - A date certain, sale of an unmarketable asset, birth, death, marriage, divorce, or an event outside the control of any person (Treas. Reg. § 1.664-3(d))



Charitable Remainder Trusts (continued)

- A CRT files:
 - IRS Form 5227
 - Beneficiaries receive an IRS Form 1041 Schedule K-1
 - Appropriate state filing (in California, Form 541-B)



Charitable Remainder Trusts (continued)

- A CRT is a useful tax-free environment:
 - To liquidate appreciated securities
 - To diversify a concentrated position
 - To reposition retirement assets from the accumulation phase to the distribution phase
 - As an alternative to a stretch IRA



Charitable Lead Trusts

Charitable Lead Trusts

- Irrevocable trust
- **NOT** exempt from income tax
- Income tax deduction allowed to donor, but only if the trust is a grantor trust (IRC § 170(f)(2)(B))
 - Income tax deduction is subject to recapture if the grantor doesn't survive the term (Treas. Reg. § 1.170A-6(c)(4))
 - For nongrantor trusts, the trust is allowed an unlimited charitable deduction (IRC § 642(c))



Charitable Lead Trusts (continued)

- Gift tax deduction allowed (IRC § 2522(c)(2)(B))
- Estate tax deduction allowed (IRC § 2055(e)(2)(B))

Charitable Lead Trusts (continued)

- A CLT may be a grantor or nongrantor trust, or a combination of the two
 - A grantor CLT allows for an income tax deduction
 - A nongrantor CLT is a transfer tax savings device
 - i.e., does not create an income tax deduction



Charitable Lead Trusts (continued)

- Two different payment structures
 - Fixed (annuity) amount (CLAT)
 - Additional contributions not permitted
 - Allocation of GST exemption not permitted until trust term expires (IRC § 2642(e)(1))
 - Fixed percentage (unitrust) amount (CLUT)
 - Additional contributions permitted



Charitable Lead Trusts (continued)

- No “net income” option
- No maximum term
- No minimum or maximum payout rate
 - But the right combination of term and payout rate can produce a gift/estate tax deduction equal to the amount transferred (a “zeroed-out” CLT)



Charitable Lead Trusts (continued)

- A grantor CLT is a useful tool to:
 - Generate an income tax deduction in years when there is a windfall
- A nongrantor CLT is a useful tool to:
 - Transfer assets to heirs or other parties with no or reduced transfer tax burden
 - The most common version used to achieve this purpose is the nongrantor charitable lead annuity trust
 - This version is the easiest to achieve a zeroed-out result



Charitable Lead Trusts (continued)

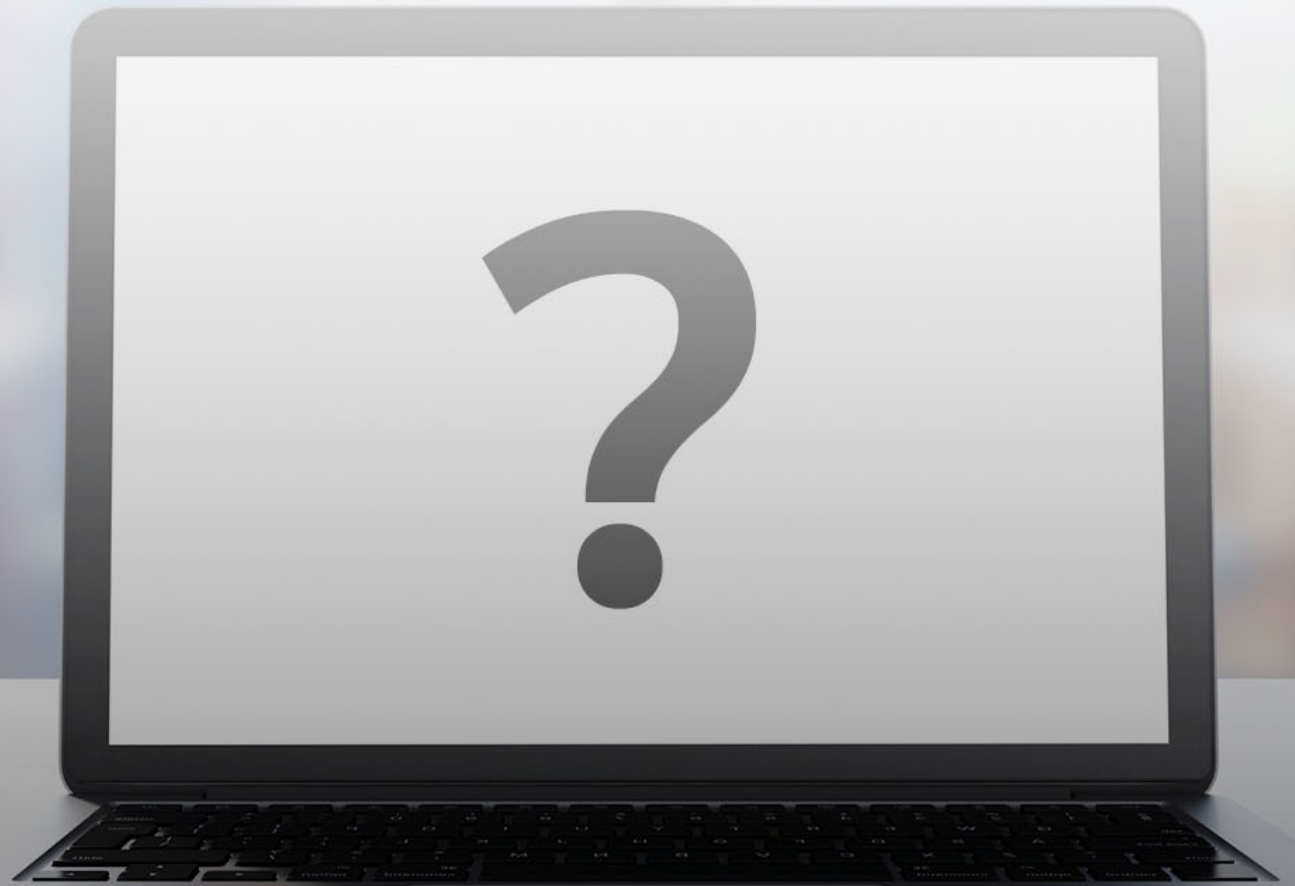
- A grantor CLT files:
 - IRS Form 5227
 - Must comply with a Treas. Reg. § 1.671-4 filing method
 - Appropriate state filing



Charitable Lead Trusts (continued)

- A nongrantor CLT files:
 - IRS Form 5227
 - IRS Form 1041
 - Appropriate state filing

Questions?





Thank you.

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