

Donations of Personal Property

BENEFITS FOR ALL

SANDRA TROPPER, FASA

ACCREDITED SR. APPRAISER, FINE ART



Personal Property Donations

Presented to the National Capital Gift
Planning Council

Sandra Tropper, FASA
Accredited Senior Appraiser, Fine Art
American Society of Appraisers

Presentation

- ▶ Focus on Non-Cash Charitable Contributions of personal property
 - ▶ Household contributions – special IRS regulations
 - ▶ Vehicles – special IRS regulations
 - ▶ **Property to religious and charitable organizations that fall into the category 501(c)(3), educational institutions, museums, organizations approved by the IRS, based on mission and structure, and government entities

The phone rings
Hello. I need an appraisal for a donation.



- ▶ What are you donating and when are you donating it?
Or have you already made the donation?
 - ▶ I have not donated it as of yet. And I am not sure when I am donating it....
- ▶ To whom are you donating the property?
 - ▶ I am not sure who I am giving it to...But I know that the National Portrait Gallery might want a portrait of my great great grandfather...

The conversation continues...

- ▶ Who painted the portrait?
 - ▶ I do not know. There's no signature...
- ▶ Does the portrait gallery they know about the donation? Have they seen the portrait?
 - ▶ No. Do they need to?
 - ▶ I am sure they will want it. It is really old...
 - ▶ And it's in a frame...



Non-Cash Charitable Contributions



- ▶ Anyone can give anything when there is a willing recipient
- ▶ Not every contribution results in an income tax deduction
- ▶ IRS requirements based on statute, regulations and judicial precedents
 - ▶ Guidance -- 526 and 561
- ▶ **August, 2006** Pension Protection Act passed by US Congress
- ▶ **2008** Dept. of the Treasury issued an exposure draft of regulations implementing that statute

Twelve years later...



- ▶ July 27, **2018** FINAL REGS PROVIDE SUBSTANTIATION RULES FOR CHARITABLE CONTRIBUTIONS (§ 170, 501, 6695A)
 - ▶ Requirements for filing tax returns
 - ▶ Including definitions (Qualified Appraiser/Qualified Appraisal) based on statute
 - ▶ Requirements for deductions
- ▶ Effective January 1, 2019

Substantiation & Reporting Req'ts for Non-Cash Charitable Contributions

- ▶ **SUMMARY:** These final regulations provide guidance concerning substantiation and reporting requirements for cash and noncash charitable contributions. The final regulations reflect the enactment of provisions of the American Jobs Creation Act of 2004 and the Pension Protection Act of 2006. These regulations provide guidance to individuals, partnerships, and corporations that make charitable contributions.



Definition of Qualified Appraiser



- ▶ An individual with verifiable education and experience in valuing the type of property for which the appraisal is performed.
 - ▶ Successfully completed professional or college-level coursework in valuing this type of property AND
 - ▶ Two or more years of experience in valuing the type of property
- OR
- ▶ Earned a recognized appraisal designation for the type of property
- ▶ Coursework must be obtained from an educational organization, generally recognized professional trade or appraiser organization, or employer educational program



Qualified Appraiser

- ▶ Other Criteria:

Appraiser **CANNOT**

- ▶ Be prohibited from practicing in front of the IRS in last three years (OPR)
- ▶ Be the donor or the donee of the property
- ▶ Be related or married to the donor or donee
 - ▶ Employed by the donor or donee
 - ▶ (Must do a majority of assignments for others during the year)
- ▶ Be a party involved in the donor's acquisition (also not related to or married to)
 - ▶ Exception (within two months and FMV is not more than purchase price)

Definition of Qualified Appraisal

- ▶ Appraisal document that is prepared by a qualified appraiser in accordance with generally accepted appraisal standards
- ▶ Signed and dated by a “qualified appraiser”
- ▶ Meets the generally accepted appraisal standards means *the substance and principles of the **Uniform Standards of Professional Appraisal Practice (USPAP)***
- ▶ *USPAP* is the only set of national standards for personal property appraisers
- ▶ Must be received by the donor before due date (incl. extensions) of tax return

Uniform Standards of Professional Appraisal Practice

- ▶ *USPAP* – standards and rules written, edited, revised and promulgated by the Appraisal Standards Board of The Appraisal Foundation (TAF)
 - ▶ Updated every two years
- ▶ TAF -- Congressionally mandated organization sets appraisal standards and qualification criteria for appraisers
 - ▶ USPAP provides RULES and STANDARDS for real property and personal property appraisers and business valuers



The Appraisal Foundation - Qualifications

- ▶ The Appraiser Qualifications Board of The Appraisal Foundation
 - ▶ Minimal qualifications for both real property and personal property appraisers
 - ▶ Minimal education and experience requirements
 - ▶ Sponsors of The Appraisal Foundation such as ASA, ISA and AAA all must require members to adhere to both minimum qualifications and standards of TAF



Working with the Client

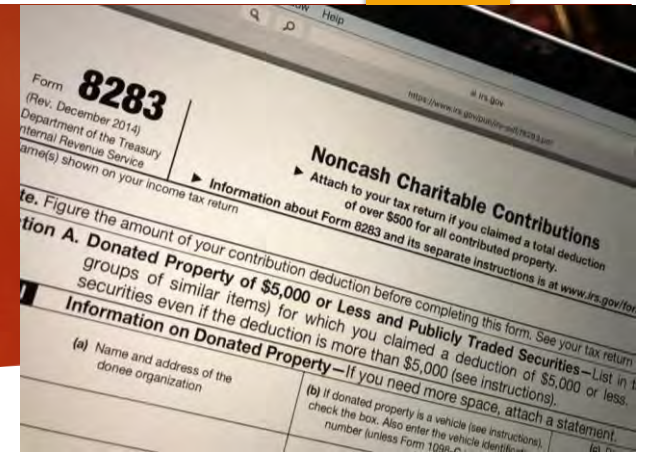
- ▶ According to USPAP, appraiser gets information from clients to develop the Scope of Work for the appraisal assignment
 - ▶ Intended Use and Intended Users
 - ▶ Type of Value (Fair Market Value with definition and citation)
 - ▶ Source: 26 CFR §1.170A-1(c)(2)
 - ▶ Effective date of valuation (date of donation)
 - ▶ Assignment conditions
 - ▶ Property (property information and the relevant market)



The Appraisal Foundation and IRS

- ▶ SIMILAR! Requirements
- ▶ IRS and the Appraisal Qualification Board – establish minimal qualifications for an appraiser
 - ▶ USPAP Ethics RULE requires “arm’s length”
 - ▶ (Fees based on value are prohibited)
- ▶ USPAP Competency Rule (knowledgeable about the property)

IRS Requirements



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/foia

▶ Figure the amount of your contribution deduction before completing this form. See your tax return instructions for more information.

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

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

(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 provided).

- ▶ Donation of:
- ▶ Items under \$250 require a receipt from the recipient (must be a qualified recipient)
- ▶ Items between \$250 and under \$500 require a “contemporaneous written acknowledgement”
- ▶ Items between \$500 and \$5,000 require a “contemporaneous written acknowledgement” and completion of an 8283 form Section A (Page 1)

IRS Requirements

- ▶ Donation of:
- ▶ Items with a Fair Market Value of \$5,000 and above must have a “contemporaneous written acknowledgement” and completed of 8283 form Section B (Page 2)
 - ▶ Appraisal must be done; appraiser declaration
- ▶ Items with a Fair market Value of more than \$500,000 must be submitted with the tax return

Appraisal Requirements

- ▶ Description of the property “in sufficient detail...for a person who is generally not familiar with the type of property to ascertain that the described property is the contributed property”
 - ▶ Property type (Title or type of object)
 - ▶ Artist, maker
 - ▶ Signature, inscriptions, markings, labels
 - ▶ Other identifying details
 - ▶ Date, period, style
 - ▶ Measurements: dimensions, weight (if applicable)
 - ▶ Subject matter
 - ▶ Materials (media and techniques)



Appraisal Requirements, cont.

- ▶ History (exhibitions, publications)
- ▶ Provenance (history of ownership)
- ▶ Physical condition
- ▶ Acquisition information
 - ▶ Method
 - ▶ Date
 - ▶ Acquisition cost, or FMV at time of gift or bequest
- ▶ Photographs of property
- ▶ Appraisal must contain methodology used for the valuation
- ▶ Market used (state of the market)/Comparable properties



Appraisal Requirements, cont.

Appraisal must include:

- ▶ Name and address of donor
- ▶ Date of contribution (can be future date)
- ▶ Terms of donation (restrictions on use, sale or disposition; earmarks for use)
- ▶ Appraiser name, address, taxpayer ID
 - ▶ Appraiser qualifications (for assignment)
- ▶ Statement of intended use (payment of income taxes)
- ▶ Appraiser declaration (similar to the one signed on the 8283)

Appraisal Requirements

www.irs.gov

- ▶ “Preferred Object Identification” Format for “Art” valued over \$50,000
 - ▶ (on IRS website under Art Services Office)
- ▶ Additional “Requests” :
 - ▶ Basis for reasoning for Fair Market Value: FACTS and EVIDENCE
 - ▶ State of the appropriate market. (What is the market?)
 - ▶ Analysis (methodology) in terms of characteristics of value
 - ▶ Comparisons to similar properties (Photos and sales info on comparable items)
 - ▶ Importance of property in relation to others of the type
 - ▶ Authentication

Authentication



- ▶ Verification of maker, period, origin
 - ▶ Connoisseurship of scholars, academics, museum officials, gallerists -- noted expert "accepted" in the marketplace and the IRS
 - ▶ Scientific testing
 - ▶ History of property (provenance)
- ▶ Appraiser is responsible for authentication but not for authenticating

Authentication

Supper at Emmaus by(?) Caravaggio



Supper at Emmaus by Caravaggio, National Gallery, London

Vehicle Donations



- ▶ Special rules for vehicle donations (automobiles, boats, planes) from the American Jobs Creation Act
- ▶ See Notice 2006-1 for guidance
 - ▶ Vehicle given to needy person or sold below FMV allows full FMV deduction
 - ▶ Vehicle used by charity allows full FMV
 - ▶ Value of vehicle plays a role
 - ▶ Use of Blue Book
 - ▶ Must attach a Form 1098-C (donor received completed form within 30 days of sale of vehicle)
 - ▶ Improvements on vehicle by donee must be accounted for

8283 Requirements

- ▶ Information on the 8283 form (information also in the appraisal)
- ▶ Donor's name, address of the donee (taxpayer ID#)
- ▶ Date of the contribution
- ▶ Brief description of property; condition of property
- ▶ Manner of acquisition (purchase, gift, inheritance, exchange)
- ▶ Cost Basis
- ▶ Effective date of valuation/date of contribution
- ▶ Fair Market Value

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/foia.

▶ Figure the amount of your contribution deduction before completing this form. See your tax return instructions for more information.

Part A. Donated Property of \$5,000 or Less and Publicly Traded Securities—List in Part A groups of similar items for which you claimed a deduction of \$5,000 or less, securities even if the deduction is more than \$5,000 (see instructions).

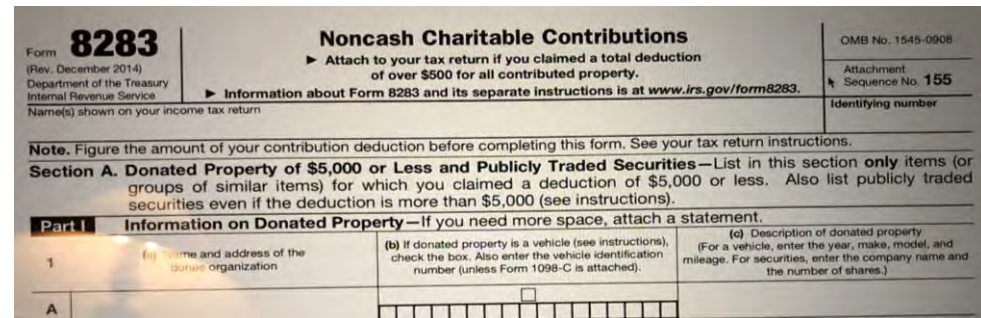
Part B. Information on Donated Property—If you need more space, attach a statement.

(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 1096-C is required).

8283 Requirements

- ▶ Appraiser declaration
- ▶ Donee acceptance statement
 - ▶ Sent without FMV and other information on top of form
 - ▶ Agree to keep property for three years or they fill out an 8282 and the IRS “recaptures” the donation



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

OMB No. 1545-0908
Attachment Sequence No. 155
Identifying number

▶ 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.

Name(s) shown on your income tax return

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.

| | (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.) |
|---|--|--|---|
| 1 | | | |
| A | | | |

Hello. I need an appraisal...



- ▶ 60 Day Rule
 - ▶ Appraisal may not be done more than 60 days prior to donation
 - ▶ Client needs to know where the property is being donated and an anticipated (or past) date; that it is (or will be accepted)
- ▶ Not just an organization that is a 501 (c)(3)
 - ▶ But an organization that meets the “related use” requirement for the donation
 - ▶ Is the donation in line with the mission of the organization?
 - ▶ Is it in line with the reason that the organization has its tax status?

Additional Issues

- ▶ Must be “Capital Gains Property”
- ▶ Or “Ordinary Income Property”
 - ▶ Inventory of a dealer (FMV less profit or “ordinary income”)
 - ▶ Work made by an artist, manuscripts by writer (archive) are “Self-created assets”
 - ▶ Cost of materials (not labor) – unless materials were deducted as business expense
 - ▶ Property held/owned for less than a year
 - ▶ Deduction is cost basis or Fair Market Value, whichever is lower

Additional Issues



- ▶ Fractional Donation
 - ▶ Must make full contribution of property within 10 years of original date of contribution
 - ▶ Additional deductions allowed for later contributions are based on FMV at time of donation or that of FMV on original date of donation, whichever is lower
 - ▶ On death, donor must contribute remainder of property interest
 - ▶ If criteria are not met, IRS “recaptures” the deduction PLUS interest and 10% of the recaptured amount

Thank you for your time

- ▶ Contact information for Sandie Tropper, FASA
- ▶ Sandraj.artemis@gmail.com
- ▶ Office: 301-229-2058
- ▶ ASA (personal and real property appraisers, and business valuers)
 - ▶ www.appraisers.org "Find an appraiser"
- ▶ The Appraisal Foundation
 - ▶ www.appraisalfoundation.org

