PRESENT LAW AND BACKGROUND RELATING TO THE FEDERAL TAX TREATMENT OF CHARITABLE CONTRIBUTIONS

Scheduled for a Public Hearing
Before the
SENATE COMMITTEE ON FINANCE
on March 17, 2022

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

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INTRODUCTION AND SUMMARY

The Senate Committee on Finance has scheduled a public hearing on March 17, 2022, entitled "Examining Charitable Giving and Trends in the Nonprofit Sector." This document,[1] prepared by the staff of the Joint Committee on Taxation, contains an overview of the present law rules relating to the Federal tax treatment of charitable contributions, a discussion of economic issues relating to Federal tax incentives for charitable giving, and data relating to charitable contributions.

Part I of this pamphlet describes the history and present law of Federal tax treatment of charitable contributions. The Federal income tax charitable deduction dates back to 1917 and has remained a feature of the income tax system throughout its history. The Internal Revenue Code allows taxpayers to reduce their income, estate, and gift tax liability with deductions for gifts to certain organizations, including charities and governmental units.

Part II of this pamphlet provides data and analysis relating to charitable giving in the United States.[2] Charitable giving in the United States by individuals, foundations, decedents' estates, and corporations is estimated to have reached $471.44 billion in 2020, of which individuals gave $324.1 billion, foundations gave $88.55 billion, decedents' estates gave $41.91 billion, and corporations gave $16.88 billion.[3] Overall, charitable giving in the Unites States in 2020 increased by 5.1 percent (3.8 percent adjusted for inflation) over 2019. While giving by individuals, foundations, and estates increased year over year by 2.2 percent, 17.0 percent, and 10.3 percent, respectively (1.0, 15.6, and 9.0 percent adjusted for inflation), giving by corporations decreased by 6.1 percent in 2020 compared to 2019.[4] As discussed in Part I, below, not all charitable contributions are deductible for Federal income tax purposes.

Organizations classified as religious organizations received 28 percent of all charitable donations. Educational institutions comprise the next largest category, receiving 15 percent of donations in 2020. Human services organizations (such as the Red Cross) received 14 percent, grantmaking foundations (including independent, community, and operating foundations) received 12 percent, and health organizations received nine percent. Others, including

[1] This document may be cited as follows: Joint Committee on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions* (JCX-2-22), March 11, 2022. This document can be found on the website at www.jct.gov.

[2] Part II provides some data from the Giving USA Foundation, which publishes estimates of overall giving in the United States. Because IRS data generally captures only giving by taxpayers who claim a charitable deduction, estimates published by Giving USA are made using a variety of data derived from both tax- and non-tax-related sources. The categories used by Giving USA to summarize sources and recipients of charitable contributions do not in all cases align with classifications of donors and recipient organizations that apply in determining the income tax charitable deduction, which are described in Part I. For example, in summarizing sources of giving, Giving USA classifies foundations as a source of giving; for federal income tax purposes, however, the law generally does not provide an income tax deduction when a foundation makes a grant to another charity to the extent that the foundation is exempt from Federal income tax. Further details on this data are available in Part II.

[3] Giving USA, *Giving USA 2021: The Annual Report on Philanthropy for the Year 2020,* 2021, p.23.

[4] *Ibid*., p.27.

organizations classified as "public-society benefit" organizations (for example, United Way, Jewish Federations, and sponsoring organizations of donor-advised funds); arts, culture, and humanities organizations; international affairs organizations; and environmental and animal organizations together received 22 percent of contributions and direct contributions to individuals totaled three percent in 2020.[5]

A donor advised fund ("DAF") generally is an account owned by a public charity to which a donor makes a deductible contribution and subsequently provides advice to the charity concerning the investment or granting of amounts in the account. In recent years, charitable giving to DAFs has grown at a rate that far exceeds the rate of growth in overall charitable giving. Between 2006 and 2019, the number of DAF accounts maintained by charitable organizations increased from 160,000 to 873,228,[6] assets held in DAF accounts increased from $31.1 billion to $141.95 billion (an increase of 356.4 percent),[7] contributions to DAF accounts increased from $9 billion to $38.81 billion (8.7 percent of total U.S. giving for 2019, and an increase of 331.2 percent), and grants from DAF accounts increased from $5.7 billion to $27.37 billion.[8] During the same period, total U.S. giving increased by 52 percent.[9]

Many charitable organizations rely on charitable donations to finance their operations, and the charitable contribution deduction has been found to play an important role in providing such support. The deduction for charitable contributions reduces the economic cost of making a donation and evidence suggests this encourages charitable giving. The after-tax cost of giving is the value of the gift net of the amount of any tax benefits received. For example, for every dollar given to charity by an itemizing taxpayer in the 35-percent marginal tax bracket, the after-tax cost of giving that dollar is 65 cents ($1 – $0.35). Empirical studies generally suggest that taxpayers increase donations as the after-tax cost of giving decreases, and they decrease donations as the after-tax cost of giving increases. The strength of this price effect can have significant policy implications if, for example, the loss in Federal revenue from allowing the charitable deduction is greater than or less than the increase in charitable giving caused by the deduction. A number of economic studies have examined the strength of this price effect, with differing results, as discussed in Part II, below.

There are a number of economic explanations for why people give to charity that have implications for the design of charitable giving tax policy. One such explanation is that individuals give to charity not only for the benefit of others, but also partly because they receive

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5 *Ibid.*, pp. 4-6, 10. Totals may not add to 100 percent due to rounding.

6 The 2006 and 2019 counts are from two separate data sources and are rounded differently. *Report to Congress on Supporting Organizations and Donor Advised Funds,* Department of Treasury, 2011, https://home .treasury.gov/system/files/131/Report-Donor-Advised-Funds-2011.pdf; *2020 Donor-Advised Fund Report,* National Philanthropic Trust, 2021, https://www.nptrust.org/daf-report/index html

7 This is calculated to be $\frac{\$141.95-\$31.1}{\$31.1}$*100, or 356.4 percent.

8 Giving USA, *Donor Advised Funds: New Insights*, 2021, p. 13.

9 *Ibid*.

a benefit (or "warm glow") from helping others. If this is correct, under a comprehensive income tax system, there is no rationale for allowing the full deduction of these contributions. On the other hand, if donors make charitable donations purely to benefit others and are not themselves enriched by the charity, the donated income reduces the donor's ability to pay the income tax without providing the donor with any benefits. If this is correct, under a comprehensive income tax, there is a rationale to allow deduction of these contributions. These and other economic rationales for the charitable deduction are discussed in Part II, below.

I. PRESENT LAW AND BACKGROUND

The Internal Revenue Code allows a taxpayer to reduce income, estate, and gift tax liability by taking deductions for contributions to certain organizations, including charities;[10] Federal, State, local and Indian tribal governments; and certain other organizations. The rules describing these deductions are found in sections 170 (income tax charitable deduction),[11] 2055 (estate tax charitable deduction), and 2522 (gift tax charitable deduction).[12]

A. History of the Charitable Contribution Deduction

The income tax charitable deduction was first introduced by the War Revenue Act of 1917[13] and accompanied rate increases in the Federal income tax. The rate increases were enacted to help fund the United States' World War I effort, and legislators feared that the increases would reduce individuals' income "surplus" from which they supported charity. It was thought that a decrease in private support would create an increased need for public support and even higher tax rates, so the deduction was offered as a compromise. To ensure that individual taxpayers could not eliminate their tax liability through the deduction, it was capped at 15 percent of taxable income.

Supporters of the deduction also argued that the incidence of any income tax without the deduction would fall at least partially on the charities themselves, as individuals would donate only the after-tax value of their before-tax intended gifts. Additionally, the deduction was viewed as an effective way to distribute public money to charities, as it cut out the government intermediary. Many believed charities could deliver social services better than the government and that it was appropriate for individuals, rather than the government, to decide which charities to support. Finally, some argued that money donated to charity should not be considered income at all and thus should not be taxed.

The income tax charitable deduction has undergone many changes since the War Revenue Act of 1917. Significant changes include allowing an unlimited deduction to taxpayers who donated more than 90 percent of their taxable income in the current year and in each of the previous 10 years in 1924;[14] changing the limitation to a percentage of adjusted gross income ("AGI"), rather than taxable income, and introducing the standard deduction in 1944;[15] and

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[10] This pamphlet generally will refer to organizations described in section 501(c)(3) of the Internal Revenue Code as "charities" or "charitable organizations."

[11] Section 170 applies to individuals and C corporations. See also section 642(c), which provides charitable deduction rules for estates and trusts. Trusts and estates generally are permitted to deduct certain amounts paid or permanently set aside for charitable purposes.

[12] Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

[13] Pub. L. No. 65-50.

[14] Revenue Act of 1924, Pub. L. No. 68-176.

[15] Individual Income Tax Act of 1944, Pub. L. No. 78-315.

removing the unlimited deduction in 1976.[16] For a brief period beginning in 1981, nonitemizers were allowed to take the deduction.[17] The Tax Reform Act of 1986[18] ended that practice because of the increased standard deduction, the administrative burdens of substantiating nonitemizers' contributions, and the belief that the practice allowed nonitemizers a double deduction for their contributions (because the standard deduction assumes a certain amount of charitable contributions).

The Revenue Act of 1935[19] made the charitable deduction available to corporations, but the deduction was limited at that time to five percent of the corporation's net income.[20] Despite concerns in earlier debates that charitable giving by corporations would be *ultra vires* (beyond the powers of the corporation), the deduction was ultimately allowed as a means to reduce the level of tax increases needed to provide services to those affected by the Great Depression.

The charitable deduction for the modern estate tax was first introduced by the Revenue Act of 1918.[21] The justifications for the estate tax deduction mirror those for the income tax deduction. Supporters expressed fears that individual taxpayers would stop giving to charity because of the new income tax rates discussed above and also reasoned that, because the charities were providing public goods, donations to those charities should not be taxed. The charitable deduction for the gift tax was first introduced along with the gift tax by the Revenue Act of 1924,[22] but that gift tax was repealed in 1926.[23] The gift tax, along with the charitable deduction for the gift tax, was reinstated by the Revenue Act of 1932[24] as a corollary to the estate tax. The gift tax was designed to ensure that taxpayers could not avoid the estate tax by making *inter vivos* transfers (transfers during the donor's life).

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[16] Tax Reform Act of 1976, Pub. L. No. 94-455.

[17] Economic Recovery Tax Act of 1981, Pub. L. No. 97-34.

[18] Tax Reform Act of 1986, Pub. L. No. 99-514.

[19] Pub. L. No. 74-407.

[20] The percentage limit on corporate charitable contributions was modified to 10 percent of taxable income in the Economic Recovery Tax Act of 1981, Pub. L. No. 97-34.

[21] Pub. L. No. 65-254. The War Revenue Act of 1898, 30 Stat. 448, established a short-lived estate tax to raise funds for the Spanish-American War. An exemption from the tax was allowed for charitable bequests by the War Revenue Reduction Act of 1901, 31 Stat. 946; however, the tax was repealed by the War Revenue Repeal Act of 1902, 32 Stat. 96.

[22] Pub. L. No. 68-176.

[23] Revenue Act of 1926, Pub. L. No. 69-20.

[24] Pub. L. No. 72-154.

B. Income Tax Deduction for Charitable Contributions

1. Elements of the deduction

To be deductible, a charitable contribution generally must meet several threshold requirements. The recipient organization must be eligible to receive deductible charitable contributions. The transfer must be made with gratuitous intent and without the expectation of a benefit of substantial economic value in return. The transfer must be complete and generally must be a transfer of a donor's entire interest in the contributed property (not a contingent or partial interest). The transfer must be of money or property—contributions of services are not deductible.[25] And the transfer must be substantiated and in the proper form. These requirements are discussed in greater detail below.

As also discussed below, a taxpayer's deduction for charitable contributions made during the year is limited to a percentage of income. These rules, in part, turn on whether the organization receiving the contribution is a public charity or a private foundation. Other rules determine the deductible value of contributed property based on the type of property and the type of recipient organization.

2. Effect of the deduction on taxable income

<u>In general</u>

Because the charitable contribution deduction for individuals is generally an itemized deduction, its value in any tax year depends on the relative amount of the taxpayer's itemized deductions compared to his or her standard deduction and the taxpayer's marginal tax rate.[26]

An individual computes his or her taxable income by reducing gross income by the sum of (i) the deductions allowable in computing AGI ("above-the-line" deductions);[27] (ii) either the standard deduction or the sum of the itemized deductions, at the election of the taxpayer;[28] and (iii) the qualified business income deduction.[29] Graduated tax rates are then applied to a

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[25] For example, the value of time spent volunteering for a charitable organization is not deductible. Incidental expenses such as mileage, supplies, or other expenses incurred while volunteering for a charitable organization, however, may be deductible.

[26] The charitable deduction is also allowed for purposes of calculating alternative minimum taxable income.

[27] Above-the-line deductions include, among other things, trade or business expenses, losses from the sale or exchange of property, deductions attributable to rents and royalties, contributions to pensions and other retirement plans, certain moving expenses for members of the Armed Forces, certain benefits and payments to members of qualified volunteer emergency response organizations, and certain expenses of elementary and secondary school teachers. See sec. 62.

[28] Sec. 63.

[29] Sec. 199A.

taxpayer's taxable income to determine his or her income tax liability. A taxpayer may also reduce his or her income tax liability by certain tax credits.

The standard deduction eliminates the need for many taxpayers to itemize deductions on Schedule A of Form 1040. The amount of the standard deduction originally was designed in part to approximate the amount of itemized deductions—such as medical expenses, charitable contributions, and State and local taxes—that a taxpayer ordinarily incurs in a taxable year. The basic standard deduction varies depending upon a taxpayer's filing status. In 2022, the standard deduction is $12,950 for single individuals, $19,400 for heads of households, $25,900 for married couples filing jointly, and $12,950 for married individuals filing separately.[30]

If a taxpayer takes the standard deduction rather than itemizing deductions in a tax year, then any charitable contributions the taxpayer makes in that year do not further reduce taxable income.[31] A taxpayer's decision to elect to itemize deductions in lieu of taking the applicable standard deduction depends on the amount of the standard deduction relative to the amount of itemized deductions. In general, it is beneficial to itemize deductions only if the total value of the itemized deductions is greater than the standard deduction.

- Example 1.–In 2022, a single taxpayer generally would need a minimum of $12,950 of total itemized deductions, including charitable contributions, to prefer to itemize deductions rather than taking the standard deduction.

The taxpayer's marginal tax rate also affects the value of the charitable contribution deduction to a particular taxpayer. The higher the taxpayer's marginal tax rate, the greater the value of the charitable deduction to that taxpayer.[32]

- Example 2.–The value of a $1,000 charitable contribution deduction to a single taxpayer who itemizes deductions and is in the 22-percent tax bracket is $220 ($1,000 x 22 percent). In other words, the $1,000 charitable contribution reduces the taxpayer's tax liability by $220. Stated differently, the taxpayer's after-tax cost of making the $1,000 contribution is $780.
- Example 3.–The value of a $1,000 charitable contribution deduction to a single taxpayer who itemizes deductions and is in the 35-percent tax bracket is $350 ($1,000 x 35 percent). For this taxpayer, the $1,000 charitable contribution reduces his or her tax liability by $350. Therefore, the after-tax cost of making the $1,000 contribution is $650.

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[30] Rev. Proc. 2021-45, I.R.B 2021-48, p. 769. An additional standard deduction is allowed with respect to any individual who is elderly (*i.e.*, above age 64) and/or blind. Sec. 63(f).

[31] A temporary provision, discussed in greater detail below, allowed nonitemizers to claim a limited charitable deduction for certain cash contributions made during 2020 and 2021.

[32] An overall limit on itemized deductions, known as the "Pease limitation," was temporarily repealed (through 2025) by Public Law 115-97. For a general discussion of the effect of the Pease limitation on charitable contributions, see Joint Committee on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions* (JCX-4-13), February 11, 2013, p. 8.

3. Organizations eligible to receive deductible charitable contributions

Overview of tax-exempt organizations

The tax-exempt sector in the United States includes a wide variety of organizations, both charitable and noncharitable. Section 501(a) exempts many of these organizations from Federal income tax.[33] Section 501(c) describes the tax-exempt purposes of many of these organizations and the additional legal requirements they must meet to maintain tax-exempt status.

As of September 30, 2020, there were approximately 1.75 million section 501(c) organizations registered with the Internal Revenue Service.[34] Of these, there were approximately 1.4 million charitable organizations described in section 501(c)(3) and eligible to receive deductible charitable contributions under section 170. The remaining approximately 0.35 million section 501(c) organizations were other types of organizations, including chambers of commerce, fraternal organizations, and civic leagues.[35]

Eligible recipients of deductible charitable contributions

In general

Not all tax-exempt organizations are eligible to receive charitable contributions that are deductible by the donor. Section 170 (relating to the income tax charitable deduction) permits donors to deduct contributions to the following organizations: (1) governmental entities;[36] (2) domestic charitable organizations;[37] (3) veterans organizations;[38] (4) domestic fraternal

[33] Others may be exempt from Federal income tax by virtue of being a governmental unit or integral part thereof, or under a separate provision of the Code.

[34] Internal Revenue Service, *2020 Data Book*, p. 30, available at https://www.irs.gov/pub/irs-pdf/p55b.pdf.

[35] *Ibid*. Organizations that are not required to file for recognition of tax-exempt status generally are not included in the IRS Business Master File.

[36] A State (including an Indian tribal government) or United States possession (or political subdivision of either), or the United States or the District of Columbia, if the contribution is made exclusively for public purposes. Sec. 170(c)(1). Indian tribal governments are treated as States for purposes of deductibility of contributions under section 170(c). See sec. 7871(a)(1)(A).

[37] Specifically, a community chest, corporation, trust, fund, or foundation, organized or created in the United States or its possessions, or under the laws of the United States, any State, the District of Columbia or any possession of the United States, and organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals. Sec. 170(c)(2). The Code provides that for a charitable organization to be an eligible recipient for income tax purposes, it must be created or organized in the United States; the corresponding estate and gift tax provisions of the Code include no such explicit requirement (secs. 2055(a)(2) and 2522(a)(2)). However, section 508(d)(2)(B) provides that no income, estate or gift tax charitable deduction is allowed for a contribution to an organization that has not sought recognition from the IRS of its exempt status under section 501(c)(3).

[38] A war veterans organization or its post, auxiliary, trust, or foundation organized in the United States or its possessions. Sec. 170(c)(3).

societies;[39] and (5) cemetery companies.[40] Donors may determine whether an organization is eligible to receive tax-deductible contributions by searching data from IRS Publication 78, which lists eligible organizations by name and location, using the "Tax Exempt Organization Search Tool" on the IRS website.[41]

In general, no income tax deduction is available for gifts to individuals or to organizations that are not listed under section 170(c). Contributions to the following types of organizations, for example, typically are not deductible as charitable contributions: most social welfare organizations (described in section 501(c)(4));[42] labor organizations (described in section 501(c)(5)); business leagues and chambers of commerce (described in section 501(c)(6)); homeowners associations; and charities that are not in the proper organizational form or are organized in a foreign jurisdiction (as outlined below).

Charitable organizations

The domestic charitable organization category includes organizations that engage in a wide range of socially beneficial activities. Examples include churches and other religious organizations, disaster relief organizations such as the Red Cross, schools and other educational organizations, hospitals, and arts organizations.

For a charitable organization to be eligible to receive income tax deductible charitable contributions, it must meet the following basic requirements:

- *Organizational form*. The charity must be in the proper organizational form. Specifically, it must be a corporation, trust, community chest, fund, or foundation.[43]

[39] The society must operate under the lodge system, and the contribution must be used solely for charitable, religious, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. Sec. 170(c)(4).

[40] A nonprofit cemetery company may receive a deductible contribution if the funds are irrevocably dedicated to the perpetual care of the cemetery as a whole and not a particular lot or mausoleum crypt. Sec. 170(c)(5). Certain contributions to cemetery companies, while deductible for income tax purposes, are not deductible for estate or gift tax purposes. See secs. 2055(a) and 2522(a).

[41] See https://www.irs.gov/charities-non-profits/tax-exempt-organization-search. Publication 78 includes all organizations that have filed for recognition of tax-exempt status under a qualifying Code section and received a favorable determination from the IRS. Organizations that are not required to file for recognition of tax-exempt status are not listed in Publication 78. For example, governmental units, churches, integrated auxiliaries of churches, and conventions or associations of churches may be treated as tax-exempt without filing an application.

[42] In a few limited situations, organizations described in section 501(c)(4) may be eligible recipients described in section 170(c). This might include, for example, certain veterans organizations and certain volunteer fire companies.

[43] Sec. 170(c)(2).

- *Domestic*. The charity must be organized in the United States.[44] A foreign charitable organization is not eligible to receive income tax deductible charitable contributions directly, even if it receives a favorable determination letter from the IRS that it meets the requirements of section 501(c)(3).[45]
- *Charitable purpose*. The charity must be organized and operated exclusively for one or more of the following tax-exempt purposes: religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster international amateur sports competition, or for the prevention of cruelty to children or animals.[46] No charitable deduction is available for gifts to organizations run for personal profit or organizations that confer substantial private benefits on a noncharitable group or class.
- *No private inurement*. No part of the net earnings of a charity may inure to the benefit of any private shareholder or individual (for example, the organization may not pay dividends to the organization's officers or directors).[47]
- *No excessive lobbying and no political campaign intervention*. No substantial part of the activities of a charity may consist of carrying on propaganda, or otherwise attempting to influence legislation, and the organization may not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.[48]

As discussed in greater detail below, a charitable organization is further classified as a public charity or a private foundation. Contributions to both public charities and private foundations generally are deductible, but the amount of the deduction may differ.

4. Additional requirements for the claiming the deduction

Donative intent

The term "contribution or gift" is generally interpreted to mean a voluntary transfer of money or other property without receipt of adequate consideration and with donative intent. A payment or other transfer to a charity (regardless of whether it is called a "contribution") is not deductible if it is made in exchange or in return for an economic benefit. To the extent a payment exceeds the fair market value of the benefit received from the charity, the excess

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[44] Sec. 170(c)(2)(A).

[45] Foreign charitable organizations are, however, eligible to receive grants from domestic charities, which sometimes serve as intermediaries of foreign charities provided that the domestic charity maintains discretion and control over its funds and does not permit earmarked grants to foreign charities. These intermediary organizations are commonly known as "friends of" organizations. The geographical restriction for the income tax charitable deduction does not apply to the gift and estate tax charitable deductions.

[46] Sec. 170(c)(2)(B).

[47] Sec. 170(c)(2)(C).

[48] Sec. 170(c)(2)(D).

portion may be deductible provided that the donor can demonstrate that he or she transferred the excess to charity with the intention of making a gift.[49]

- Example 4.–If a donor pays $1,000 to attend a dinner to benefit a charitable organization, the deductible portion of the payment does not include the value of the dinner or other tangible return benefits the donor receives at the event.[50]

Following are examples of payments to eligible recipient organizations that are not deductible, because donative intent is lacking.

- Example 5.–If a parent pays tuition to a university for a child's education, that tuition payment is not deductible even if the university is a charitable organization or State government agency, because the tuition is a fee for educational services (a substantial return benefit).
- Example 6.–A payment of membership dues, fees, or other bills to a country club, lodge, fraternal order, or similar group generally is not deductible, even if the group qualifies to receive deductible contributions, because such payments typically are in exchange for services rendered.
- Example 7.–The cost of a raffle, bingo, or lottery ticket generally is not deductible to the extent that the payment entitles the purchaser to a chance to win a prize.

<u>Substantiation of contributions</u>

A donor who claims a deduction for a charitable contribution must maintain reliable written records regarding the contribution, regardless of the value or amount of the contribution.[51] In the case of a charitable contribution of money, regardless of the amount, applicable recordkeeping requirements are satisfied only if the donor maintains as a record of the contribution a bank record or a written communication from the recipient showing the name of the recipient organization, the date of the contribution, and the amount of the contribution.

No charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether the charity provided any good or service (and an estimate of the value of any such good or service) to the taxpayer in consideration for the contribution.[52]

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[49] *United States v. American Bar Endowment*, 477 U.S. 105 (1986). Treas. Reg. sec. 1.170A-1(h).

[50] Intangible return benefits and certain low-cost items given in exchange for a contribution do not reduce the value of the charitable deduction.

[51] Sec. 170(f)(17).

[52] Such acknowledgement must include the amount of cash and a description (but not value) of any property other than cash contributed, whether the recipient provided any goods or services in consideration for the contribution, and a good faith estimate of the value of any such goods or services. Sec. 170(f)(8).

In addition, any organization receiving a contribution exceeding $75 made partly as a gift and partly as consideration for goods or services furnished by the charity (a "quid pro quo" contribution) is required to provide in writing an estimate of the value of the goods or services and a statement that only the portion of the contribution that exceeds the value of the goods or services is deductible as a charitable contribution.[53]

If the total charitable deduction claimed for noncash property is more than $500, the taxpayer must attach a completed Form 8283 (Noncash Charitable Contributions) to the taxpayer's return.[54] In general, taxpayers are required to obtain a qualified appraisal for donated property with a value of more than $5,000, and to attach an appraisal summary to the tax return.

5. Determining the amount of the deduction: percentage limits and valuation rules

For Federal income tax purposes, the deductible portion of a charitable contribution generally is limited to a percentage of the taxpayer's income. In addition, in determining the deductible value of a charitable contribution of appreciated property for income tax purposes, the Code sometimes requires a reduction from the fair market value of the property.

Percentage limits on charitable contributions

Individual taxpayers

For individuals, in any taxable year, the amount deductible as a charitable contribution is limited to a percentage of the taxpayer's contribution base.[55] The contribution base is defined as the taxpayer's AGI computed without regard to any net operating loss carryback.[56] The applicable percentage of the contribution base varies depending on the type of recipient organization and property contributed.

Contributions by an individual taxpayer of property (other than appreciated capital gain property) to a charitable organization described in section 170(b)(1)(A) (*e.g.*, public charities, private foundations other than private non-operating foundations, and certain governmental units) may not exceed 50 percent of the taxpayer's contribution base. Contributions of this type of property to nonoperating private foundations and certain other organizations generally may be deducted up to 30 percent of the taxpayer's contribution base. Public charities and private foundations are discussed below in greater detail.

For contributions taken into account for taxable years beginning after December 31, 2017, and before January 1, 2026, section 170(b)(1)(G) increases the percentage limit for contributions by an individual taxpayer of cash to an organization described in section 170(b)(1)(A) to 60 percent. The 60-percent limit does not apply to noncash

[53] Sec. 6115.

[54] Sec. 170(f)(11).

[55] Sec. 170(b)(1).

[56] Sec. 170(b)(1)(H).

contributions. The 60-percent limit is intended to be applied after, and reduced by, the amount of noncash contributions to organizations described in section 170(b)(1)(A).

Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(A) generally are deductible up to 30 percent of the taxpayer's contribution base. An individual may elect, however, to bring contributions of appreciated capital gain property for a taxable year within the 50-percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of appreciated capital gain property to private nonoperating foundations are deductible up to 20 percent of the taxpayer's contribution base.[57]

Corporate taxpayers

A C corporation generally may deduct charitable contributions up to 10 percent of the corporation's taxable income for the year.[58] For this purpose, taxable income is determined without regard to: (1) the charitable contribution deduction; (2) any net operating loss carryback to the taxable year; (3) deductions for dividends received; (4) deductions for dividends paid on certain preferred stock of public utilities; and (5) any capital loss carryback to the taxable year.[59]

A transfer of property by a corporation to a charity might qualify as either a deductible charitable contribution or a deductible business expense, but not both. No deduction is allowed as a business expense under section 162 for any contribution that would be deductible as a charitable contribution but for the percentage limitations on the charitable contribution deduction (or certain other limits on deductibility under section 170).[60] In addition, a business transfer made with a reasonable expectation of a return benefit is not deductible as a charitable contribution under section 170, because the transferor lacks donative intent. The same transfer, however, might be deductible as a business expense under section 162.

Carryforwards of excess contributions

Charitable contributions that exceed the applicable percentage limit generally may be carried forward for up to five years.[61] In general, contributions carried over from a prior year are

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[57] More favorable percentage limits sometimes apply to contributions *to* the donee charity than to contributions that are *for the use of* the donee charity. Contributions of capital gain property for the use of public charities and other organizations described in section 170(b)(1)(A) also are limited to 20 percent of the taxpayer's contribution base. In contrast to property contributed directly to a charitable organization, property contributed for the use of an organization generally has been interpreted to mean property contributed in trust for the organization. *Rockefeller v. Commissioner*, 676 F.2d 35, 39 (2d Cir. 1982). Charitable contributions of income interests (where deductible) also generally are treated as contributions for the use of the donee organization.

[58] Sec. 170(b)(2)(A).

[59] Sec. 170(b)(2)(C). Certain qualified conservation contributions (generally, conservation easements), qualify for more generous contribution limits and carryforward periods. These rules are discussed below.

[60] Sec. 162(b).

[61] Sec. 170(d).

taken into account after contributions for the current year that are subject to the same percentage limit. Excess contributions made for the use of (rather than to) an organization generally may not be carried forward.

Valuation of charitable contributions

In general

For purposes of the income tax charitable deduction, the value of property contributed to charity generally is the fair market value of the property. In certain situations, however, the amount of the deduction may be the donor's tax basis in the property or may be determined in an alternative manner.

Charitable contributions of cash are deductible in the amount contributed, generally subject to the percentage limits discussed above. In addition, a taxpayer generally may deduct the full fair market value of long-term capital gain property contributed to a public charity.[62] Contributions of tangible personal property to a public charity also generally are deductible at fair market value if the use by the recipient charitable organization is related to its tax-exempt purpose.[63]

In certain other cases, however, section 170(e) limits the deductible value of the contribution of appreciated property to the donor's tax basis in the property. This limitation generally applies, for example, for: (1) contributions of inventory or other ordinary income or short-term capital gain property;[64] (2) contributions of tangible personal property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose;[65] and

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[62] Capital gain property means any capital asset or property used in the taxpayer's trade or business, the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Sec. 170(e)(1)(A).

[63] In the case of a charitable contribution of tangible personal property with respect to which a fair market value deduction in excess of $5,000 is claimed and which is not used for exempt purposes, section 170(e)(7) provides for recovery of the excess tax benefit. If the recipient organization disposes of applicable property within three years of the contribution of the property, the donor is subject to an adjustment of the tax benefit. If the disposition occurs in the tax year in which the contribution is made, the donor's deduction generally is basis and not fair market value. If the disposition occurs in a subsequent year, the donor must include as ordinary income for its taxable year in which the disposition occurs an amount equal to the excess (if any) of (i) the amount of the deduction previously claimed by the donor as a charitable contribution with respect to such property, over (ii) the donor's basis in such property at the time of the contribution. There is no adjustment of the tax benefit if the recipient organization makes an appropriate certification to the Secretary by written statement signed under penalties of perjury by an officer of the organization.

[64] Sec. 170(e). Special rules, discussed below, apply for certain contributions of inventory and other property.

[65] Sec. 170(e)(1)(B)(i)(I).

(3) contributions to or for the use of a private foundation (other than certain private operating foundations).[66]

Contributions of qualified appreciated stock to a private nonoperating foundation are not subject to the above-described basis limitation; subject to certain limits, such contributions may be deducted at the fair market value of the stock.[67] Qualified appreciated stock is stock that is capital gain property and for which (as of the date of the contribution) market quotations are readily available on an established securities market.[68]

Contributions of property with a fair market value that is less than the donor's tax basis generally are deductible at the fair market value of the property.

Enhanced deduction rules for certain contributions of inventory and other property

As mentioned above, contributions of appreciated inventory and certain other property generally are limited to the donor's tax basis in the property. In certain limited cases, however, contributions of such property may qualify for an enhanced deduction valuation that exceeds the donor's tax basis in the property (but which is less than the fair market value of the property).

Contributions of inventory by C corporations to section 501(c)(3) organizations for the care of the ill, the needy, or infants

As discussed above, a taxpayer's deduction for charitable contributions of inventory property generally is limited to the taxpayer's basis (typically, cost) in the inventory, or, if less, the fair market value of the property. For certain contributions of inventory, however, C corporations (but not other taxpayers) may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (*i.e.*, basis plus one-half of fair market value in excess of basis) or (2) two times basis.[69] To be eligible for the enhanced deduction value, the contributed property generally must be inventory of the taxpayer contributed to a charitable organization described in section 501(c)(3) (except for private nonoperating foundations), and the donee must (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants; (2) not transfer the property in exchange for money, other property, or services; and (3) provide the taxpayer a written statement that the donee's use of the

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[66] Sec. 170(e)(1)(B)(ii). Certain contributions of patents or other intellectual property also generally are limited to the donor's basis in the property. Sec. 170(e)(1)(B)(iii). However, additional charitable deductions beyond the donor's tax basis are allowed in certain situations. In addition, the deduction for a charitable contribution of taxidermy property that is contributed by the person who prepared, stuffed, or mounted the property (or by any person who paid or incurred the cost of such preparation, stuffing, or mounting) is limited to basis. Sec. 170(e)(1)(B)(iv). For purposes of determining a taxpayer's basis in such taxidermy property, only the cost of the preparing, stuffing, and mounting may be included. Sec. 170(f)(15).

[67] Sec. 170(e)(5).

[68] Sec. 170(e)(5)(B).

[69] Sec. 170(e)(3).

property will be consistent with such requirements.[70] Contributions to organizations that are not described in section 501(c)(3), such as governmental entities, do not qualify for this enhanced deduction.

To claim the enhanced deduction, the taxpayer must establish that the fair market value of the donated item exceeds the tax basis.

Enhanced deduction rule for contributions of food inventory

Any taxpayer engaged in a trade or business, whether or not the taxpayer is a C corporation, is eligible to claim the enhanced deduction for donations of food inventory.[71] The enhanced deduction for food inventory is available only for food that qualifies as "apparently wholesome food." Apparently wholesome food is defined as food intended for human consumption that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

For a taxpayer that claims the enhanced deduction for food inventory, the total deduction for donations of food inventory in a taxable year generally may not exceed 15 percent of the taxpayer's net income for such taxable year from all sole proprietorships, S corporations, or partnerships (or other non-C corporation trades or businesses) from which contributions of apparently wholesome food are made. For C corporations, these contributions are made subject to a limitation of 15 percent of taxable income (as modified). The general 10-percent limitation for a C corporation does not apply to these contributions, but the 10-percent limitation applicable to other contributions is reduced by the amount of these contributions. Qualifying food inventory contributions in excess of the 15-percent limitation may be carried forward and treated as qualifying food inventory contributions in each of the five succeeding taxable years in order of time.

Selected statutory rules for specific types of property

Other statutory rules limit the deductible value (and impose enhanced reporting obligations on donors) of charitable contributions of certain types of property, including vehicles, intellectual property, and clothing and household items. Each of these rules was enacted in response to concerns that taxpayers often did not accurately report—and in many instances overstated—the value of the property.

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[70] Sec. 170(e)(3)(A)(i)-(iii). In the case of contributed property subject to the Federal Food, Drug, and Cosmetic Act, as amended, the property must satisfy the applicable requirements of such Act on the date of transfer and for 180 days prior to the transfer. Sec. 170(e)(3)(A)(iv). A donor making a charitable contribution of inventory must make a corresponding adjustment to the cost of goods sold by decreasing the cost of goods sold by the lesser of the fair market value of the property or the donor's basis with respect to the inventory. Treas. Reg. sec. 1.170A-4A(c)(3).

[71] Sec. 170(e)(3)(C).

Vehicles

The amount of the deduction for charitable contributions of used vehicles (generally including automobiles, boats, and airplanes for which the claimed value exceeds $500 and excluding inventory property) depends upon the use of the vehicle by the recipient organization.[72] If the recipient organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction may not exceed the gross proceeds received from the sale. In other situations, a fair market value deduction may be allowed.

The Code imposes special substantiation requirements on contributions of vehicles for which the claimed value exceeds $500 (excluding inventory property). A penalty applies if a recipient organization knowingly furnishes a false or fraudulent acknowledgement, or knowingly fails to furnish an acknowledgement showing the required information and meeting other statutory requirements.

Patents and other intellectual property

If a taxpayer contributes a patent or certain other intellectual property to a charitable organization, the taxpayer's initial charitable deduction is limited to the lesser of the taxpayer's basis in the contributed property or the fair market value of the property.[73] In addition, the taxpayer is permitted to deduct, as a charitable contribution, additional amounts in the year of contribution or in subsequent taxable years based on a specified percentage of the qualified donee income received or accrued by the charitable donee with respect to the contributed intellectual property. For this purpose, qualified donee income includes net income received or accrued by the donee that properly is allocable to the intellectual property itself (as opposed to the activity in which the intellectual property is used).

The amount of any additional charitable deduction is calculated as a sliding-scale percentage of qualified donee income received or accrued by the charitable donee that properly is allocable to the contributed property for the applicable taxable year of the donor. The percentage declines from 100 percent in the first and second years ending on or after the contribution to 10 percent in the 11th and 12th years. No deduction is permitted for later taxable years. An additional charitable deduction is allowed only to the extent that the aggregate of the amounts that are calculated pursuant to the sliding-scale exceed the amount of the deduction claimed upon the contribution of the patent or other intellectual property. Special reporting and substantiation rules apply.

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[72] Sec. 170(f)(12). Before 2005, a taxpayer who donated a used automobile to a charitable organization generally deducted the fair market value (rather than the taxpayer's basis) of the automobile. A taxpayer who donated a used automobile generally was permitted to use an established used car pricing guide to determine the fair market value of the automobile, but only if the guide listed a sales price for an automobile of the same make, model and year, sold in the same area, and in the same condition as the donated automobile. Similar rules applied to contributions of other types of vehicles and property, such as boats.

[73] Sec. 170(e)(1)(B)(iii).

Additional charitable deductions are not available for patents or other intellectual property contributed to a private foundation (other than a private operating foundation or certain other private foundations described in section 170(b)(1)(E)). No charitable deduction is permitted with respect to any revenues or income received or accrued by the charitable donee after the expiration of the legal life of the patent or other intellectual property, or after the tenth anniversary of the date the contribution was made by the donor.

Clothing and household items

Charitable contributions of clothing and household items generally are subject to the charitable deduction rules that apply to tangible personal property. If such contributed property is appreciated property in the hands of the taxpayer and is not used to further the recipient organization's exempt purpose, the deduction is limited to the taxpayer's basis. In most situations, however, clothing and household items have declined in value and thus have a fair market value that is less than the taxpayer's basis in the property. Because property with a fair market value less than basis generally is deductible at the property's fair market value, taxpayers generally may deduct only the fair market value of most contributions of clothing or household items, regardless of how the recipient organization uses the donated items.

No deduction is allowed for a charitable contribution of clothing or a household item unless the item is in good used condition or better.[74] The Secretary is authorized to deny by regulation a deduction for any contribution of clothing or a household item that has minimal monetary value, such as used socks and used undergarments. Notwithstanding the general rule, a charitable contribution of clothing or household items not in good used or better condition with a claimed value of more than $500 may be deducted if the taxpayer includes with the taxpayer's return a qualified appraisal with respect to the property.[75]

For this purpose, household items include furniture, furnishings, electronics, appliances, linens, and other similar items. Food, paintings, antiques, and other objects of art, jewelry and gems, and certain collections are excluded from the rules described in the preceding paragraph.

Trusts and estates

Nongrantor trusts and estates are generally subject to Federal income tax. The taxable income of a trust or estate is generally computed in the same manner as the taxable income of an individual, subject to certain modifications.[76]

[74] Sec. 170(f)(16).

[75] As is discussed above, the charitable contribution substantiation rules generally require a qualified appraisal where the claimed value of a contribution is more than $5,000.

[76] Sec. 641(b).

Once such modification is that estates and certain trusts[77] are eligible for a charitable deduction under section 642(c) in lieu of the deduction under section 170(a).[78] Under this provision, the charitable deduction allowed to trusts and estates is not subject to any percentage limitations, in contrast to the rules for individuals and corporations.

Section 642(c) allows a deduction for "any amount of gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in IRC § 170(c)."[79] It also allows for estates and certain trusts created on or before October 9, 1969, a deduction for amounts of gross income that are permanently set aside for charitable purposes.[80] Charitable deductions made by trusts and estates are not limited to domestic charities.

6. Contributions of partial interests in property

In general

In general, a charitable deduction is not allowed for income, estate, or gift tax purposes if the donor transfers an interest in property to a charity while retaining an interest in that property or transferring an interest in that property to a noncharity for less than full and adequate consideration.[81] This rule of nondeductibility, often referred to as the partial interest rule, generally prohibits a charitable deduction for contributions of income interests, remainder interests, or rights to use property.

A charitable contribution deduction generally is not allowable for a contribution of a future interest in tangible personal property.[82] For this purpose, a future interest is one "in which a donor purports to give tangible personal property to a charitable organization, but has an understanding, arrangement, agreement, etc., whether written or oral, with the charitable organization which has the effect of reserving to, or retaining in, such donor a right to the use, possession, or enjoyment of the property."[83]

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[77] Simple trusts may not claim a charitable deduction

[78] Sec. 642(c)(1).

[79] *Ibid*.

[80] Sec. 642(c)(2).

[81] Secs. 170(f)(3)(A) (income tax), 2055(e)(2) (estate tax), and 2522(c)(2) (gift tax).

[82] Sec. 170(a)(3).

[83] Treas. Reg. sec. 1.170A-5(a)(4). Treasury regulations provide that section 170(a)(3), which generally denies a deduction for a contribution of a future interest in tangible personal property, has "no application in respect of a transfer of an undivided present interest in property. For example, a contribution of an undivided one-quarter interest in a painting with respect to which the donee is entitled to possession during three months of each year shall be treated as made upon the receipt by the donee of a formally executed and acknowledged deed of gift. However,

A gift of an undivided portion of a donor's entire interest in property generally is not treated as a gift of a partial interest in property, and a deduction therefore may be allowed.[84] For this purpose, an undivided portion of a donor's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the donor in such property and must extend over the entire term of the donor's interest in such property.[85] A gift generally is treated as a gift of an undivided portion of a donor's entire interest in property if the donee is given the right, as a tenant in common with the donor, to possession, dominion, and control of the property for a portion of each year appropriate to its interest in such property.[86]

Other exceptions to the partial interest rule are provided for, among other interests: (1) a remainder interest in a charitable remainder annuity trust, charitable remainder unitrust, or pooled income fund; (2) a present interest in the form of a guaranteed annuity or a fixed percentage of the annual value of property; (3) a remainder interest in a personal residence or farm; and (4) a qualified conservation contribution. Some of these exceptions are discussed in more detail below.

Split-interest trusts

Certain split-interest transfers are not subject to the partial interest rule. Split-interest trust transfers generally allow a taxpayer to make a deductible charitable contribution in trust while retaining an interest in the property for a period of time.[87]

For example, provided the transaction satisfies all applicable technical requirements,[88] a donor may make a charitable contribution using a charitable remainder trust. Charitable remainder trusts generally are structured such that the donor or another individual receives an income interest or similar interest from the trust for a period of time, after which a qualified charitable organization receives the trust property (the remainder interest). Although the remainder interest is a partial interest in property, the donor generally is entitled to a charitable deduction at the time of the transfer to the trust equal to the present value of the charitable remainder interest.[89] As an alternative, a donor may make a charitable contribution using a charitable lead trust, another type of partial interest gift for which a charitable deduction is

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the period of initial possession by the donee may not be deferred in time for more than one year." Treas. Reg. sec. 1.170A-5(a)(2).

[84] Sec. 170(f)(3)(B)(ii). Additional requirements apply to certain fractional gifts of tangible personal property, including works of art. Sec. 170(o).

[85] Treas. Reg. sec. 1.170A-7(b)(1).

[86] Treas. Reg. sec. 1.170A-7(b)(1).

[87] Split-interest trusts are subject to certain operational rules and restrictions that apply to private foundations, including rules prohibiting self dealing (section 4941) and prohibiting excess business holdings (section 4943). See sec. 4947(a)(2).

[88] See sec. 664.

[89] Secs. 170(f)(2)(A), 2055(e)(2)(A), and 2522(c)(2)(A).

allowed.[90] In a charitable lead trust structure, the charity generally receives specified payments from the trust for a period of time (the lead interest), with the remainder interest reverting to the donor or passing to other beneficiaries.

Qualified conservation contributions (including conservation easements)

A qualified conservation contribution is another type of partial-interest contribution that is deductible.[91] A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. A qualified real property interest is defined as: (1) the entire interest of the donor other than a qualified mineral interest; (2) a remainder interest; or (3) a restriction (granted in perpetuity) on the use that may be made of the real property (generally, a conservation easement). Qualified organizations include certain governmental units, public charities that meet certain public support tests, and certain supporting organizations. Conservation purposes include: (1) the preservation of land areas for outdoor recreation by, or for the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation will yield a significant public benefit and is either for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy; and (4) the preservation of an historically important land area or a certified historic structure.

Preferential percentage limits and carryforward rules apply to qualified conservation contributions. In general, the 30-percent contribution base limitation on contributions of capital gain property by individuals does not apply to qualified conservation contributions. Instead, such contributions are subject to a 50-percent limit. These contributions are not taken into account in determining the amount of other allowable charitable contributions. Individuals are allowed to carry forward any qualified conservation contributions that exceed the 50-percent limitation for up to 15 years. In the case of an individual who is a qualified farmer or rancher for the taxable year in which the contribution is made, a qualified conservation contribution is allowable up to 100 percent of the excess of the taxpayer's contribution base over the amount of all other allowable charitable contributions.

In the case of a corporation (other than a publicly traded corporation) that is a qualified farmer or rancher for the taxable year in which the contribution is made, any qualified conservation contribution is allowable up to 100 percent of the excess of the corporation's taxable income (as computed under section 170(b)(2)) over the amount of all other allowable charitable contributions. Any excess may be carried forward for up to 15 years as a contribution subject to the 100-percent limitation.[92]

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[90] Secs. 170(f)(2)(B), 2055(e)(2)(A), and 2522(c)(2)(A).

[91] Secs. 170(f)(3)(B)(iii) and 170(h).

[92] Sec. 170(b)(2)(B).

A qualified farmer or rancher means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.

7. Contributions to public charities compared to contributions to private foundations

As mentioned above, a charitable organization is further classified as either a public charity or a private foundation. The applicable deduction and operational rules can affect a donor's preference for contributing to one type of organization versus another. This section compares certain of the operational and deduction rules that apply to public charities (including donor advised funds ("DAFs")) and private foundations.

Private foundations

The Code generally *provides* that a charitable organization is a private foundation unless it meets one of the tests for non-private foundation status (also referred to as public charity status) in section 509(a). In general, private foundations receive funding from a limited number of sources (an individual, a family, or a corporation, for example).[93] Donors to a private foundation and persons related to such donors together often control the operation of the private foundation.

As discussed above, contributions to private foundations generally are determined using less favorable percentage limits and valuation rules than are contributions to public charities. In addition, because private foundations receive support from, and typically are controlled by, a small number of supporters, private foundations are subject to a number of anti-abuse rules and excise taxes that do not apply to most public charities. For example, private foundations are subject to tax on their net investment income at a rate of 1.39 percent.[94] Private foundations also are subject to more restrictions on their activities than are public charities. For example, private foundations are prohibited from engaging in self-dealing transactions,[95] are required to make a minimum amount of charitable distributions each year (generally, five percent of assets),[96] are limited in the extent to which they may control a business,[97] may not make speculative

[93] Private foundations are either private operating foundations or private nonoperating foundations. In general, private operating foundations operate their own charitable programs in contrast to private nonoperating foundations, which generally are grantmaking organizations. Most private foundations are nonoperating foundations. Operating foundations are not subject to the payout requirements of private foundations and are not considered a private foundation for purposes of the charitable contribution deduction rules.

[94] Sec. 4940.

[95] Sec. 4941.

[96] Sec. 4942.

[97] Sec. 4943.

investments,[98] and may not make certain expenditures.[99] Violations of these rules result in excise taxes on the foundation and, in some cases, on the managers of the foundation.

Public charities

Public charity status, in general

An organization may qualify as a public charity in several ways.[100] Certain organizations are classified as public charities *per se*, regardless of their sources of support. These include churches, certain schools, hospitals and other medical organizations, certain organizations providing assistance to colleges and universities, and governmental units.[101]

Other organizations qualify as public charities because they are broadly publicly supported. First, a charity may qualify as publicly supported if at least one-third of its total support is from gifts, grants or other contributions from governmental units or the general public.[102] Alternatively, it may qualify as publicly supported if it receives more than one-third of its total support from a combination of gifts, grants, and contributions from governmental units and the public plus revenue arising from activities related to its exempt purposes (*e.g.*, fee-for-service income). In addition, this category of public charity must not rely excessively on endowment income as a source of support.[103]

A supporting organization, *i.e.*, an organization that provides support to another section 501(c)(3) entity that is not a private foundation and meets the requirements of the Code, also is classified as a public charity.[104] An entity that raises funds on behalf of a university might, for

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[98] Sec. 4944.

[99] Sec. 4945.

[100] The Code does not expressly define the term "public charity," but rather provides exceptions to those entities that are treated as private foundations.

[101] Sec. 509(a)(1) (referring to sections 170(b)(1)(A)(i) through (iv) for a description of these organizations).

[102] Treas. Reg. sec. 1.170A-9(f)(2). Failing this mechanical test, the organization may qualify as a public charity if it passes a "facts and circumstances" test. Treas. Reg. sec. 1.170A-9(f)(3).

[103] To meet this requirement, the organization must normally receive more than one-third of its support from a combination of (1) gifts, grants, contributions, or membership fees and (2) certain gross receipts from admissions, sales of merchandise, performance of services, and furnishing of facilities in connection with activities that are related to the organization's exempt purposes. Sec. 509(a)(2)(A). In addition, the organization must not normally receive more than one-third of its public support in each taxable year from the sum of (1) gross investment income and (2) the excess of unrelated business taxable income as determined under section 512 over the amount of unrelated business income tax imposed by section 511. Sec. 509(a)(2)(B).

[104] Sec. 509(a)(3). Supporting organizations are further classified as Type I, II, or III depending on the relationship they have with the organizations they support. Supporting organizations must support public charities listed in one of the other categories (*i.e.*, *per se* public charities, broadly supported public charities, or revenue

example, be structured as a supporting organization (with the university being the supported organization).

As discussed above, contributions to public charities generally qualify for preferential percentage limits and valuation rules. In addition, public charities are not subject to the private foundation excise tax on net investment income, and they are not subject to the private foundation self-dealing, minimum distribution ("payout"), and in most cases the other operational requirements described above. However, certain "disqualified persons" that engage in an "excess benefit transaction" with a public charity (and in some cases the managers of the charity) may be subject to an excise tax on the amount of the excess benefit.[105] An excess benefit transaction generally is a transaction in which the organization provides a benefit to the disqualified person in excess of the value of consideration received by the organization, such as paying excess compensation to an officer of the organization.

Donor advised funds

Some charitable organizations (including community foundations) establish accounts to which donors may contribute and thereafter provide nonbinding advice or recommendations with regard to distributions from the fund or the investment of assets in the fund.[106] Such accounts are commonly referred to as "donor advised funds," or "DAFs." Donors who make contributions to charities for maintenance in a DAF generally claim a charitable deduction at the time of the contribution. Although sponsoring charities frequently permit donors (or other persons appointed by donors) to provide nonbinding recommendations concerning the distribution or investment of assets in a DAF, sponsoring charities generally must have legal ownership and control of such assets following the contribution. If the sponsoring charity does not have such control (or permits a donor to exercise control over amounts contributed), the donor's contributions may not qualify for a charitable deduction.

In recent years, a number of financial institutions have formed charitable corporations for the principal purpose of offering DAFs, sometimes referred to as "commercial" DAFs. In addition, some established charities, including community foundations, operate DAFs in addition to their other activities. The IRS has recognized several organizations that sponsor DAFs, including "commercial" DAF sponsors, as section 501(c)(3) public charities.

As with most other public charities, a DAF sponsor is not subject to the private foundation excise tax, and it is not subject to the minimum distribution ("payout") requirement, self-dealing prohibition, and certain other operational rules that apply to nonoperating private

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generating public charities), and they are not permitted to support other supporting organizations or testing for public safety organizations.

Organizations organized and operated exclusively for testing for public safety also are classified as public charities. Sec. 509(a)(4). Such organizations, however, are not eligible to receive deductible charitable contributions under section 170.

[105] Sec. 4958.

[106] See sec. 4966(d)(2) (defining "donor advised fund" for purposes of the Code).

foundations, either at the level of the sponsoring charity or its individual DAF accounts. The sponsoring organization of a DAF is, however, subject to excise tax in the event it makes certain taxable distributions from a DAF, including distributions for a noncharitable purpose.[107] A donor to a DAF or another person who has advisory privileges with respect to the DAF (and in some cases a fund manager) may be subject to an excise tax in the case of a DAF distribution that provides a direct or indirect benefit to the donor or advisor.[108] The private foundation excess business holdings rules of section 4943 also apply to donor advised funds.

In applying the "excess benefit transaction" rules of section 4958 to DAFs, the term "excess benefit transaction" is expanded to include any grant, loan, compensation, or other similar payment from the DAF to a donor, donor advisor, or person who is related to a donor or donor advisor. The entire amount of the grant, loan, or compensation is treated as the amount of the excess benefit.[109]

The sponsoring organization of a DAF must report on its annual Form 990 filed with the IRS: (1) the total number of DAFs it owns as of the end of the taxable year; (2) the aggregate value of assets held in DAFs as of the end of the taxable year; and (3) the aggregate contributions to and grants made from such DAFs during the taxable year.[110]

Because (1) contributions to DAFs are subject to the preferential percentage limits and valuation rules for public charities, (2) donors may make post-gift recommendations (that typically are followed by the sponsoring organizations), and (3) DAFs need not comply with many of the operational rules and restrictions that apply to private foundations (including the annual minimum distribution, or "payout," requirement), some donors view a DAF as an attractive alternative to a private foundation.

<u>Comparison</u>

Table 1, below, provides a comparison of selected rules that apply to private foundations and public charities, as well as rules that apply to donors to such organizations. The table also highlights certain rules that apply to DAFs but not to other public charities.

[107] Sec. 4966.

[108] Sec. 4967.

[109] Sec. 4958(b)(2).

[110] Sec. 6033(k).

Table 1.–Comparison of Selected Rules Applicable to Nonoperating Private Foundations, Public Charities (Including DAFs), and Donors to Such Organizations

	Nonoperating Private Foundations	Public Charities (In General)	Donor Advised Funds
Percentage limit[1] for contributions by an individual of ordinary income property or cash	30%	50% (60%)[2]	50% (60%)
Percentage limit for contributions by an individual of capital gain property	20%	30%[3] (contributions *to*) or 20% (contributions *for the use of*)	30% (contributions *to*) or 20% (contributions *for the use of*)
Valuation of contributions of appreciated capital gain property	Generally limited to basis. Fair market value for certain publicly traded stock.	Fair market value, with certain exceptions	Fair market value, with certain exceptions
Excise tax on net investment income	Yes (sec. 4940)	No, except for certain private colleges and universities with large endowments (sec. 4968)	No
Treatment of transactions between organization and insiders	Excise tax on full value of transaction in cases of self-dealing (sec. 4941)	Most public charities are subject to excise tax only on excess value provided by organization in an excess benefit transaction (sec. 4958)	Excise tax on excess value provided by organization in an excess benefit transaction (tax on full value in certain situations) (sec. 4958(b)(2)). Excise tax on certain prohibited benefits to donors and advisors (sec. 4967)
Annual minimum distribution requirement	Yes, generally 5% of assets not used directly in carrying out exempt purpose (sec. 4942)	No	No

	Nonoperating Private Foundations	Public Charities (In General)	Donor Advised Funds
Restriction on excess business holdings	Yes (sec. 4943)	Generally, no	Yes (sec. 4943)
Excise tax on taxable distributions	Yes (sec. 4945)	Generally, no	Yes (sec. 4966)

[1] In the case of a taxpayer who is an individual, the limit is a percentage of the taxpayer's "contribution base," which is the taxpayer's AGI determined without regard to net operating losses carried to the year under section 172. Sec. 170(b)(1)(H).

[2] The 50-percent limit is increased to 60 percent for certain contributions of cash taken into account for a taxable year that begins after December 31, 2017, and before January 1, 2026.

[3] Capital gain property contributed to public charities, private operating foundations, or private distributing foundations will be subject to the 50-percent limitation if the donor elects to reduce the fair market value of the property by the amount that would have been long-term capital gain if the property had been sold. In addition, certain qualified conservation contributions to public charities (generally, conservation easements), qualify for more generous contribution limits. In general, the 30-percent limit applicable to contributions of capital gain property is increased to 100 percent if the individual making the qualified conservation contribution is a qualified farmer or rancher or to 50 percent if the individual is not a qualified farmer or rancher.

8. Temporary disaster relief provisions

Congress has at times liberalized the charitable contribution rules for contributions made in response to natural disasters.[111] This has included, for example, relaxing the charitable percentage limits, allowing a limited charitable deduction to nonitemizers, and modifying the rules relating to mileage deductions and reimbursements when driving one's personal vehicle while providing donated services to charity.

In 2020, for example, the Congress, in providing relief relating to the COVID-19 pandemic, temporarily relaxed the charitable percentage limits for, and allowed nonitemizers to deduct, certain charitable contributions made in cash.

First, the CARES Act[112] generally suspends the percentage limit for individual taxpayers and increases the corporate percentage limit to 25 percent for cash contributions paid during 2020 to certain public charities. The Consolidated Appropriations Act, 2021[113] extends this rule

[111] See, *e.g.*, sec. 20104(a) of Pub. L. No. 115-123 (increasing percentage limits in response to 2017 California wildfires); sec. 504(a) of Pub. L. No. 115-63 (increasing percentage limits in response to Hurricanes Harvey, Irma, and Maria); and former sec. 1400S (increasing percentage limits in response to Hurricanes Katrina, Rita, and Wilma).

[112] Pub. L No. 116-136, sec. 2205.

[113] Pub. L No. 116-260.

for contributions paid during 2021. The Act also fully suspends the corporate percentage limit for certain contributions made in connection with Federally declared disasters.

Second, the CARES Act generally allows an individual who does not itemize deductions to claim a charitable deduction not to exceed $300 per filing unit for cash contributions made during a taxable year that begins in 2020 to certain public charities. The Consolidated Appropriations Act, 2021 extends this rule for contributions made during a taxable year that begins in 2021 and increases the deduction limit for taxpayers filing a joint return to $600.[114]

[114] Sec. 170(p).

C. Estate and Gift Tax Deductions for Charitable Contributions

A charitable deduction also is available for Federal estate and gift tax purposes.[115] In determining the value of a decedent's taxable estate for Federal estate tax purposes, the value of bequests or other transfers to certain qualified public or charitable organizations is subtracted from the value of the decedent's gross estate.[116] Similarly, in computing a taxpayer's taxable gifts for a year for Federal gift tax purposes, the value of gifts made to certain qualified public and charitable organizations during the year is subtracted from the value of the taxpayer's total gifts for the year.[117]

The basic requirements for a deductible charitable contribution for estate or gift tax purposes generally are the same as the requirements for a deductible charitable contribution for income tax purposes. For example, as with the income tax, to qualify for an estate or gift tax charitable deduction the contribution must be made with donative intent and must be made to an eligible donee. The lists of eligible donees for estate and gift tax purposes also largely are coextensive with the list of eligible donees for income tax purposes, with a few differences discussed above.[118]

In contrast to the income tax charitable deduction, there are no percentage limits on the deductibility of a charitable contribution for estate or gift tax purposes. The amount of the deduction also does not differ based on the type of donee organization (*e.g.*, a public charity versus a nonoperating private foundation) or the type of property contributed (*e.g.*, ordinary income property versus capital gain property). For estate tax purposes, however, the deduction generally is limited to the value of the property transferred to charity that is required to be included in the decedent's gross estate.[119]

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[115] Secs. 2055 (estate tax) and 2522 (gift tax).

[116] Sec. 2055(a).

[117] Sec. 2522(a).

[118] See secs. 170(c), 2055(a), and 2522(a).

[119] Sec. 2055(d).

D. Exclusion from Gross Income for Qualified Charitable Distributions from Individual Retirement Arrangements (IRAs)

<u>**In general**</u>

A taxpayer may exclude from gross income an otherwise taxable IRA distribution from a traditional or a Roth IRA if the distribution is a qualified charitable distribution.[120] The exclusion from gross income may not exceed $100,000 per taxpayer per taxable year.[121]

A qualified charitable distribution is any distribution from an IRA directly by the IRA trustee to an organization described in section 170(b)(1)(A) (other than a supporting organization or a DAF). Distributions are eligible for the exclusion only if made on or after the date the IRA owner attains age 70-½[122] and only to the extent the distribution would be includible in gross income (without regard to this provision).[123]

The exclusion applies only if a charitable contribution deduction for the entire distribution otherwise would be allowable (under present law), determined without regard to the generally applicable percentage limitations. Thus, for example, if the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, the exclusion is not available with respect to any part of the IRA distribution.

Distributions that are excluded from gross income by reason of the qualified charitable distribution provision are not taken into account in determining the deduction for charitable

[120] Sec. 408(d)(8). The exclusion does not apply to distributions from employer-sponsored retirement plans, including SIMPLE IRAs and simplified employee pensions ("SEPs").

[121] Special rules apply in determining the amount of an IRA distribution that is otherwise taxable. The otherwise applicable rules regarding taxation of IRA distributions and the deduction of charitable contributions continue to apply to distributions from an IRA that are not qualified charitable distributions. A qualified charitable distribution is taken into account for purposes of the minimum distribution rules applicable to traditional IRAs to the same extent the distribution would have been taken into account under such rules had the distribution not been directly distributed under the qualified charitable distribution provision. An IRA does not fail to qualify as an IRA as a result of qualified charitable distributions being made from the IRA.

[122] An IRA owner generally takes required minimum distributions beginning at age 72. Sec. 401(a)(9). The amount of qualified charitable distributions excludable from gross income generally is reduced to the extent the taxpayer makes deductible contributions to his or her IRA in one or more taxable years ending on or after the date the taxpayer attains age 70-½.

[123] If the IRA owner has any IRA that includes nondeductible contributions, a special rule applies in determining the portion of a distribution that is includible in gross income (but for the qualified charitable distribution provision) and thus is eligible for qualified charitable distribution treatment. Under the special rule, the distribution is treated as consisting of income first, up to the aggregate amount that would be includible in gross income (but for the qualified charitable distribution provision) if the aggregate balance of all IRAs having the same owner were distributed during the same year. In determining the amount of subsequent IRA distributions includible in income, proper adjustments are to be made to reflect the amount treated as a qualified charitable distribution under the special rule.

contributions for purposes of the itemized deduction or, for contributions made in 2020 or 2021, the temporary nonitemizer deduction.

Interaction of the exclusion with other rules

There are a number of different ways in which taxpayers may benefit from a qualified charitable distribution. Three such potential benefits are discussed below.

Avoiding the effect of individual percentage limits

In the absence of the special rule for qualified charitable distributions, an IRA owner who arranges for an IRA distribution to be made to charity (or receives an IRA distribution and subsequently transfers the funds to charity) recognizes gross income by reason of the distribution and may deduct the contribution to charity. The charitable contribution, however, is subject to the individual percentage limits, discussed above, potentially reducing the taxpayer's charitable deduction such that it does not fully offset the amount of the distribution included in income. Therefore, a taxpayer whose charitable contribution otherwise would be limited by reason of the individual percentage limits may reduce her taxable income by arranging for a qualified charitable distribution from her IRA.

Avoiding additional income without an offsetting charitable deduction where a taxpayer elects to take the standard deduction

A taxpayer who elects to take the standard deduction may also benefit from a qualified charitable distribution. In the absence of the special exclusion for qualified charitable distributions, a standard deduction taxpayer who takes a distribution from an IRA and contributes the amount to charity will have additional taxable income. She would not, however, be able to deduct the contribution to charity.[124]

Minimizing Social Security taxes and Medicare premiums

In the absence of the special rule regarding qualified charitable distributions, an IRA distribution increases a taxpayer's AGI. Additional AGI may, in certain instances, cause a taxpayer to pay Social Security tax at a higher rate or higher Medicare Part B premiums. Therefore, a taxpayer who must take a required minimum distribution from her IRA but does not need the funds to meet living expenses may in certain situations reduce certain non-tax related expenses by arranging for a qualified charitable distribution.

[124] In some situations, making a charitable contribution of an amount distributed from an IRA (other than as a qualified charitable distribution) could cause a taxpayer's itemized deductions to exceed the standard deduction. But the taxpayer may in certain situations still be better off by excluding the distribution as a qualified charitable distribution and claiming the standard deduction (*e.g.*, because of the percentage limits on charitable contributions).

II. ECONOMIC AND COMPLIANCE ISSUES RELATED TO THE CHARITABLE CONTRIBUTION DEDUCTION AND CHARITABLE GIVING

A. Economic Rationales for Tax Deduction of Charitable Contributions

Tax deductibility of charitable contributions ("the charitable deduction") reduces the economic cost to the donor of his or her donation and, therefore, may encourage charitable giving. However, the tax deduction is also not cost free, may be difficult to administer, and may also be a vehicle for tax planning and potential abuse.[125] An understanding of the economic rationales for and against the charitable deduction may therefore be important to informed policy debate.

There are a number of economic rationales for and against the charitable deduction based, in part, on differing views about the role of charitable organizations and the benefits they provide to society as a whole, on assumptions about individuals' motivations behind charitable giving, and on views about the appropriate base of the income tax.

If donors make contributions for purely altruistic reasons, charitable donations enrich the recipient charity and their beneficiaries but do not enrich the donor. In this case, the amount of the contribution does not represent consumption to the donor but rather a decrease in her wealth and the value of the donation does not properly belong in an accurately measured income tax base and should not be taxed under a comprehensive income tax system.

On the other hand, if donors find charitable giving gratifying because they enjoy making someone else happy, they feel relief from the guilt of not giving, or they enjoy the recognition that accompanies donations, then they are said to experience a "warm-glow" from giving, and donors can be said to benefit from their gifts. In this case, the donation is, at least in part, a personal expenditure and a deduction for the full amount of the donation should not be allowed under a comprehensive income tax system.

A second, separate rationale for the charitable deduction stems from the role of charitable organizations and the type of benefits those organizations provide. Charitable organizations may provide goods and services from which the larger community derives value. For example, in addition to the personal satisfaction that a donor derives from his personal art acquisitions, donations of this art to a museum enable the public to view and share in the donor's enjoyment. Economists consider such donations to be private contributions to a public good.

If such private contributions are substitutes for provision of public goods that the government might otherwise provide, these private gifts alleviate the burden on government and the cost to taxpayers. In this case, there is an economic rationale for providing a tax deduction for such private contributions. Furthermore, in some cases the charitable deduction can be said to provide neutrality in the choice to provide certain services to the public through direct government operation and financing or through the private operation and mixed private and public financing of certain organizations providing certain public services. In this respect, the

[125] Roger Colinvaux, "Rationale and Changing the Charitable Deduction," *Tax Notes*, March 25, 2013, vol. 138.

tax deduction for voluntary charitable contributions is similar to the deductions permitted for many State and local taxes.

On the other hand, charitable organizations may provide goods and services to select classes of charitable beneficiaries rather than to the wider public. For example, donations to a particular college may benefit select students and faculty at that college; donations to a hospital may benefit certain patients and doctors at that hospital; and donations to a church may benefit parishioners at the church. If the larger public is unable to share in the benefit of the charity's activities, such donations are private contributions to private goods and there is no economic rationale for the deduction.

A third rationale for the charitable contribution deduction may be that charitable organizations provide goods and services with significant spillover benefits to the public.[126] For example, charitable organizations may choose to provide benefits that improve the health of individuals, such as through the treatment of contagious diseases. Such treatments provide direct benefits to private individuals, but also indirectly help others by preventing the spread of contagious diseases. Economists generally argue that, in the absence of a subsidy, the private market provides insufficient levels of goods with spillover benefits. It is argued that the tax deduction for charitable contributions under present law encourages donations to charities that provide goods with significant spillover benefits and, therefore, promotes the provision of these types of benefits. For charitable goods and services with no spillover benefits, there is no such rationale for a charitable deduction.

[126] Economists usually refer to such spillover benefits as "positive externalities," which are benefits that accrue to other individuals who are "external" to the initial consumption of the good.

B. Economic Effects of Tax Deductions for Charitable Contributions

Effects on the tax price of contributions and the quantity of giving

Because the Code allows deductions from income for charitable contributions, a taxpayer's total cost (or tax price) of donating to a charity is reduced by the value of the tax benefit provided. For example, for a taxpayer who itemizes deductions and pays a 24 percent marginal income tax rate, a $100 cash gift to charity reduces his taxable income by $100, and thereby reduces his tax liability by $24. As a result, the $100 cash gift to charity reduces the taxpayer's after-tax income by only $76. Economists say that the after-tax cost of giving $100 cash to charity is $76 for this taxpayer. As this example illustrates, the after-tax cost of donating one dollar is one minus the taxpayer's marginal tax rate. Equivalently, the value of the tax deduction to the taxpayer is the amount of the donation multiplied by the taxpayer's marginal tax rate.

Because the deduction for charitable contributions decreases the after-tax cost of giving, theoretically, it increases the ability and willingness of donors to increase donations. Empirical studies of the responsiveness of giving to the after-tax cost of giving generally confirm this theory and find that taxpayers with a lower cost of giving tend to give more, and that taxpayers with a higher cost of giving tend to give less.

While there is generally a consensus among researchers that tax incentives matter for individual giving, there is less unanimity around the strength of these incentives. Some early studies generally estimate these effects to be strong.[127] These studies find that when the after-tax cost of giving changes by one percent, donors respond with a greater than one percent change in the amount of donations. The policy implication of such a result is that the loss in government revenues due to a deduction for charitable contributions is less than the increase in dollar value of charitable contributions by donors. More recent studies find both weaker and stronger effects relative to the earlier studies.[128] One analysis of 70 such empirical studies finds varying estimates of the strength of these effects.[129] Results may differ for many reasons, including the empirical difficulties and lack of credible estimation strategies; faulty data, including misreported levels of charitable giving in household level tax data; and the heterogeneity in effects across individual charities as contributions to certain charities may be more sensitive to tax incentives than those to other charities. Many of the recent studies also attempt to

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[127] Charles T. Clotfelter, *Federal Tax Policy and Charitable Giving*, University of Chicago Press, Chicago, IL, 1985; Daniel Feenberg, "Are Tax Price Models Really Identified: The Case of Charitable Giving," *National Tax Journal*, vol. 40, no. 4, 1987, pp. 629-633.

[128] Gerald Auten, Holger Sieg, and Charles T. Clotfelter, "The Distribution of Charitable Giving, Income and Taxes: An Analysis of Panel Data." *American Economic Review*, vol. 40, no. 1, 2002, pp. 371-382; Jon Bakija and Bradley T. Heim, "How Does Charitable Giving Respond to Incentives and Income? New Estimates from Panel Data," *National Tax Journal,* vol. 64, no. 2, 2011, pp. 615-650; Nicolas Duquette, "Do Tax Incentives Affect Charitable Contributions? Evidence from Public Charities' Reported Revenues," *Journal of Public Economics,* vol. 137, 2016, pp. 51-69.

[129] John Peloza and Piers Steel, "The Price Elasticities of Charitable Contributions: A Meta-Analysis," *Journal of Public Policy and Marketing,* vol. 24, no. 2, 2005, pp. 260-272.

differentiate between short-run and long-run effects of changes in the after-tax cost of giving on contributions. Because of changing policies, the short-run estimates may include measured timing effects that can result from an individual taxpayer's timing of charitable contributions in anticipation of changes in tax regimes. For example, the Tax Reform Act of 1986 reduced the top marginal individual income tax rate from 50 percent to 28 percent. In anticipation of this, individuals may have shifted gifts they would have given in 1987 into 1986 because the after-tax cost of contributing a dollar in 1987 was larger than the after-tax cost in 1986. While this would produce a large effect from the change in after-tax cost of giving in the short-run, the long-run effect would be smaller if the individual returned to a normal pattern of giving thereafter. At least one study suggests that, on a permanent, long-run basis, charitable contributions are less responsive to the after-tax cost of giving than short-run estimates would imply.[130]

Distributional effects

While tax benefits are not the only factor to motivate charitable giving, a large body of theoretical and empirical evidence suggests that the charitable contribution deduction encourages increased levels of charitable giving. However, under present law, an individual taxpayer who does not itemize deductions receives no value from the tax deductibility of charitable contributions and the after-tax cost of giving one dollar is one dollar of foregone other expenditures. Because nonitemizers do not face a reduced after-tax cost of giving, the deduction for charitable giving disproportionately provides preferences for high-income taxpayers who are more likely to itemize relative to low-income taxpayers who are more likely to take the standard deduction.

Furthermore, because the after-tax price of a dollar of cash giving is one minus the marginal tax rate (as discussed above), the higher a taxpayer's marginal tax rate, the more the charitable contribution deduction reduces the taxpayer's after-tax cost of giving. Generally, the tax deduction is therefore more valuable to high-income taxpayers, who tend to be in higher marginal tax rate brackets, than to low-income taxpayers, who tend to be in lower marginal tax rate brackets and are less likely to itemize.[131] As a result of this differential, high-income taxpayers may face the largest tax incentives for giving, while low-income taxpayers may face relatively small tax incentives for giving even if they itemize. Some studies present evidence suggesting that high-income taxpayers are indeed more responsive to the incentives provided by the charitable contribution deduction than are low-income taxpayers.[132, 133]

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[130] William C. Randolph, "Dynamic Income, Progressive Taxes, and the Timing of Charitable Contributions," *Journal of Political Economy*, vol. 103, 1995, pp. 709-738.

[131] This can be complicated by interactions with other features of the Code, such as the alternative minimum tax.

[132] Bakija and Heim, 2011. See also Charles Clotfelter, "The Impact of Tax Reform on Charitable Giving: A 1989 Perspective," published in Joel Slemrod (ed.), *Do Taxes Matter? The Impact of the Tax Reform Act of 1986*, Cambridge, MA: MIT Press, 1990.

[133] Research also examines the relationship of overall levels of income inequality on aggregate charitable giving. It is often thought that philanthropy is a countervailing force which mitigates against the effects of income

One implication of these distributional effects is that certain types of charities may be more affected by changes in policies than others. For example, if low-income donors are somewhat more likely to give to churches and religious organizations, while high-income donors are marginally more likely to give to education, health care, and arts institutions,[134] policy changes that affect the after-tax cost of giving for high-income donors relatively more than low-income donors may have a marginally greater impact on education, health care and arts institutions than on other types of charities, such as religious organizations.[135]

<u>Crowd-out effects and the deduction for charitable contributions</u>

Charitable contributions may be made for a number of reasons, including altruism (that is, to benefit the donee) and "warm-glow" (that is, to benefit the donor). Theoretically, if contributions are made to a particular charity entirely for reasons of altruism, the donor feels no benefit to himself, and others' gifts to the same charity are a perfect substitute for his own gift. In this case, decreases in private donations to charities will exactly offset increases in public funding and public funding is said to "crowd out" private donations. On the other hand, contributions may be made not only for reasons of altruism but also for other reasons, such as the "warm-glow" that results from this altruism. In this case, others' gifts or public funding is not a perfect substitute for one's own gift and public spending will not fully crowd out private giving.

A substantial empirical literature documents the existence of "warm-glow" effects in charitable giving.[136] Therefore, it may be reasonable to assume that increased government funding of a charity will not fully crowd out private giving. For example, increased public funding for a museum may not result in an equivalent decline in private contributions. In this case, the increase in public funding results in an increase in overall funding for the museum. Tax

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inequality. Furthermore, higher levels of income inequality are often thought to be associated with higher levels of giving. At least one study finds that historical data contradicts this narrative and shows that periods of higher income inequality are associated with lower shares of giving by the wealthy. Nicolas Duquette, "Inequality and Philanthropy: High Income Giving in the United States, 1917-2012," *Explorations in Economic History,* vol. 70, October 2018, pp. 25-41.

[134] For example, the 2009 Center on Philanthropy Panel Study module of the Panel Study of Income Dynamics shows that contributions to religious organizations constituted 63.3 percent of their total contributions for families with annual incomes under $100,000, and 52.3 percent for families with annual incomes over $100,000. Contributions to education, health care, and arts institutions constituted 10.3 percent of their giving for families with annual incomes under $100,000, and 13.3 percent for families with annual incomes over $100,000. Joint Committee on Taxation staff tabulations of 2009 Center on Philanthropy Panel Study module of the Panel Study of Income Dynamics.

[135] Robert Mcclelland and Arthur C. Brooks, "What is the Real Relationship between Income and Charitable Giving?" *Public Finance Review*, 2004, vol. 32, no. 5, pp. 483-497.

[136] James Andreoni, "Impure Altruism and Donations to Public Goods: A Theory of Warm-Glow Giving," *Economic Journal,* vol. 100, no. 401, 1990, pp. 464-477; Heidi Crumpler and Philip J. Grossman, "An Experimental Test of Warm Glow Giving," *Journal of Public Economics,* vol. 92, no. 5, 2008, pp. 1011-1021; Mirco Tonin and Michael Vlassopoulos, "Disentangling the Sources of Pro-Socially Motivated Effort: A Field Experiment," *Journal of Public Economics*, vol. 94, no. 11, 2010, pp. 1086-1092. Some legal scholars have also written in this area. For example, see William Andrews, "Personal Deductions in an Ideal Income Tax," *Harvard Law Review*, vol. 347, 1972.

policy which provides preferences for contributions may further support this increase in overall funding for the museum.

C. Tax Expenditure Estimates of the Charitable Contributions Deduction

Table 2 in Part II.E., below, shows the distribution by income class of the tax expenditure for charitable contributions. The tax expenditure is measured as the difference between tax liability under present law and the tax liability that would result from a recomputation of tax without benefit of the charitable contribution deduction. Taxpayer behavior is assumed to remain unchanged for this tax expenditure estimate purpose.[137] This approach to tax expenditure measurement is in contrast to the approach taken in revenue estimating, which accounts for anticipated taxpayer behavior. The last three columns of Table 2 show, respectively, the number of returns with a positive tax expenditure for the charitable contribution deduction, the total amount of the tax expenditure, and the average tax expenditure per return.

The data show that the tax expenditure is concentrated in the upper end of the income distribution, as expected for a number of reasons. First, the deduction is available only to those who itemize deductions, and itemizing is more prevalent the greater the taxpayer's income. Second, the amount of giving generally rises with income. Third, higher-income individuals have higher marginal tax rates, and the value of any deduction increases as the marginal tax rate increases. For example, $100 of giving results in a $15 tax expenditure for someone in the 15-percent tax bracket, while $100 of giving results in $35 of tax expenditures for someone in the 35-percent tax bracket.

[137] The tax expenditure estimates account for "tax form behavior" such as, for example, allowing an itemizer to recompute liability and use the standard deduction instead of itemizing if that yields a lower tax liability. For a full discussion of the distinction between tax expenditure estimates and revenue estimates, see Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2020-2024* (JCX-23-20), November 5, 2020, pp. 18-19.

D. Tax Compliance and the Valuation of Charitable Contributions

Valuing contributions of non-cash property, in general

The valuation of contributions of non-cash property presents significant tax compliance challenges. In particular, the determination of fair market value creates a significant opportunity for error or abuse by taxpayers making charitable contributions of property.[138] To the extent that taxpayers claim inflated valuations that are not corrected by the IRS, the Treasury loses revenue that should be collected under present law because charitable contribution deductions are greater than are warranted. Whether due to mistake, incompetence, misunderstanding of the law or facts, or efforts to evade taxes, valuation misstatements are common. [139]

Proper valuation is a difficult and resource intensive issue for the IRS to identify, audit, and litigate. The IRS must determine which values are suspect, prepare its own appraisal of the questioned property, and persuade a court that the IRS's value, and not the taxpayer's, is correct. As a practical matter, such hurdles often mean that pursuit of valuation misstatements in the charitable contribution context is not a high priority for the IRS because the expected revenue gains relative to resource costs are lower than in other tax compliance areas.

Unlike the parties in many arm's length negotiations, in the case of a charitable contribution, the interests of a donor and a donee organization are often aligned. A donee organization may have no knowledge of the value a donor claims for the contribution of non-cash property, and even if known, has no incentive to question a donor's claimed value because there is no countervailing tax consequence to the donee of an inflated claim. That is, the donee generally does not pay tax on the receipt of the contribution or any subsequent disposition of the contributed property. Some donees may even directly or indirectly support an inflated value in order to secure a desired gift. Such circumstances contribute to the difficulties in accurately valuing non-cash property in the charitable contribution context.

Congress has responded to these concerns by enacting several targeted provisions designed to increase certainty and limit valuation abuse in connection with charitable contributions of difficult-to-value property. In 2004, for example, Congress enacted provisions regarding the deductibility of charitable contributions of used motor vehicles and intellectual

[138] The Treasury Inspector General for Tax Administration estimates that more than 273,000 taxpayers claimed approximately $3.8 billion in potentially unsubstantiated non-cash contributions in tax year 2010, which resulted in an estimated $1.1 billion reduction in tax collected. Inspector General for Tax Administration, Department of the Treasury, *Many Taxpayers Are Still Not Complying With Noncash Charitable Contribution Reporting Requirements* (TIGTA 2013-40-009), December 20, 2012, p. 6.

[139] Some researchers have noted the spike in the number of taxpayers making donations of exactly $500, the threshold beyond which taxpayers are required to submit further reports of the donation, such as property type, name of the recipient, and other details. This spike at the $500 donation level may be indicative of valuation and compliance problems. However, without further information, this evidence is only suggestive. See Deena Ackerman and Gerald Auten, "Tax Expenditures for Noncash Charitable Contributions," *National Tax Journal*, vol. 64, June 2011, pp. 651-688.

property.[140] In 2006, the Congress enacted additional provisions that addressed concerns about valuation of charitable contributions, including: (1) imposing additional requirements for deducting contributions of clothing and household items; (2) restricting charitable deductions for contributions of taxidermy property; (3) limiting deductions for contributions of certain historic preservation easements; (4) imposing new standards for qualified appraisers and qualified appraisals; (5) lowering the thresholds for imposing accuracy related penalties in the case of gross valuation misstatements; and (6) imposing penalties on appraisers who participate in appraisals that result in a substantial or gross valuation misstatement.[141]

Policy concerns relating to conservation easement deductions

Charitable deductions of qualified conservation contributions present particularly serious policy and compliance issues. First, valuation is especially problematic because the measure of the fair market value of the easement (generally, the difference in fair market value before and after placing the restriction on the property) is highly speculative, considering that, in general, there is no market and thus no comparable sales data for such easements.

Furthermore, in many instances, present law does not require that the preservation or protection of conservation be pursuant to a clearly delineated governmental conservation policy, only requiring such a policy in cases of open space preservation if the preservation is not for the scenic enjoyment of the general public. As a result, taxpayers and donee organizations have considerable flexibility to determine the conservation purpose served by an easement or other restriction. This enables taxpayers to claim substantial charitable deductions for conservation easements that arguably do not serve a significant conservation purpose.

The ability of a donor of a qualified conservation contribution to use the retained property after the contribution of the partial interest also makes it difficult to determine whether a significant public benefit or conservation purpose is served by the contribution. For example, if a donor is able to continue to use real property as a residence after the contribution is made, the donor may benefit economically and in other ways from making the contribution, and the extent of the public benefit and conservation purpose may be diminished by such use.[142]

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[140] American Jobs Creation Act of 2004, Pub. L. No. 108-357, secs. 882, 884. Under the vehicle provision, where a vehicle will not be used by the donee charity for its charitable purpose, the donor's deduction generally is limited to the gross proceeds from the sale of the vehicle. Sec. 170(f)(12). In the case of a contribution of intellectual property (such as a patent), the donor's initial deduction generally is the taxpayer's basis in the property (or, if less, the fair market value of the property); the donor may, however, take subsequent deductions as the donee charity receives income properly allocable to the intellectual property, if certain requirements are satisfied. Secs. 170(e)(1)(B)(iii) & 170(m).

[141] Pension Protection Act of 2006, Pub. L. No. 109-280, secs. 1213, 1214, 1216, 1219.

[142] In response to concerns about charitable deductions for conservation easements, in 2004 the IRS issued a notice informing taxpayers that it would examine conservation easement donations closely and, where appropriate, would deny tax benefits to, or impose sanctions on, donors, recipient organizations, appraisers, and promoters of conservation easement transactions. The notice states: "The purpose of this notice is to advise participants in these transactions that, in appropriate cases, the Service intends to disallow such deductions and may impose penalties and excise taxes. Furthermore, the Service may, in appropriate cases, challenge the tax-exempt status of a charitable

All of these valuation and policy issues are especially challenging in syndicated easement transactions. A typical syndicated easement transaction is one in which promoters establish a pass-through structure through which they acquire real property, solicit investors in the pass-through entity, grant a conservation easement to an appropriate tax-exempt organization, and then allocate to the investors charitable deductions in an amount that often substantially exceeds the amount of the investment.[143] These transactions are susceptible to the potential valuation errors and abuses described above and also increase the number of taxpayers who can potentially benefit from speculative valuation practices. The weaker the ability of IRS to enforce, the more likely abuses may continue and grow.

On December 23, 2016, the IRS issued Notice 2017-10, which designates certain syndicated conservation easement transactions as listed transactions that are subject to certain disclosure and list maintenance requirements.[144] According to the Notice, "[t]he Department of the Treasury . . . and the Internal Revenue Service . . . are aware that some promoters are syndicating conservation easement transactions that purport to give investors the opportunity to obtain charitable contribution deductions in amounts that significantly exceed the amount invested." The Notice generally provides that a transaction is a listed transaction under the Notice if: (1) an investor receives promotional materials that offer prospective investors in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the investor's investment. The investor purchases an interest in the pass-through entity that holds real property; (2) the entity then contributes a conservation easement encumbering the property to a tax-exempt organization; and (3) allocates a charitable contribution deduction to the investor.

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organization that participates in these transactions. In addition, this notice advises promoters and appraisers that the Service intends to review promotions of transactions involving these improper deductions, and that the promoters and appraisers may be subject to penalties." Notice 2004-41, 2004-1 C.B. 31, June 30, 2004.

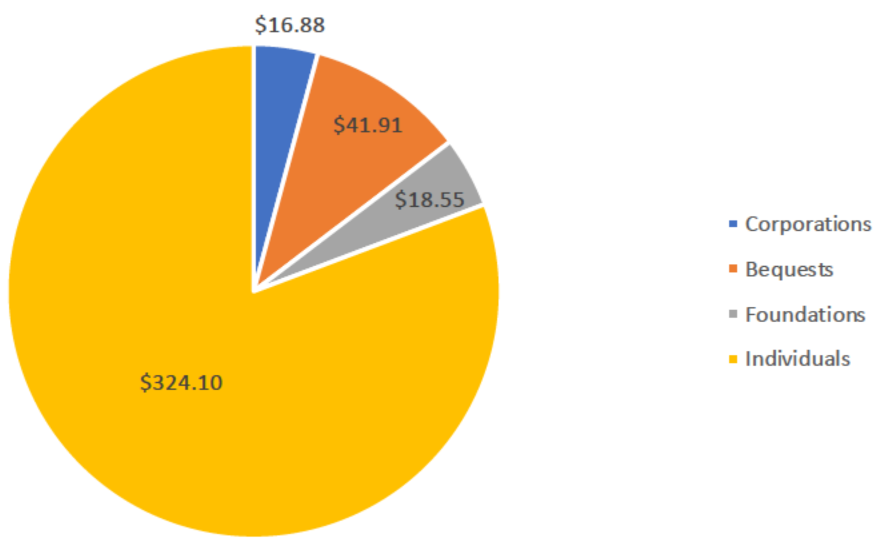
[143] Pass-through entities, partnerships and S corporations, may not claim a charitable deduction but instead pass through the deduction to partners or shareholders. See secs. 702(a)(4), 703(a)(2)(C), 1363(b), 1366(a)(1).

[144] Treas. Reg. secs. 1.6011-4 and 301.6111-3. See also sec. 6501(c)(10) (special limitations period for assessment of tax related to a listed transaction that was not properly disclosed).

E. Data on Levels of Charitable Contributions and Charitable Contribution Deductions

According to data from the Giving USA Foundation,[145] charitable giving in the United States by individuals, foundations, decedents' estates, and corporations reached an estimated $471.44 billion in 2020, of which individuals gave $324.1 billion, foundations gave $88.55 billion, decedents' estates gave $41.91 billion, and corporations gave $16.88 billion.[146] Overall, charitable giving in the Unites States in 2020 increased by 5.1 percent (3.8 percent adjusted for inflation) over 2019. While giving by individuals, foundations, and decedents increased year over year (2.2 percent, 17.0 percent, and 10.3 percent, respectively), giving by corporations decreased by 6.1 percent in 2020 compared to 2019.[147]

Figure 1.–Charitable Contributions by Source, 2020
(Billions of Dollars)



Source: Giving USA, *Giving USA 2021: The Annual Report on Philanthropy for the Year 2020,* 2021.

[145] The Giving USA Foundation publishes estimates of overall giving in the United States. Because IRS data generally captures only giving by taxpayers who claim a charitable deduction, estimates published by Giving USA are made using a variety of data derived from both tax- and non-tax-related sources. The categories used by Giving USA to summarize sources and recipients of charitable contributions do not in all cases align with classifications of donors and recipient organizations that apply in determining the income tax charitable deduction, which are described in Part I. For example, in summarizing sources of giving, Giving USA classifies foundations as a source of giving; for federal income tax purposes, however, the law generally does not provide an income tax deduction when a foundation makes a grant to another charity to the extent that the foundation is exempt from Federal income tax.

[146] Giving USA, *Giving USA 2021: The Annual Report on Philanthropy for the Year 2020,* 2021, p.23.

[147] *Ibid.*, p.27.

Note: In showing aggregate contributions by source, Giving USA includes contributions made by a corporate foundation (*i.e.*, a foundation established or controlled by a corporation) in giving by corporations and not in giving by foundations. In addition, we understand that Giving USA's summary data regarding overall giving levels might in some cases double count contributions involving non-corporate foundations, because there generally is no coordinating adjustment made when amounts are both contributed to a foundation by an individual and granted by a foundation to another charity during a year.

Organizations classified by Giving USA as religious organizations received 28 percent of all charitable donations. Educational institutions comprise the next largest category, receiving 15 percent of donations in 2020. Human services organizations (such as the Red Cross) received 14 percent, grantmaking foundations (including independent, community, and operating foundations) received 12 percent, and health organizations received nine percent. Other organizations such as United Way, Jewish Federations, and sponsoring organizations of donor-advised funds; arts, culture, and humanities organizations; international affairs organizations; environmental and animal organizations; and direct contributions to individuals together received 25 percent of contributions in 2020.[148, 149]

Charitable contributions and deductions by individuals

Table 2, below, shows the distribution of the charitable contribution deduction for individuals by income class for 2022. The Joint Committee staff estimates that, for 2022, 19.5 million individual tax returns will claim itemized deductions of any type, and 16.6 million of those will claim the charitable contribution deduction, in amounts totaling $217.6 billion.[150]

148 *Ibid.*, pp. 34-35. Totals may not add to 100 percent due to rounding.

149 We understand that, in showing aggregate contributions by use, or type of recipient, Giving USA makes an adjustment in accounting for contributions made to, and grants made by, certain DAF sponsoring organizations. Contributions to such DAFs generally are categorized by Giving USA as contributions to organizations benefiting public society. But the amount shown in that category is net of grants made from such DAFs during the year, with the granted amounts instead being included in the appropriate category for the charity that receives a grant (religious organizations, educational institutions, etc.).

150 The income concept used to place tax returns into income categories is AGI plus the following: employer contributions for health plans; employer contributions for the purchase of life insurance; employer share of payroll taxes; workers' compensation; tax exempt interest; excluded income of U.S. citizens living abroad; nontaxable Social Security benefits; insurance value of Medicare benefits; and alternative minimum tax preference items.

Table 2.−Tax Returns Claiming an Itemized Deduction For a Charitable Contribution, and Estimated Tax Expenditure (2022 Projections)

Income Category	Number of tax returns (thousands)	Number of itemizers (thousands)	Number of itemizers with charitable contributions (thousands)	Amount of deductible contributions ($ millions)	Average amout of deductible contributions per return with deductible contributions	Number of returns with a tax expenditure (thousands)	Amount of tax expenditure (millions)	Average tax expenditure per return with tax expenditure
$0 to $10,000	44,940	452	173	482	2,788	3	[1]	61
$10,000 to $20,000	23,464	312	202	516	2,559	38	4	107
$20,000 to $30,000	19,271	457	315	1,099	3,483	195	39	202
$30,000 to $40,000	14,310	553	417	1,668	4,001	332	85	255
$40,000 to $50,000	12,556	701	544	2,436	4,477	494	153	310
$50,000 to $75,000	23,207	2,353	1,880	8,528	4,537	1,808	808	447
$75,000 to $100,000	15,217	2,538	2,106	11,107	5,273	2,070	1,252	605
$100,000 to $200,000	25,938	6,550	5,745	40,950	7,128	5,695	5,658	994
$200,000 to $500,000	8,930	4,081	3,781	39,718	10,505	3,775	7,676	2,034
$500,000 to $1,000,000	1,430	917	869	17,456	20,080	868	5,011	5,772
$1,000,000 and over	753	567	547	93,602	171,050	547	29,568	54,092
Total	190,016	19,479	16,580	217,561	13,122	15,824	50,255	3,176

[1] Less than $500,000.

Source: Joint Committee on Taxation.

Note: Excludes individuals who are dependents of other taxpayers and taxpayers with negative income. Details may not add to totals due to rounding. Calculations based on 2021 model and baseline.

Between 1980 and 2020, the amount of individual charitable contributions received by qualifying organizations increased from $40.71 billion to $324.10 billion (see Table 3). According to these same data, between 2019 and 2020, individuals increased total giving by 2.2 percent (or 1.0 percent after adjusting for inflation).[151]

Table 3.−Total Individual Charitable Donations Estimated to Have Been Received By Charitable Organizations, 1980-2020 (Billions of Nominal Dollars)

Year	**1980**	**1985**	**1990**	**1995**	**2000**	**2005**	**2010**	**2015**	**2020**
Total Individual Donations	40.71	57.39	79.00	94.78	174.09	220.82	207.99	264.69	324.1

Source: *Giving USA* 2020. Data do not include donations from trusts. Data include itemized and non-itemized charitable contributions and include gifts of cash, securities, and property. Tabulations prepared by the staff of the Joint Committee on Taxation. Figures are in nominal dollars.

Table 4 reports individual itemized deductions claimed for charitable contributions as reported to the Internal Revenue Service. There are no data that directly measure the magnitude of charitable giving by nonitemizers. However, comparison of Table 3 and Table 4 suggests that, in 2010 and in 2015, approximately $37.8 billion and $42.84 billion in individual charitable contributions for those two years respectively were not claimed as itemized deductions on individual tax returns.[152]

Table 4.−Individual Itemized Charitable Donations Claimed on Tax Returns, 1999-2016 (Billions of Nominal Dollars)

Year	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**
Total Individual Donations	125.80	140.68	139.24	140.57	145.70	165.56
Year	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Total Individual Donations	183.39	186.65	193.60	172.94	158.02	170.24
Year	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Total Individual Donations	174.47	199.27	194.66	210.60	221.85	233.87

Source: Individual itemized deductions taken from Internal Revenue Service Statistics of Income data Tabulations prepared by the staff of the Joint Committee on Taxation Figures are in nominal dollars

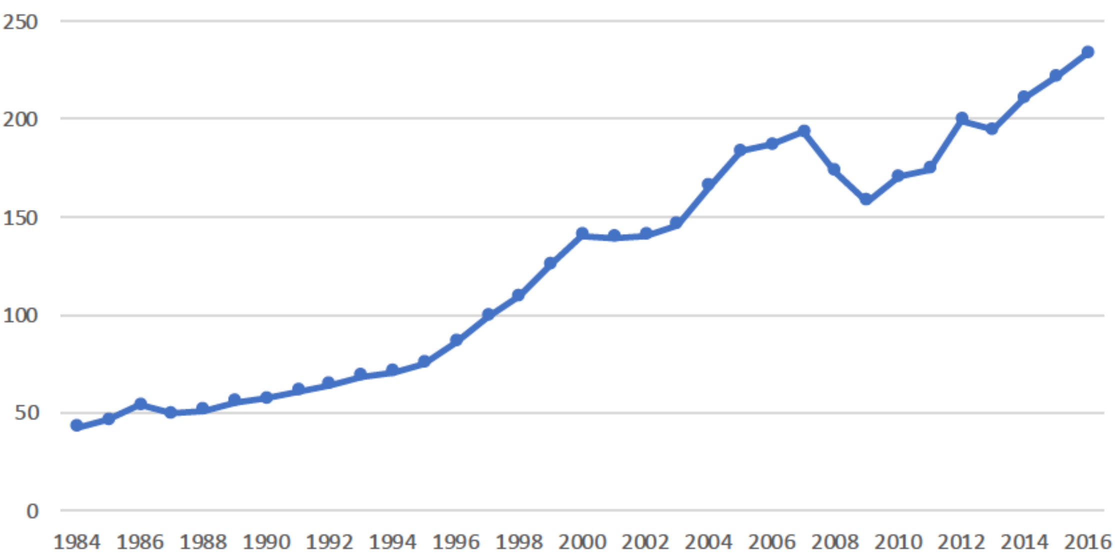
Figure 2 shows individual charitable contributions claimed as itemized deductions on individual tax returns between 1984 and 2016. These contributions have generally grown from year to year since 1984, with the exception of relatively small decreases 1986 to 1987, 2000 to

[151] Giving USA, *Giving USA 2021: The Annual Report on Philanthropy for the Year 2020,* 2021.

[152] This is an accurate estimate of nonitemizer giving only to the extent the numbers reported for total giving and those for itemizers are accurate. Note that the data for these calculations (2010 and 2015) predate the substantial increase in the standard deduction under Public Law 115-97, which resulted in fewer individual taxpayers itemizing deductions beginning in 2018. As a result, they are not necessarily comparable to estimates of nonitemizer giving in 2018 or after.

2001, and 2012 to 2013, and large decreases between 2007 and 2009. These decreases are partly the result of downturns in the stock market and the economy generally, and the effect of tax reform in 1986 and 1987.[153]

Figure 2.–Total Individual Itemized Charitable Donations Claimed on Tax Returns 1984-2016 (Billions of Nominal Dollars)



Source: Internal Revenue Service Statistics of Income Bulletin, Historical Tables.

[153] Most analysts attribute the high level of donations in 1986 followed by the lower level of donations in 1987 to the anticipation and enactment of the Tax Reform Act of 1986 which lowered future marginal tax rates for many taxpayers, thereby increasing the expected after-tax cost of future donations. In addition, certain other modifications to charitable tax deductions as part of the individual alternative minimum tax may have altered the timing of some donations to charities. The increase in the standard deduction provided in the Tax Reform Act of 1986 also reduced the number of taxpayers who chose to itemize deductions.

The IRS SOI Division collects data on total reported noncash charitable contributions from all individual income tax returns for each tax year. Table 5 shows that non-cash charitable donations deducted as an itemized deduction totaled $83.5 billion in 2018. In addition, the IRS collects data from Form 8283, Noncash Charitable Contributions. Individual taxpayers use this form when the amount of taxpayer deductions for all non-cash donations reported on Schedule A, Itemized Deductions, exceeds $500. Table 5 shows that of the $83.5 billion total non-cash charitable contributions deducted in 2018, $70.8 billion were deducted using Form 8283. Difficulties with proper valuation of some non-cash charitable donations may present particularly serious policy and compliance issues.

Table 5.–Total Individual Non-Cash Charitable Donations, 2011-2018
(Billions of Nominal Dollars)

Year	**2011**	**2012**	**2013**	**2014**	**2017**	**2018**
Total Individual Non-Cash Donations	43.6	49	51.6	65.3	88.1	83.5
Total Individual Non-Cash Donations using Form 8283, "Non-cash Charitable Contributions"	38.7	42.9	46.4	60.4	84.3	70.8
Percent of Total Individual Non-Cash Donations using Form 8283, "Non-cash Charitable Contributions"	88.8%	87.6%	89.9%	92.5%	95.7%	84.8%

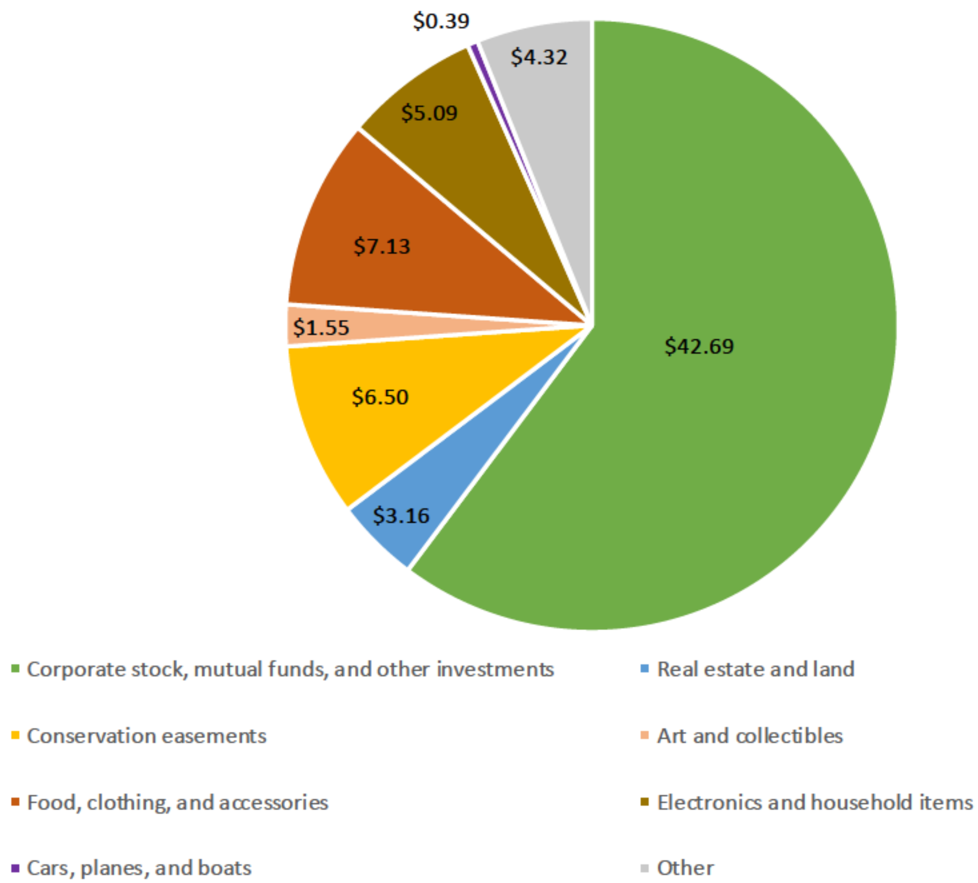
Source: IRS SOI Bulletin, Individual Noncash Charitable Contributions, Tax Year 2013-2018.

Note: Data is unavailable for Tax Years 2015 and 2016.

Figure 3 shows the relative size of individual non-cash charitable donations reported on Form 8283 by type of asset. The majority (60 percent) of non-cash charitable contributions by individuals are donations of corporate stock, mutual funds, and other investments; 10 percent are contributions of food, clothing, and other household items; and nine percent are donations of conservation easements.[154]

[154] Form 8283 is filed by individuals, partnerships and S corporations with greater than $500 of non-cash gifts, and generally by C corporations with a deduction of more than $5,000 per item or group of similar items.

Figure 3.−Individual Non-Cash Charitable Donations Reported on Form 8283 by Type of Asset, 2018 (Billions of Dollars)



Source: *SOI Bulletin*.

<u>Charitable giving in donor advised funds</u>

A donor advised fund ("DAF") generally is an account owned by a public charity to which a donor makes a deductible contribution and subsequently provides advice concerning the investment or granting of amounts in the account. In 2020, contributions to DAF accounts totaled $47.85 billion, approximately 10.1 percent of total giving ($471.44 billion).[155]

Giving to donor advised funds has increased substantially in recent years compared to overall charitable giving. Between 2006 and 2019, the number of DAF accounts maintained by

[155] National Philanthropic Trust, *Donor-Advised Fund Report 2020*, 2021.

charitable organizations increased from 160,000 to 873,228,[156] assets held in DAF accounts increased from $31.1 billion to $141.95 billion (an increase of 356.4 percent)[157], contributions to DAF accounts increased from $9 billion to $38.81 billion (8.7 percent of total U.S. giving for the year, and an increase of 331.2 percent), and grants from DAF accounts increased from $5.7 billion to $27.37 billion.[158] During the same period of time, total U.S. giving increased by 52 percent.[159]

Table 6 shows continued growth in these measures from 2019 to 2020. In 2020, the total number of DAF accounts maintained by charitable organizations increased to 1,005,099, assets held in DAF accounts increased to 159.83 billion, contributions to DAF accounts increased to $47.85 billion, and grants from DAF accounts increased to $34.67 billion.

Table 6.–Aggregate Statistics for Donor Advised Funds, 2020

Year	**2020**
Total grants	$34.67 billion
Total contributions	$47.85 billion
Charitable assets	$159.83 billion
Total number of DAF accounts	1,005,099
Average size of DAF account	$159,019

Source: National Philanthropic Trust, *Donor Advised Fund Report*, 2021.

[156] The 2006 and 2019 counts are from two separate data sources and are rounded differently. *Report to Congress on Supporting Organizations and Donor Advised Funds,* Department of Treasury, 2011, https://home .treasury.gov/system/files/131/Report-Donor-Advised-Funds-2011.pdf; *2020 Donor-Advised Fund Report,* National Philanthropic Trust, 2021, https://www.nptrust.org/daf-report/index html

[157] This is calculated to be $\frac{\$141.95-\$31.1}{\$31.1}$*100, or 356.4 percent.

[158] Giving USA, *Donor Advised Funds: New Insights*, 2021, p. 13.

[159] *Ibid*.