

WHAT IS A QUALIFIED APPRAISAL? AN ARTICLE FOR DONORS

David A. Libengood, Relationship Manager

Individuals who make charitable gifts of property *other than* cash or marketable securities must meet special gift substantiation requirements if they wish to claim federal income tax deductions for their gifts. More specifically, the tax law requires a donor to hire a “qualified appraiser” who must complete a “qualified appraisal” of the gift property. The donor must also attach an “appraisal summary” to his or her tax return.

It is important to note that these detailed requirements are unique to appraisals for charitable gift purposes. Many appraisals that would be perfectly appropriate for other valuation purposes, such as obtaining insurance or financing, might not pass muster when it comes to substantiating a charitable gift. The purpose of this article is to familiarize donors generally with these qualified appraisal rules. You should *always* consult competent legal or tax advisors to determine how the rules would apply in your particular situation. Your advisor can find more information about the qualified appraisal requirements in Internal Revenue Code §170(f)(11), IRS Notice 2006-96, and Treasury Regulation §1.170A-13(c).

When Is an Appraisal Required?

Qualified appraisals are most commonly obtained for gifts of real estate, tangible personal property (e.g., artwork), or privately held stock. However, qualified appraisals are required for a gift of *any* asset other than cash or readily marketable securities. This could include gifts of a life insurance policy, of publicly traded stock subject to restrictions (e.g., Rule 144 stock), or even of your right to receive payments pursuant to an existing charitable remainder trust or gift annuity contract.

A *de minimis* exception provides that a qualified appraisal is required only if the income tax deduction to be claimed by the donor exceeds \$5,000 (or \$10,000 for gifts of privately held stock). For purposes of determining whether the \$5,000 threshold is crossed, a donor

must aggregate gifts of similar items of property made to all charities during the year. For example, if during 2007 a donor made gifts of three rare books, each worth approximately \$2,500, to three different charities, a qualified appraisal would be required because the aggregate value of \$7,500 exceeds the \$5,000 threshold.

A donor must obtain the qualified appraisal no earlier than 60 days prior to the date of the gift, and not later than the due date (including extensions) of the federal income tax return on which the charitable deduction is first claimed. Because of the 60-day requirement, donors might wish to negotiate with appraisers up front for a reduced fee for “refreshing” the appraisal if they anticipate the gift date might be delayed for some reason.

Most tax counsel believe that because it is the donor’s legal responsibility to obtain a qualified appraisal, the charity cannot properly pay for the appraisal. The cost of the appraisal is deductible as a miscellaneous itemized deduction, but only to the extent the aggregate of all miscellaneous itemized deductions exceeds 2% of adjusted gross income.

Who Is a Qualified Appraiser?

Not surprisingly, the IRS is interested in making sure that qualified appraisers of charitable gifts are both capable and unbiased. Therefore, the tax law requires a qualified appraiser to regularly perform appraisals for compensation and have the necessary credentials and experience to appraise the type of property being given to charity. Also, the following persons *cannot*, by definition, be qualified appraisers with respect to the gift property:

- The donor
- A party to the transaction in which the donor acquired the gift property (i.e., the person who sold, exchanged, or gave the property to the donor)
- The donee charity
- Any employee or family member of the foregoing persons or organizations listed immediately above
- An appraiser who is regularly used by the foregoing persons or organizations who does not perform a majority of his or her appraisals during the tax year for other persons

- Any individual, if he or she had knowledge of facts that would cause a reasonable person to expect the appraiser to overstate the value of the gift property.

Your attorney, CPA, or planned giving officer might be able to recommend individuals who would be suitable qualified appraisers. You can also search for credentialed appraisers and learn more about appraisal standards at the following Web sites: *www.appraisalinstitute.org* and *www.appraisalfoundation.org*.

What Must Be Included in the Appraisal?

The following are some of the items that must be included in a qualified appraisal to substantiate the income tax deduction:

- A statement that the appraisal was prepared for income tax purposes
- The date (or expected date) of the gift
- A detailed description of the gift property
- The terms of any agreement or understanding entered into (or expected to be entered into) by the donor or donee that relates to the sale or disposition of the gift property or the earmarking of it for a particular use
- In the case of tangible personal property, a description of the physical condition of the property
- The name, address, and taxpayer identification number of the qualified appraiser. In addition, if the qualified appraiser is a partner in a partnership, or employed by another individual or corporation, the name, address, and taxpayer identification number of that partnership or employer.
- The qualifications of the appraiser, including his or her background, experience, education, and membership in professional appraisal associations
- The fair market value of the property on the gift date.

It might be wise to review the above checklist of items with the qualified appraiser before you finalize the engagement to make sure that there is a clear understanding of what the final appraisal document will contain.

What Is an Appraisal Summary?

A donor who is required to obtain a qualified appraisal to substantiate an income tax deduction must also attach an appraisal summary to the tax return on which the deduction is first claimed. This appraisal summary is currently incorporated into Section B of IRS Form 8283-Noncash Charitable Contributions. In addition to

summarizing required data from the qualified appraisal, Form 8283 also requires the donor to specify how and when the gift property was acquired and its cost basis. (Note that if the claimed income tax deduction is greater than \$500,000, or is greater than \$20,000 and relates to a gift of artwork, you must also attach a copy of the signed, qualified appraisal itself.)

The donor must list the name, address, and taxpayer identification number of the qualified appraiser, and also obtain his or her signature on the Form 8283. By signing, the appraiser acknowledges (1) that he or she is qualified to make appraisals of the type of property being given, (2) that the appraisal fee was not based on a percentage of the appraised property value, (3) that overstatement of the gift value could subject him or her to penalties, and that (4) he or she has not been disqualified from presenting evidence or testimony to the IRS.

An appropriately authorized official of the donee charitable organization must also sign Form 8283. By signing, the charity acknowledges the date it received the gift property, but does not indicate agreement or disagreement with the appraisal value. However, if the charity sells, exchanges, or otherwise disposes of the gift property within three years after it was received, the charity must report the date of disposition and the sales price on IRS Form 8282-Donee Information Return. This enables the IRS to compare the value claimed for charitable deduction purposes with the ultimate value realized by the charity. IRS can assess penalties upon the taxpayer and/or the appraiser if it determines that value of the gift was substantially or grossly overstated.

2008 Proposed Regulations

In October of 2008, the IRS issued proposed regulations that address substantiation requirements for charitable gifts generally and also the definitions of a qualified appraiser and qualified appraisal (see Internal Revenue Bulletin 2008-40). The proposed regulations were opened for comment, and a public hearing was held in January 2009. It is important to note that proposed regulations do *not* have the force of law unless and until they are published as final regulations; moreover, the final regulations could be different from the proposed regulations. The proposed regulations nonetheless give donors and their advisors some insight into how the IRS views particular issues and therefore might be helpful in specific gift situations. The definitive guidance for qualified appraisal issues remains in Internal Revenue Code §170(f)(11), IRS Notice 2006-96, and Treasury Regulation §1.170A-13(c). ■

