GIVING SECURITIES

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It is always wise to carefully consider the best property to use to make charitable gifts. While many gifts are made in the form of cash, additional tax savings and other financial benefits can make gifts of securities that have increased in value especially attractive.

Changing market values

With the strong performance of investment markets in recent years, it may now be particularly advantageous to make gifts of securities.

If you own securities that have increased in value since you have owned them, there are three possibilities for the future:

- The value of the securities may grow.
- The value of the securities may stay the same.
- The value of the securities may decline.

While no one knows what the future might hold, each possibility can indicate a course of action for those who are considering making charitable gifts of securities this year.

Read on to learn how favorable tax law provisions, combined with current asset values, may have a positive impact on what you choose to give.

Special benefits of giving securities

Many are surprised to learn they can make charitable gifts of stocks, bonds, mutual funds and certain other securities that are worth more than they cost. These gifts often result in income tax savings and the ability to bypass capital gains tax that would be due if you sold these assets. Recent tax legislation fully retained the special tax benefits of giving securities.

To enjoy the most favorable benefits from gifts of securities, you must have owned them for more than one year.

Such gifts are deductible and can be used to eliminate tax on up to 30% of your adjusted gross income (AGI) in the year of the gift. Any unused deduction amounts may be used to help reduce taxes in as many as five future tax years.

Securities that might otherwise be sold

If you have securities that have increased in value since their purchase, and you are thinking about selling them, you might want to consider using these assets to fund your charitable gifts.

Example: John and Sarah Fox purchased 100 shares in ABC Corporation several years ago at a cost of $2,500. The shares have been worth as much as $12,000. They are worth $10,000 today and yield a dividend of 1%.

If the Foxes sold the stock, they would realize a $7,500 capital gain. Because they have held the securities long term (for more than one year), they would owe as much as $1,785 in federal capital gains tax on a sale.* More could be due in state taxes as well, depending on where they live.

John and Sarah plan to make charitable gifts totaling $10,000 this year. They normally make their gifts in the form of cash.

** Examples based on capital gains tax plus Medicare contribution tax. Check for latest rates.*

Let's take a look at three possibilities they may wish to consider:

	Option A Give $10,000 in Cash	Option B Sell Securities & Give Cash	Option C Give Securities Outright
Gift value	$10,000	$10,000	$10,000
Ordinary income tax savings	$3,700	$3,700	$3,700
Capital gains and MCT tax saved or paid**	N/A	$1,785 paid	$1,785 saved
Net tax savings	$3,700	$1,915	$5,485

***Total of 20% capital gains tax and 3.8% Medicare contribution tax.*

In their income tax bracket, the least desirable alternative would be to sell the securities and give the proceeds, as the payment of the capital gains tax on the amount of the gain would reduce their net tax savings.

If they instead made their gifts in the form of ABC shares, they would not owe capital gains tax on the increased value of $7,500. Their combined income tax, capital gains tax and Medicare contribution tax savings would be $5,485, nearly twice the savings than if they had sold the securities and given $10,000 in cash. They may enjoy additional state income and capital gains tax savings as well.

By giving the securities, the Foxes preserve their cash, generate current income tax savings, do not owe capital gains and other taxes that would be due on a sale, all while making a significant charitable gift.

Because of the different ways capital gains taxes are determined—including length of time held and other factors—it is important to select the right asset when considering a charitable gift of securities or other investments. The best choice will normally be securities owned for more than one year that would be subject to the most tax if sold.

Give a security and "keep" it

Suppose you are reluctant to give a particular stock or mutual fund that has performed well over the long term and you believe it is likely to continue increasing in value. There is a way to make a charitable gift using such a security while, in effect, keeping it.

For example, suppose you make a $10,000 tax-deductible gift using a security for which you paid $5,000, thereby bypassing taxes on the $5,000 profit.

You could then use $10,000 in cash you might otherwise have donated to repurchase the same security. You will then own the same investment with a new, higher cost basis of $10,000.

If the security declines in value in the future, you may then benefit from a capital loss in the security rather than simply realizing less gain. If the security grows in value, you will owe tax only on future sale proceeds in excess of your new $10,000 cost basis.

Balancing capital gain through gifts

What if you believe that a security you own is less likely to grow in value and may even decline in value in the future?

A way to make a significant gift in these circumstances is through a balanced sale. Under this alternative, you make a gift of part of your investment while selling the remainder.

Example: George Wyatt would like to make a gift of $5,000. He owns securities worth $25,000 for which he paid $16,000 ten years ago. He believes it is unlikely the shares will continue to increase in value and he would like to sell them. He does not, however, wish to pay capital gains tax on the $9,000 gain.

If he sold all of the securities, he would net just $22,850 after paying $2,150 in taxes. Through a balanced sale, he sells shares worth $20,000 and gives shares worth $5,000, with the following tax consequences*:

	Give $5,000 in Securities	**Sell $20,000 in Securities**
Gift value	$5,000	-0-
Income and other tax savings	$1,850	-0-
Combined tax liability	-0-	$1,714
Difference	-0-	$136

**Assuming maximum income, capital gains and Medicare contribution tax.*

Note that Mr. Wyatt's tax savings of $1,850 as a result of his gift more than offset the capital gains tax on the shares that were sold. He now enjoys all of the cash proceeds of the sale and the satisfaction of making a $5,000 gift.

This is just one example of special incentives our tax laws have provided for those who wish to make charitable gifts.

When securities have declined in value

If you own securities that are worth less than their original cost, it is usually better to sell them and make a charitable gift using the cash proceeds. You may then be able to claim tax benefits for both the capital loss and the charitable gift and effectively deduct more than the current value of the securities.

Completing your gift of securities

Making gifts of appreciated securities need not be complicated. If your financial services provider holds the securities (including mutual funds) for your account, instruct that they be transferred electronically. This is the most convenient way to make a gift.

On the other hand, if you hold stock certificates, mail the unendorsed certificate and a signed stock power (available from your financial services provider) in separate envelopes to the charitable recipient. The gift is complete on the postmark date of the later envelope.

We will be pleased to provide you or your advisors with any information that may be needed to complete the transfer.

Giving while retaining income

There are also a number of ways you can make charitable gifts while receiving fixed or variable income for life or other period of time you choose.

Through such options, securities that have increased in value can be sold and reinvested free of capital gains tax. The total value can then be available to produce greater earnings than might otherwise be achieved.

In addition, payments may be taxed at lower rates than other income. An income tax deduction is also allowed in the year of the transfer for the value of the charitable gift. Assets given in this way are generally removed from your state and/or federal taxable estate, perhaps resulting in additional tax savings for your heirs.

More information

If the ideas presented in these pages are of interest to you, we will be pleased to provide further information upon request. You may also wish to share this booklet with your financial advisors. They may find the following section especially helpful.

Technical Advisory Section

The following information and references to additional resources are provided for those who assist you in your estate and financial planning.

Amount of donor's charitable contribution

Securities held long term: In general, if an individual donates securities held long term to a public charity, such as a church, educational institution, health care organization or other cause, the amount he or she can claim as a charitable gift for federal income tax purposes is the securities' fair market value on the date of the gift. See Internal Revenue Code section 170(b)(1)(A).

Long term means longer than one year. See IRC section 1222(3). The holding period to qualify as long-term property for deduction of appreciated property gifts at full market value is more than one year.

Securities held short term: The amount that can be claimed as a charitable gift in the case of donated securities held short term, on the other hand, is the donor's cost basis in the securities if the cost basis is less than the securities' fair market value. See IRC section 170(e)(1)(A).

Securities that have declined in value: Shares that have gone down in value since being purchased generally should not be donated because a gift of such an investment does not cause the potential capital loss to be realized for federal income tax purposes. Instead, the donor should sell the shares to realize the loss, to the extent possible, and give the cash from the sale.

Fair market value: For purposes of determining the amount of the donor's charitable gift, the fair market value of publicly traded securities is generally the average of its high and low trading prices on the date of the gift. See Regulation section 25.2512-2(b)(1).

Private foundations: Special rules may apply to gifts of appreciated property to private foundations. See IRC section 170(e).

Donors should be well advised on current rules before completing such gifts.

The donor's income tax charitable deduction

The federal income tax charitable deduction is subject to various percentage limitations. Prior to the *Tax Cuts and Jobs Act of 2017* (TCJA), the charitable deduction was limited to 50% of adjusted gross income (AGI). Gifts to public charities of cash, personal property and short-term capital gain property of all types were generally deductible up to this 50% limit. See IRC section 170(b)(1)(A).

Gifts to public charities of appreciated real property held long-term (together with certain other types of long-term appreciated property contributions) are generally deductible up to 30% of AGI. See IRC section 170(b)(1)(C).

The TCJA increased the amount of cash that can be deducted to 60% of AGI for gifts made between January 1, 2018 and December 31, 2025. See IRC section 170(b)(1)(G).

"Excess" contributions may be carried forward for up to five subsequent tax years. See IRC section 170(d)(1).

The interplay of the 60% and 30% limits and the carryover rules set out a hierarchy that governs the order in which various types of gifts (to public charities) are to be deducted as follows:

1. Current gifts subject to the 60% limit
2. Current gifts subject to the 30% limit
3. Carried-over gifts subject to the 60% limit
4. Carried-over gifts subject to the 30% limit

See IRC section 170(b)(1)(B).

Additional savings

If a donor gives appreciated property—where capital gain realized if it were sold would be subject to the 3.8% Medicare contribution tax on "unearned income"—the gift would bypass the Medicare contribution tax and result in additional tax savings.

A special election

A donor of appreciated stock or other appreciated assets subject to the 30% limitation may find the 30% limit too tight a restriction and prefer that a higher limitation be applied to his or her gift.

For example, the donated asset may be only slightly appreciated. Or the donation may be very large relative to the donor's income, with the result that much of the gift will have to be carried over into years when the donor will not be able to make use of deductions.

Donors in these circumstances may wish to use a special election under IRC section 170(b)(1)(C)(iii). The election permits the donor to deduct all "30%" gifts at cost basis but take the reduced gifts as a charitable deduction subject to the 50% limitation under IRC section 170(b)(1)(A).

The election can be useful in some situations but needs to be considered carefully. The election applies to all gifts otherwise subject to the 30% limit (including carried-over contributions).

Repeal of Pease Limitation

In the past, some high-income earners could see their benefits from itemizing deductions reduced by the lesser of 3% of their adjusted gross income exceeding a threshold amount, or 80% of their deductions. Because this provision was repealed by the *Tax Cuts and Jobs Act of 2017*, donors who experienced this limitation in the past will now enjoy the full benefit of their charitable and other itemized deductions.

Substantiating gift value

Ordinarily, no qualified appraisal (as that term is defined in Reg. section 1.170A-13(c)) is needed to sustain a claim of an income tax charitable deduction with respect to a gift of publicly traded securities.

If, however, shares of stock are subject to a sale restriction—such as a restriction under Securities and Exchange Commission (SEC) Rule 144—then even though the stock itself is publicly traded, the shares are not considered to be publicly traded. They therefore fall within the requirement for a qualified appraisal if the donor claims a value of more than $5,000 for the shares. See Reg. section 1.170A-13(c)(7)(xi)(C).

Substantiation rules: It is important for donors to keep any written acknowledgments they receive from charities for charitable gifts. Since 1994, donors have been required to have special receipts from charities to which they have made gifts valued at $250 or more. Receipts must specify the value of any benefits received in exchange for gifts or state that no benefits were received.

"S" corporation stock

A provision in the *Small Business Job Protection Act* of 1996 allowed charities to be shareholders of "S" corporation stock beginning in 1998. Note, however, that any income or gain realized by the donee organization with respect to "S" stock is unrelated business income.

Restricted stock

Special rules apply to gifts of stock options, warrants or restricted stock. Obtain specialized advice prior to making charitable gifts of such assets.

Gifts of U.S. savings bonds

Series E, H, EE and HH bonds accrue interest income over the period they are held. Generally, the donor is allowed to deduct the full value in the year the proceeds are given; however, he or she must also report the increase in value over the basis as income for that year. Therefore, it may be more advantageous to fund the gift with other securities that have been held long term.

Funding alternative charitable gifts with securities

It can be advantageous to use appreciated securities to fund qualified charitable remainder trusts and certain other gift planning arrangements that feature income for life or another period of time. The deduction in such cases is generally based on the full value of the securities transferred, and gain on the sale of the assets has historically been avoided at the time of the sale. See IRC section 664, regulations promulgated thereunder, and other relevant code sections and regulations for additional information.

Gifts of closely held stock

In some situations, a person may wish to make a gift of stock in a closely held corporation. A donor who owns highly appreciated stock in a company that has significant cash reserves may be in the best position to make a sizable gift. Sometimes referred to as a "charitable stock bailout," such a gift is often followed by a redemption of the stock by the corporation.

If the donor owns all stock in the company, the donor's ownership percentage is not lessened by the gift, but cash to make the gift has effectively been provided by the corporation.

In a case where a donor wishes to pass control to another group of people, this gift will serve to lessen the donor's percentage of ownership and increase the relative percentage of ownership by others without incurring gift tax or estate tax.

The IRS has also ruled, however, that neither the donor nor the corporation may be in a position to compel redemption of the stock (for example, under an agreement entered into before the gift is made). See Revenue Ruling 78-197. The donor will receive a deduction for the full value of the stock. The deduction for the gift is limited to 30% of the donor's AGI. See IRC section 170(b)(1)(C). A qualified appraisal is required if the claimed value exceeds $10,000. See Reg. section 1.170A-13(c) (2)(ii).

Other available information

See www.irs.gov for a variety of publications and forms including:

- Charitable contributions (#526)
- Non-cash contributions form and instructions (#8283)
- Determining the value of donated property (#561)

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