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

Scheduled for a Public Hearing
Before the
HOUSE COMMITTEE ON WAYS AND MEANS
on February 14, 2013

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

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INTRODUCTION AND SUMMARY

The House Committee on Ways and Means has scheduled a public hearing on February 14, 2013, entitled "Tax Reform and Charitable Contributions." 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 a description of several legislative proposals related to the 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. These organizations include:

- Charities. Religious organizations, grantmaking foundations, educational institutions, health and human services organizations, arts and cultural organizations, international and environmental organizations, among others;
- Governmental units. Federal, State, local and Indian tribal governments; and
- Other organizations. Veterans organizations, cemetery companies, volunteer fire departments, civil defense organizations, and, in some instances, fraternal organizations.

Charitable giving by individuals, foundations, estates, and corporations reached $298.42 billion in 2011, of which individuals gave $217.79 billion,[2] foundations gave $41.67 billion,[3] estates gave $24.41 billion, and corporations gave $14.55 billion.[4] These figures represent estimates of the total amount of donations made to charity during 2011. As discussed in Part I, below, not all such donations are deductible for Federal income tax purposes. For data concerning tax-deductible charitable contributions, see Part II, below.

Figure 1, below, shows the recipients of the $298.42 billion of total 2011 charitable giving, by amount received and percentage of the total. The category receiving the largest share of donations in 2011 was religious organizations, which received nearly one-third of all charitable donations. Educational institutions comprise the next largest category, receiving 13 percent of donations in 2011. Human services organizations (such as the Red Cross) received

[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-4-13), February 11, 2013. This document can be found on the website at www.jct.gov.

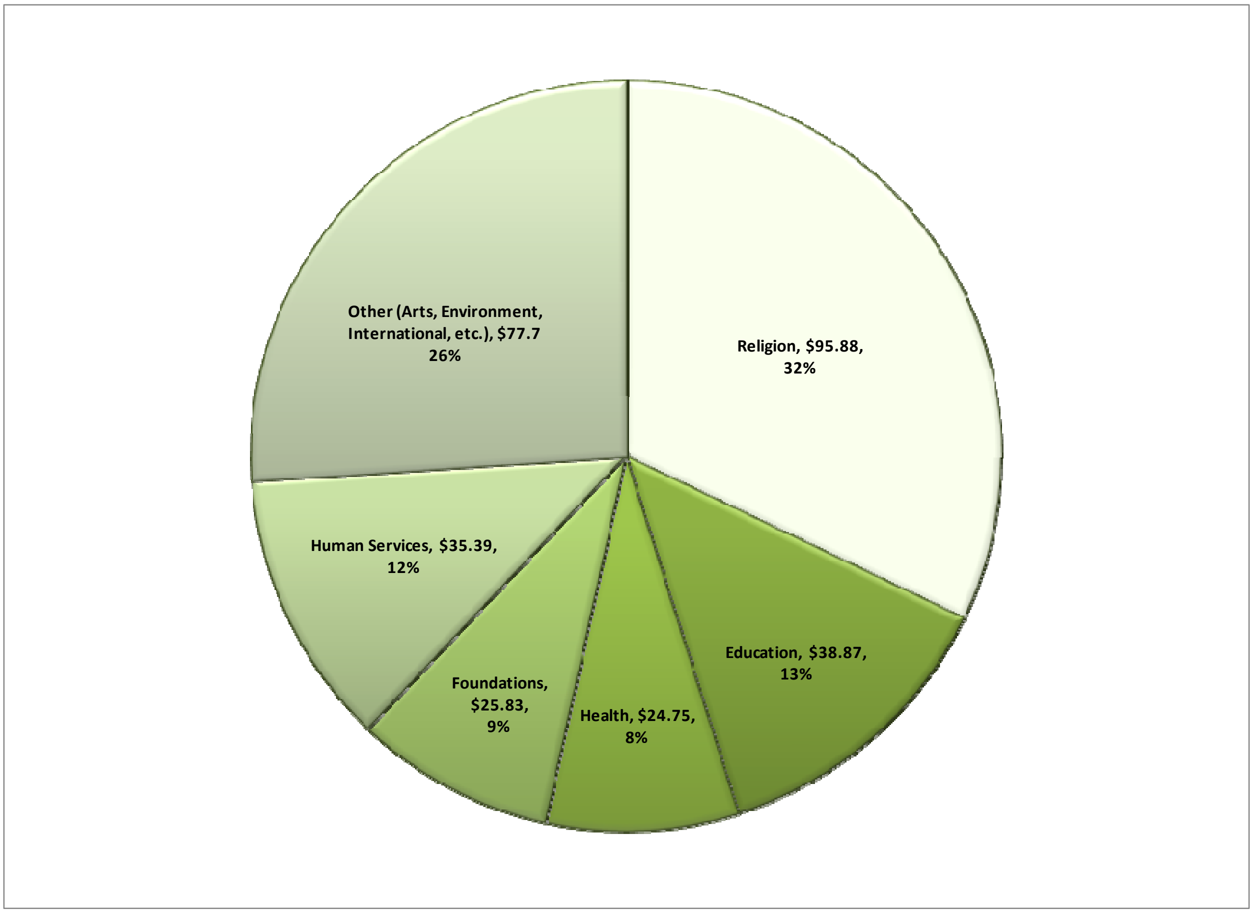
[2] Giving USA Foundation, *Giving USA 2012: The Annual Report on Philanthropy for the Year 2011, Executive Summary*, 2012, p.4.

[3] The Foundation Center, *Foundation Growth and Giving Estimates*, June 2011 (figure excludes $5.2 billion in giving by corporate foundations).

[4] Giving USA Foundation, *Giving USA 2012: The Annual Report on Philanthropy for the Year 2011, Executive Summary*, 2012, p.4.

12 percent, grantmaking foundations (including independent, community, and operating foundations) received nine percent, and health organizations received eight percent. Other organizations, including organizations benefiting public society (*e.g.*, 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 26 percent of contributions in 2011.[5]

Figure 1.−Total 2011 Charitable Giving by Type of Recipient Organization (Amounts in Billions)[6]



In 2010, public charities reported $2.71 trillion in total assets, over $1.51 trillion in total revenues, and $1.45 trillion in total expenses.[7] Of the revenues, 21.6 percent came from contributions, gifts and government grants; 73.5 percent came from program service revenues,

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[5] *Ibid.*, pp. 4-6, 10.

[6] *Ibid.* Chart prepared by the staff of the Joint Committee on Taxation.

[7] Urban Institute, *The Nonprofit Sector in Brief: Public Charities, Giving, and Volunteering*, 2012, p.2.

which included government fees and contracts; and 4.9 percent came from other sources including dues, rental income, special event income, and gains or losses from goods sold.[8]

Many charitable organizations rely on charitable donations to finance their operations, and the charitable contribution deduction plays an important role in providing such support. The deduction for charitable contributions reduces the economic cost of making a donation and thus 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 28-percent marginal tax bracket, the after-tax cost of giving that dollar is 72 cents ($1 – $0.28). Empirical studies generally support the proposition that taxpayers respond to tax incentives when making giving decisions. In other words, 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 several economic explanations for why people give to charity that have implications for the design of charitable giving tax policy. One such explanation, for example, is that individuals give to charity not only for the benefit of others, but also partly because they receive a benefit (or "warm glow") from helping others. If this is correct, under a comprehensive income tax system, there is no rationale for allowing deduction of these contributions, at least to the extent they provide a personal benefit. 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. 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.

In recent years, a number of reforms have been proposed relating to the Federal tax treatment of charitable contributions. Part III, below, describes selected proposals aimed at modifying the general tax benefits available to taxpayers who make charitable contributions as well as proposals that address compliance and tax administration concerns.

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[8] *Ibid.*, p.3, Figure 2.

I. PRESENT LAW AND BACKGROUND

The Internal Revenue Code allows taxpayers to reduce their income, estate, and gift tax liabilities by taking deductions for contributions to certain organizations, including charities,[9] 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), 2055 (estate tax charitable deduction), and 2522 (gift tax charitable deduction).[10]

A. History of the Charitable Contribution Deduction

The income tax charitable deduction was first introduced by the War Revenue Act of 1917,[11] 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 middlemen. 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;[12] changing the limitation to a percentage of adjusted gross income (rather than taxable income) and introducing the standard deduction in 1944;[13] and removing the unlimited deduction in 1976.[14] For a brief period beginning in 1981, nonitemizers were allowed

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

[10] Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code"). Trusts and estates also are permitted to deduct certain amounts paid or permanently set aside for charitable purposes. Sec. 642(c).

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

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

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

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

to take the deduction.[15] The Tax Reform Act of 1986[16] 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 (*i.e.*, because the standard deduction assumes a certain amount of charitable contributions).

The Revenue Act of 1935[17] made the charitable deduction available to corporations, but the deduction was limited at that time to five percent of the corporation's net income.[18] Despite concerns in earlier debates that charitable giving by corporations would be *ultra vires* (*i.e.*, beyond the powers of the corporation), the deduction was finally 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.[19] 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 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,[20] but that gift tax was repealed in 1926.[21] However, the gift tax, along with the charitable deduction for the gift tax, was reintroduced by the Revenue Act of 1932[22] as a corollary to the estate tax, and was designed to ensure that taxpayers could not avoid the estate tax by *inter vivos* transfers (*i.e.*, transfers during the donor's life).

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

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

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

[18] 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.

[19] 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.

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

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

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

B. Overview of the Income Tax Charitable Contribution Deduction

1. Elements of the income tax charitable contribution deduction

To be deductible, a charitable contribution generally must meet several threshold requirements. First, the recipient of the transfer must be eligible to receive charitable contributions (*i.e.*, an organization or entity described in section 170(c), 2055(a), or 2522(a)). Second, the transfer must be made with gratuitous intent and without the expectation of a benefit of substantial economic value in return. Third, the transfer must be complete and generally must be a transfer of a donor's entire interest in the contributed property (*i.e.*, not a contingent or partial interest contribution). Fourth, the transfer must be of money or property—contributions of services are not deductible.[23] Finally, the transfer must be substantiated and in the proper form. These requirements are discussed in greater detail below.

As also discussed below, special rules limit a taxpayer's charitable contributions in a given year to a percentage of income, and those rules, in part, turn on whether the organization receiving the contributions is a public charity or a private foundation. Other special rules determine the deductible value of contributed property for each type of property.

2. Effect of the deduction on taxable income

<u>In general</u>

Because the charitable contribution deduction is an itemized deduction,[24] 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.[25]

An individual computes his or her taxable income by reducing gross income by the sum of (i) the deductions allowable in computing adjusted gross income ("above-the-line deductions),[26] (ii) *either* the standard deduction *or* the sum of the itemized deductions, at the election of the taxpayer, and (iii) the deduction for personal exemptions. Graduated tax rates are

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[23] 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.

[24] Other itemized deductions include deductions for State and local income taxes (or, in lieu of income, sales taxes), real property and certain personal property taxes, home mortgage interest, certain investment interest, medical expenses (in excess of 10 percent of adjusted gross income ("AGI")), casualty and theft losses (in excess of 10 percent of AGI and in excess of $100 per loss), and certain miscellaneous expenses (in excess of two percent of AGI).

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

[26] 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, and alimony payments.

then applied to a 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.[27]

The standard deduction eliminates the need for many taxpayers to itemize deductions on Schedule A of Form 1040. The amount of the standard deduction is conceived of in part to approximate the amount of itemized deductions—such as medical expenses, charitable contributions, and State taxes—that a taxpayer ordinarily incurs in a taxable year. The basic standard deduction varies depending upon a taxpayer's filing status. In 2013, the standard deduction is $6,100 for single individuals, $8,950 for heads of household, $12,200 for married couples filing jointly, and $6,100 for married individuals filing separately.

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. 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.[28]

> **Example 1.**–In 2013 a single taxpayer generally would need a minimum of $6,100 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.

> **Example 2.**–The value of a $1,000 charitable contribution deduction to a single taxpayer who has $28,500 of taxable income, itemizes deductions, and is in the 15-percent tax bracket is $150 (*i.e.*, $1,000 x 15 percent). In other words, the $1,000 charitable contribution reduces the taxpayer's tax liability by $150. Stated differently, the taxpayer's after-tax cost of making the $1,000 contribution is $850.
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> **Example 3.**–The value of a $1,000 charitable contribution deduction to a single taxpayer who has $479,150 of taxable income, itemizes deductions, and is in the 39.6-percent tax bracket is $396 (*i.e.*, $1,000 x 39.6 percent). For this taxpayer, the $1,000 charitable contribution reduces his or her tax liability by $396 (disregarding the overall limit on itemized deductions). Therefore, the after-tax cost of making the $1,000 contribution is $604.

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[27] For more information regarding individual tax rates and the individual tax base, see Joint Committee on Taxation, *Overview of the Federal Tax System As In Effect for 2013* (JCX-2-13R), January 8, 2013.

[28] "Nearly two out of three taxpayers take the standard deduction, rather than itemizing deductions, such as mortgage interest, charitable contributions and [S]tate and local taxes." Internal Revenue Service, News Release, IR-2010-127, December 23, 2010.

<u>Overall limit on itemized deductions ("Pease limitation")</u>

The total amount of most otherwise allowable itemized deductions (including the charitable deduction) is limited for certain upper-income taxpayers. All other limitations applicable to such deductions (such as the separate floors) are first applied and, then, the otherwise allowable total amount of itemized deductions is reduced by three percent of the amount by which the taxpayer's adjusted gross income ("AGI") exceeds a threshold amount.

For 2013, the threshold amounts are $250,000 for single taxpayers, $275,000 for heads of household, $300,000 for married couples filing jointly, and $150,000 for married taxpayers filing separately. These threshold amounts are indexed for inflation for years after 2013. The otherwise allowable itemized deductions may not be reduced by more than 80 percent by reason of the overall limit on itemized deductions.

> **Example 4.**–X, a single taxpayer, has adjusted gross income of $400,000 and total itemized deductions (comprised of mortgage interest, State income taxes, and charitable contributions) of $20,000. Her itemized deductions are reduced by the lesser of: (1) three percent of the excess of her AGI ($400,000) and the applicable threshold amount for single filers ($250,000), *i.e.*, three percent of $150,000, or $4,500; or (2) 80 percent of itemized deductions of $20,000, or $16,000. Because $4,500 is less than $16,000, X's itemized deductions are reduced by $4,500.

Because the limitation is based on a taxpayer's AGI and not the level of the taxpayer's itemized deductions, in many cases an additional charitable contribution by the taxpayer will not result in an additional reduction in itemized deductions.

> **Example 5.**–Assume that, in the preceding example, X's $20,000 of itemized deductions are comprised exclusively of mortgage interest and State income taxes. As shown above, the reduction in X's itemized deductions is $4,500. Assume that X chooses to make $10,000 in charitable contributions, such that her total itemized deductions increase to $30,000. The total reduction in X's itemized deductions remains $4,500 (the lesser of (1) three percent of $150,000, or $4,500, and (2) 80 percent of $30,000, or $24,000).

3. Organizations eligible to receive deductible charitable contributions

The following will discuss the tax-exempt sector in general and the subset of tax-exempt organizations that are eligible to receive charitable contributions that are deductible for Federal income tax purposes. Among these eligible donees are charitable organizations, which include public charities and private foundations. Public charities and private foundations are primarily distinguished from each other based on the sources of their financial support. Although contributions to both public charities and private foundations generally are deductible, the computation of the deduction may differ.

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.[29] Section 501(c) describes the tax-exempt purposes of these organizations and the additional legal requirements they must meet to maintain tax-exempt status.

As of September 30, 2011, there were approximately 1.49 million section 501(c) organizations registered with the Internal Revenue Service.[30] Of these, there were approximately 1.08 million charitable organizations described in section 501(c)(3) and eligible to receive deductible charitable contributions under section 170. The remaining approximately 410,000 tax-exempt organizations were other types of organizations, including chambers of commerce, fraternal organizations, and civic leagues.[31] It is estimated that there are more than 300,000 religious congregations in the United States in 2012.[32]

Table A1 in the Appendix of this pamphlet lists tax-exempt organizations described in section 501(c), as recorded in the Internal Revenue Service ("IRS") Master File as of the end of Fiscal Year 2011 (*i.e.*, September 30, 2011) by Code section, number of organizations, and eligibility to receive deductible charitable contributions.[33]

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[29] 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.

[30] Internal Revenue Service, *2012 Data Book*, p. 56. The IRS revoked the tax-exempt status of more than 385,000 organizations during Fiscal Year 2011 for failing to satisfy filing requirements for three consecutive years, as required by the Pension Protection Act of 2006. *Ibid*, p. 56, n. 1.

[31] *Ibid*. As discussed in footnote 37, below, organizations that are not required to file for recognition of tax-exempt status are not included in the IRS Business Master File.

[32] American Church Lists, *Church Demographics*, available at http://www.americanchurchlists.com/ACL/LB_churches.aspx. The more than one million charities registered with the Internal Revenue Service include religious congregations; however, this figure does not include the approximately half of all congregations that are not registered with the Internal Revenue Service.

[33] For a more detailed discussion of the tax-exempt sector in general, see Joint Committee on Taxation, *Historical Development and Present Law of the Federal Tax Exemption for Charities and Other Tax-Exempt Organizations* (JCX-29-05), April 20, 2005.

Eligible donees

The universe of organizations eligible to receive charitable contributions that qualify as deductible for Federal income tax purposes is in some respects more limited in scope. Section 170 permits donors to deduct contributions to the following kinds of organizations:

- Governmental entities. A State (including Indian tribal governments)[34] 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.
- Domestic charitable organizations. 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.[35]
- Veterans organizations. A war veterans organization or its post, auxiliary, trust, or foundation organized in the United States or its possessions.
- Domestic fraternal societies. 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.
- Cemetery companies. 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.[36]

[34] Indian tribal governments are treated as States for purposes of deductibility of contributions under section 170(c). See sec. 7871(a)(1)(A).

[35] The Code provides that for a charitable organization to be an eligible donee for income tax purposes, it must be created or organized in the United States (sec. 170(c)(2)), *i.e.*, it must be a domestic organization; 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).

[36] Certain contributions to cemetery companies are deductible for income tax purposes, but not for estate or gift tax purposes. See secs. 170(c), 2055(a), and 2522(a).

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.

Donors may determine whether an organization is eligible to receive tax-deductible contributions by consulting IRS Publication 78, which lists eligible organizations by name and location.[37]

Ineligible donees

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 under section 501(c)(4));[38] labor organizations (described under section 501(c)(5)); business leagues and chambers of commerce (described under 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).

Charities

As discussed above, domestic charitable organizations may be eligible donees of charitable contributions. 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.[39]
- Domestic. The charity must be organized in the United States.[40] Foreign charitable organizations are not eligible to receive income tax deductible charitable

[37] Publication 78 data may be searched on the IRS website at http://www.irs.gov/Charities-&-Non-Profits/Exempt-Organizations-Select-Check. 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, their integrated auxiliaries, and conventions or associations of churches; subordinate organizations exempt from tax under a group exemption letter, and public charities whose annual gross receipts are normally not more than $5,000 may be treated as tax-exempt without filing an application.

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

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

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

contributions directly, even if they receive a favorable determination letter from the IRS that they meet the requirements of section 501(c)(3).[41]

- 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.[42] No charitable deduction is available for gifts to organizations run for personal profit or organizations that confer substantial private benefits on some 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 (*e.g.*, the organization may not pay dividends to organization insiders).[43]

- No excessive lobbying and no political intervention. In addition, no substantial part of the activities of a charity may consist of carrying on propaganda, or otherwise attempting to influence legislation, and such organization may not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.[44] No charitable deduction is available for gifts to groups with a substantial purpose of lobbying or which engage in political intervention.

Public charities and private foundations

An organization qualifying for tax-exempt status under section 501(c)(3) is further classified as either a public charity or a private foundation.[45] Contributions to both public charities and private foundations generally are deductible, although the computation of the deduction may differ, as discussed below.

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[41] Foreign charitable organizations are, however, eligible to receive grants from domestic charities, which may 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.

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

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

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

[45] Sec. 509(a). 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.

Public charities

An organization may qualify as a public charity in several ways.[46] 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.[47]

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.[48] 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.[49]

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.[50]

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

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

[48] 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).

[49] 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).

[50] 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 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.

Private foundations

A section 501(c)(3) organization that does not fit within any of the above categories is a private foundation. In general, private foundations receive funding from a limited number of sources (*e.g.*, an individual, a family, or a corporation).[51]

Contributions to public charities and private foundations

As discussed below, contributions to private foundations generally do not receive as favorable treatment as do contributions to public charities for purposes of the charitable contribution deduction. Contributions to a public charity generally are deductible up to 50 percent of an individual donor's contribution base (defined below) (30 percent for capital gain property), whereas contributions to most private foundations generally are deductible up to 30 percent of an individual donor's contribution base (20 percent for capital gain property).[52] In addition, gifts of capital gain property to a public charity generally are deductible at the property's fair market value, whereas gifts of capital gain property (other than certain publicly traded stock) to most private foundations are deductible at the taxpayer's basis (cost) in the property.[53]

4. Other requirements for charitable 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 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.[54]

> **Example 6.–**If a donor pays $1,000 for the privilege of attending a dinner to benefit a charitable organization, the deductible portion of the payment does

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[51] Unlike public charities, private foundations are subject to tax on their net investment income at a rate of two percent (one percent in some cases). Sec. 4940. 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 (sec. 4941), are required to make a minimum amount of charitable distributions each year, (sec. 4942), are limited in the extent to which they may control a business (sec. 4943), may not make speculative investments (sec. 4944), and may not make certain expenditures (sec. 4945). Violations of these rules result in excise taxes on the foundation and, in some cases, may result in excise taxes on the managers of the foundation.

[52] Sec. 170(b)(1). As discussed below, corporate donors have different contribution limits.

[53] Sec. 170(e)(1)(B)(ii) and 170(e)(5).

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

> not include the value of the dinner or other tangible return benefits the donor receives at the event.[55]

Following are examples of payments to organizations that may qualify as eligible donees, but which are not deductible payments due to a lack of donative intent include the following.

> **Example 7.–**If a parent pays tuition to a university for a child's education, that tuition payment is not deductible even though the university may be a charitable organization because the tuition is a fee for educational services, a substantial return benefit.
>
> **Example 8.–**A payment of membership dues, fees, or other bills to country clubs, lodges, fraternal orders, or similar groups generally are not deductible, even if such groups may qualify as eligible recipients of charitable contributions, because such payments typically are in exchange for services rendered.
>
> **Example 9.–**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 of winning a valuable prize.

Substantiation and other formal requirements

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 such contribution.[56] 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 donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution. In such cases, the recordkeeping requirements may not be satisfied by maintaining other written records.

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.[57]

In addition, any charity 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 inform the contributor in writing of an estimate of the value of the

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

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

[57] Such acknowledgement must include the amount of cash and a description (but not value) of any property other than cash contributed, whether the donee 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).

goods or services furnished by the charity and that only the portion exceeding the value of the goods or services is deductible as a charitable contribution.[58]

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 or the deduction is not allowed.[59] 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.

[58] Sec. 6115.

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

C. Determining the Amount of the Income Tax Charitable Contribution Deduction

The preceding sections generally describe charitable contributions that are deductible for Federal income tax purposes. This section discusses several mechanical rules that apply in determining the amount of a taxpayer's Federal income tax charitable deduction for such a contribution.

For Federal income tax purposes, the deductible portion of a charitable contribution generally is limited to a percentage of the taxpayer's income. Applicable percentage limits for individual and corporate taxpayers are discussed in Part I.C.1, below. In addition, in determining the deductible value of a charitable contribution for income tax purposes, the Code sometimes requires a reduction from the fair market value of appreciated property, resulting in a deductible amount (before considering percentage limits on deductibility) equal to the taxpayer's basis in the property or to some other amount that is less than the fair market value of the property. These valuation rules are discussed in Part I.C.2, below.

1. Percentage limits on charitable contributions

Individual taxpayers

Charitable contributions by individual taxpayers are limited to a specified percentage of the individual's contribution base. The contribution base is the taxpayer's AGI for a taxable year, disregarding any net operating loss carryback to the year under section 172.[60] In general, more favorable (higher) percentage limits apply to contributions of cash and ordinary income property than to contributions of capital gain property. More favorable limits also generally apply to contributions to public charities (and certain operating foundations) than to contributions to nonoperating private foundations.

More specifically, the deduction for charitable contributions by an individual taxpayer of cash and property that is not appreciated to a charitable organization described in section 170(b)(1)(A) (public charities, private foundations other than nonoperating private 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 generally may be deducted up to the lesser of 30 percent of the taxpayer's contribution base or the excess of (i) 50 percent of the contribution base over (ii) the amount of contributions subject to the 50 percent limitation.

Contributions of appreciated capital gain property to public charities and other organizations described in section 170(b)(1)(A) generally are deductible up to 30 percent of the taxpayer's contribution base (after taking into account contributions other than contributions of capital gain property). An individual may elect, however, to bring all these 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 nonoperating private

[60] Sec. 170(b)(1)(G).

foundations are deductible up to the lesser of 20 percent of the taxpayer's contribution base or the excess of (i) 30 percent of the contribution base over (ii) the amount of contributions subject to the 30 percent limitation.

Finally, 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.[61] 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.[62] Charitable contributions of income interests (where deductible) also generally are treated as contributions *for the use of* the donee organization.

Table 1.–Charitable Contribution Percentage Limits For Individual Taxpayers[63]

	Ordinary Income Property and Cash	**Capital Gain Property *to* the Recipient**[64]	**Capital Gain Property *for the use of* the Recipient**
Public Charities, Private Operating Foundations, and Private Distributing Foundations	50%	30%[65]	20%
Nonoperating Private Foundations	30%	20%	20%

[61] Under a special, temporary provision, certain qualified conservation contributions (generally, conservation easements), qualify for more generous contribution limits and carryforward periods. These rules are discussed in detail below.

[62] *Rockefeller v. Commissioner*, 676 F.2d 35, 39 (2d Cir. 1982).

[63] Percentages shown are the percentage of an individual's contribution base.

[64] 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.

[65] Under a special, temporary provision, 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. These rules are discussed in greater detail below.

Corporate taxpayers

A corporation generally may deduct charitable contributions up to 10 percent of the corporation's taxable income for the year.[66] For this purpose, taxable income is determined without regard to: (1) the charitable contributions 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.[67]

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 contributions deduction (or certain other limits on deductibility under section 170).[68] 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.[69] In general, contributions carried over from a prior year are 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.

2. Valuation of charitable contributions

In general

For purposes of the income tax charitable deduction, the value of property contributed to charity may be limited to the fair market value of the property, the donor's tax basis in the property, or some other amount.

Charitable contributions of cash are deductible in the amount contributed, subject to the percentage limits discussed above. In addition, a taxpayer generally may deduct the full fair

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

[67] Sec. 170(b)(2)(C). Under a special, temporary provision, certain qualified conservation contributions (generally, conservation easements), qualify for more generous contribution limits and carryforward periods. These rules are discussed in detail below.

[68] Sec. 162(b).

[69] Sec. 170(d).

market value of long-term capital gain property contributed to charity.[70] Contributions of tangible personal property also generally are deductible at fair market value if the use by the recipient charitable organization is related to its tax-exempt purpose.[71]

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 of the property's deductible value to basis generally applies, for example, for: (1) contributions of inventory or other ordinary income or short-term capital gain property;[72] (2) contributions of tangible personal property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose;[73] and (3) contributions to or for the use of a private foundation (other than certain private operating foundations).[74]

For contributions of qualified appreciated stock, the above-described rule that limits the value of property contributed to or for the use of a private nonoperating foundation to the taxpayer's basis in the property does not apply; therefore, subject to certain limits, contributions of qualified appreciated stock to a nonoperating private foundation may be deducted at fair market value.[75] Qualified appreciated stock is stock that is capital gain property and for which

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[70] 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).

[71] A rule enacted as part of the Pension Protection Act of 2006, Pub. L. No. 109-280, provides for recovery of the excess tax benefit for charitable contributions 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. Sec. 170(e)(7). Under the provision, if a donee 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 donee organization makes an appropriate certification to the Secretary, by written statement signed under penalties of perjury by an officer of the organization.

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

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

[74] 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, a special rule, described in greater detail below, permits additional charitable deductions beyond the donor's tax basis in certain situations. In addition, under a special rule enacted as part of the Pension Protection Act of 2006, 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). Indirect costs, such as transportation, may not be deducted under section 170.

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

(as of the date of the contribution) market quotations are readily available on an established securities market.[76]

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

Although most charitable contributions of property are valued at fair market value or the donor's tax basis in the property, certain statutorily described contributions of appreciated inventory and other property 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.[77] 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 property will be consistent with such requirements.[78] Contributions to organizations that are not described in section 501(c)(3), such as governmental entities, do not qualify for this enhanced deduction.

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

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

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

[78] 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).

Temporary enhanced deduction rule for contributions of food inventory

Under a temporary provision for contributions made before January 1, 2014, any taxpayer engaged in a trade or business, whether or not a C corporation, is eligible to claim the enhanced deduction for donations of food inventory.[79] For taxpayers other than C corporations, the total deduction for donations of food inventory in a taxable year generally may not exceed 10 percent of the taxpayer's net income for such taxable year from all sole proprietorships, S corporations, or partnerships (or other non C corporations) from which contributions of apparently wholesome food are made. For example, if a taxpayer is a sole proprietor, a shareholder in an S corporation, and a partner in a partnership, and each business makes charitable contributions of food inventory, the taxpayer's deduction for donations of food inventory is limited to 10 percent of the taxpayer's net income from the sole proprietorship and the taxpayer's interests in the S corporation and partnership. However, if only the sole proprietorship and the S corporation made charitable contributions of food inventory, the taxpayer's deduction would be limited to 10 percent of the net income from the trade or business of the sole proprietorship and the taxpayer's interest in the S corporation, but not the taxpayer's interest in the partnership.[80]

Under the temporary provision, 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.[81]

Selected statutory rules for specific types of property

Special 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 some taxpayers did not accurately report—and in many instances overstated—the value of the property for purposes of claiming a charitable deduction.

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

[80] The 10-percent limitation does not affect the application of the generally applicable percentage limitations. For example, if 10 percent of a sole proprietor's net income from the proprietor's trade or business was greater than 50 percent of the proprietor's contribution base, the available deduction for the taxable year (with respect to contributions to public charities) would be 50 percent of the proprietor's contribution base. Consistent with present law, such contributions may be carried forward because they exceed the 50-percent limitation. Contributions of food inventory by a taxpayer that is not a C corporation that exceed the 10-percent limitation but not the 50-percent limitation could not be carried forward.

[81] Two additional enhanced deduction provisions — for certain contributions of book inventory and computer equipment to public schools and public libraries — expired at the end of 2011 and have not been renewed. Secs. 170(e)(3)(D) and 170(e)(6).

Vehicles

Under present law, the amount of deduction for charitable contributions of 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 donee organization.[82] If the donee 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). A penalty applies if a donee 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 other intellectual property (other than certain copyrights or inventory)[83] 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.[84] In addition, the taxpayer is permitted to deduct, as a charitable contribution, certain 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).[85]

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[82] Before 2005, a taxpayer who donated a used automobile to a charitable donee 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. The present-law rules concerning the deductibility of charitable contributions of vehicles were enacted as part of the American Jobs Creation Act of 2004, and are effective for contributions made after December 31, 2004. For a more detailed description of these rules, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 108th Congress* (JCS-5-05), May 2005, pp. 463-466.

[83] Under present and prior law, certain copyrights are not considered capital assets, such that the charitable deduction for such copyrights generally is limited to the taxpayer's basis. See sec. 1221(a)(3), 1231(b)(1)(C).

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

[85] The present-law rules allowing additional charitable deductions for qualified donee income were enacted as part of the American Jobs Creation Act of 2004, and are effective for contributions made after June 3, 2004. For a more detailed description of these rules, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 108th Congress* (JCS-5-05), May 2005, pp. 457-461.

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 11^{th} and 12^{th} 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 intellectual property. Special reporting and substantiation rules apply with respect to contributions of patents and other intellectual property.

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 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 applicable to tangible personal property. If such contributed property is appreciated property in the hands of the taxpayer, and is not used to further the donee's exempt purpose, the deduction is limited to basis. In most situations, however, clothing and household items 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 whether the property is used for exempt or unrelated purposes by the donee organization.

Furthermore, a special rule generally provides that no deduction is allowed for a charitable contribution of clothing or a household item unless the item is in good used or better condition. 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.[86]

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 special rules described in the preceding paragraph.[87]

[86] 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.

[87] The special rules concerning the deductibility of clothing and household items were enacted as part of the Pension Protection Act of 2006, and are effective for contributions made after August 17, 2006. For a more

D. Contributions of Partial Interests in Property

1. 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.[88] 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.[89] 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."[90]

A gift of an undivided portion of a donor's entire interest in property generally is not treated as a nondeductible gift of a partial interest in property.[91] 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.[92] 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.[93]

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detailed description of these rules, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 109th Congress* (JCS-1-07), January 17, 2007, pp. 597-600.

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

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

[90] 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, 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).

[91] Sec. 170(f)(3)(B)(ii).

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

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

Other exceptions to the partial interest rule are provided for, among other interests: (1) remainder interests in charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds; (2) present interests in the form of a guaranteed annuity or a fixed percentage of the annual value of the property; (3) a remainder interest in a personal residence or farm; and (4) qualified conservation contributions, some of which are discussed below.

2. Split interest trusts

Certain split interest transfers are not subject to the partial interest rule, which generally bars deductions for contributions of partial interests in property. Split interest trust transfers generally allow a taxpayer to make a deductible charitable contribution in trust while retaining an interest in the property for some period of time.[94]

For example, provided the transaction satisfies all applicable technical requirements,[95] 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 or similar interest from the trust for some 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.[96] 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 allowed.[97] In a charitable lead trust structure, the charity generally receives specified payments from the trust for some period of time (the lead interest), with the remainder interest reverting to the donor or passing to other beneficiaries.

3. Qualified conservation contributions

<u>Exception from partial interest rule</u>

Qualified conservation contributions are not subject to the partial interest rule, which generally bars deductions for charitable contributions of partial interests in property.[98] 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

[94] 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).

[95] See sec. 664.

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

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

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

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.[99]

Temporary provision allowing increased percentage limits and extended carryforwards

Under a temporary provision effective for contributions made in taxable years beginning before January 1, 2014,[100] preferential percentage limits and carryforward rules apply for qualified conservation contributions. In general, under the temporary provision, the 30-percent contribution base limitation on contributions of capital gain property by individuals does not apply to qualified conservation contributions. Instead, individuals may deduct the fair market value of any qualified conservation contribution to an organization described in section 170(b)(1)(A) (generally, public charities) to the extent of the excess of 50 percent of the contribution base over the amount of all other allowable charitable contributions. 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.[101]

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.

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[99] In its fiscal year 2013 revenue proposals, the Administration proposed amending the charitable deduction rules to prohibit a deduction for any contribution of property that is, or is intended to be, used as a golf course. See U.S. Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2013 Revenue Proposals*, February 2012, p. 140. Under the proposal, a taxpayer would be prohibited from deducting a contribution of a conservation easement on golf course property.

[100] Sec. 170(b)(1)(E).

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

4. Fractional contributions of tangible personal property (including works of art)

As discussed above, an exception to the partial interest rule permits a charitable deduction for a contribution of an undivided portion of a donor's entire interest in property. Under this exception, a donor generally may take a deduction for a charitable contribution of a fractional interest in tangible personal property (such as a painting), provided the donor satisfies the requirements for deductibility (including the requirements concerning contributions of partial interests and future interests in property), and in subsequent years make additional charitable contributions of undivided, fractional interests in the same property.[102] However, special valuation and deductibility rules apply to charitable contributions of fractional interests in tangible personal property, such as a contribution of a painting to a museum.[103]

First, the value of a donor's charitable deduction for the initial contribution of a fractional interest in an item of tangible personal property (or collection of such items) is determined under generally applicable rules (*e.g.*, based upon the fair market value of the artwork at the time of the contribution of the fractional interest and considering whether the use of the artwork will be related to the donee's exempt purposes). For purposes of determining the deductible amount of each additional contribution of an interest (whether or not a fractional interest) in the same item of tangible personal property for income tax purposes, however, special rules apply. Specifically, the fair market value of the item is the lesser of: (1) the value used for purposes of determining the charitable deduction for the initial fractional contribution; or (2) the fair market value of the item at the time of the subsequent contribution.[104]

Second, the income tax charitable deduction and gift tax charitable deduction for a contribution of a partial interest in tangible personal property may be recaptured under certain circumstances, such as where the donor fails to contribute all of the donor's remaining interest in such property within a specified period of time, or where the donee charity fails to take substantial physical possession of the item or fails to use the item for an exempt use during such period of time, as required by the Code.[105] In any case in which there is a recapture of a deduction, the provision also imposes an additional tax in an amount equal to 10 percent of the amount recaptured.

[102] See, *e.g.*, *Winokur v. Commissioner*, 90 T.C. 733 (1988).

[103] The special rules for contributions of fractional interests in tangible personal property were enacted as part of the Pension Protection Act of 2006. For a more detailed description of the rules, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 109th Congress* (JCS-1-07), January 17, 2007, pp. 601-603. The rules were amended by the Tax Technical Corrections Act of 2007, Pub. L. No. 110-172, section 1218. For a description of the amendments, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 110th Congress* (JCS-1-09), March 2009, p. 72.

[104] Sec. 170(o)(2).

[105] Sec. 170(o)(3). If, for example, an art museum described in section 501(c)(3) is the donee of a fractional interest in a painting and includes the painting in an art exhibit sponsored by the museum, such use generally satisfies the related-use requirement of the provision.

In addition, an income or gift tax charitable deduction generally is not allowed for a contribution of a fractional interest in an item of tangible personal property unless immediately before such contribution all interests in the item are owned (1) by the donor or (2) by the donor and the donee organization.[106]

[106] Sec. 170(o)(1).

E. Overview of the Estate and Gift Tax Charitable Deductions

A charitable deduction also is available for Federal estate and gift tax purposes.[107] 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.[108] 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.[109] Therefore, in general, the effect of the charitable deductions for estate and gift tax purposes is to remove the value of charitable transfers from the estate or gift tax base, such that these transfers escape estate or gift taxation.

The basic requirements for a deductible charitable contribution for estate or gift tax purposes generally are the same as the requirements 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.[110]

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.[111]

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

[108] Sec. 2055(a).

[109] Sec. 2522(a).

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

[111] Sec. 2055(d).

F. Exclusion from Gross Income for Distributions from Individual Retirement Arrangements (IRAs) for Charitable Purposes

In general

A temporary rule provides an exclusion from gross income for otherwise taxable IRA distributions from a traditional or a Roth IRA in the case of qualified charitable distributions made in taxable years beginning before January 1, 2014.[112] The exclusion from gross income may not exceed $100,000 per taxpayer per taxable year.[113]

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 donor advised fund). Distributions are eligible for the exclusion only if made on or after the date the IRA owner attains age 70-½ and only to the extent the distribution would be includible in gross income (without regard to this provision).[114]

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 contributions under section 170.

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

[113] 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.

[114] 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.

Interaction of the exclusion with other sections of the Code

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 may not, however, deduct the contribution to charity.[115]

Minimizing Social Security taxes

In the absence of the special rule regarding qualified charitable distributions, and 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. 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 her Social Security tax liability by arranging for a qualified charitable distribution.

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[115] 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

In general

Tax deductibility of charitable contributions reduces the economic cost to the donor of his or her donation and, therefore, encourages charitable giving. There are a number of different economic rationales for the deductibility of contributions to charitable organizations. These rationales depend, in part, on differing views about the role of charitable organizations and the benefits they provide to society as a whole. They also depend on assumptions about individuals' motivations behind charitable giving and the appropriate base of the income tax.

If donors make contributions for purely altruistic reasons, the income given to a charity enriches the recipient charity but does not enrich the donor. In this case, the donated income reduces the taxpayer's ability to pay income tax without providing the donor with any benefits. If the contribution does not represent consumption but a decrease in wealth, then it should not be taxed under a comprehensive income tax system.

On the other hand, people may 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. If people experience such a "warm-glow" from giving, then 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 a subsidy for charitable contributions, for example via a tax deduction, stems from the role of charitable organizations and the type of benefits those organizations provide. Charitable organizations may provide goods and services in such a way that the larger community derives value from them. For example, a patron of the arts may derive direct satisfaction from his donation to a museum by being able to enjoy new art acquisitions. In addition, his donation also enables the larger public to view and enjoy the same new art acquisitions. Economists consider such donations to be private contributions to a public good. Generally, in the absence of subsidies, the private market provides fewer public goods than is optimal. In this case, there is an economic rationale for incentivizing such donations.

On the other hand, charitable organizations often provide goods and services to select classes of charitable beneficiaries rather than to the public at large. For example, donations to a college may benefit select students and faculty at a 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 a charitable contribution deduction.

Furthermore, sometimes charitable organizations provide goods or services that the government would otherwise provide. These charitable gifts are then private contributions to create public goods that alleviate the burden on government. In the absence of charitable gifts, such goods and services would have to be provided by the government at full cost to taxpayers. In this case, there is an economic rationale for providing a tax deduction for such contributions. The charitable contribution 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 tax deduction for voluntary charitable contributions is similar to the deductions permitted for many State and local taxes.

A third rationale for the charitable contribution deduction is that many charitable organizations provide goods and services with significant spillover benefits to the public at large.[116] For example, charitable organizations may choose to provide benefits that improve the health of individuals, such as through the provision of vaccinations. Vaccinations 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 may provide insufficient levels of goods that create spillover benefits. Thus, 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 such benefits.

[116] 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 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 is in the 28-percent tax bracket, a $100 cash gift to charity reduces his taxable income by $100, and thereby reduces his tax liability by $28. As a consequence, the $100 cash gift to charity reduces the taxpayer's after-tax income by only $72. Economists say that the after-tax cost of giving $100 cash to charity is $72 for this taxpayer. As this example illustrates, the after-tax cost of donating one dollar is one minus the taxpayer's marginal tax rate. Alternatively stated, 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 lowers the after-tax cost of giving, theoretically, it will increase the ability and willingness of donors to increase donations. Empirical studies of the responsiveness of giving to the after-tax cost of giving generally find a response. Some earlier studies report strong evidence that donors increase giving in response to decreases in after-tax cost of giving, and decrease giving in response to increases in after-tax cost of giving.[117] These earlier studies find that when the after-tax cost of giving changes by one percent, donors respond with a greater than one percent change in 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 also find evidence of similar effects, though some studies find estimates that are weaker or mixed relative to the earlier studies.[118] Many of the recent studies also attempt to 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

[117] 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.

[118] 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.

contributions are much less responsive to the after-tax cost of giving than short-run estimates would imply.[119]

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, a 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 tax rate (as discussed above), the charitable contribution deduction reduces a taxpayer's after-tax cost of giving by relatively more, the higher his marginal tax rate. 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.[120] 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. Additionally, some studies present evidence suggesting that high-income taxpayers are more responsive to the incentives provided by the charitable contribution deduction than are low-income taxpayers.[121]

One implication of these distributional effects is that certain types of charities may be more affected by changes in policies than others. Low-income donors often give to churches and religious organizations, while high-income donors are more likely to give to education, health care, and arts institutions. 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, while the similar figure for families with annual incomes over $100,000 was 52.3 percent. Contributions to education, health care, and arts institutions constituted 10.3 percent of their giving for families with annual incomes under $100,000, while the similar figure for families with annual incomes over $100,000 was 13.3 percent.[122] Policy changes that affect the after-tax cost of giving for high-income donors relatively more than low-income donors may

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

[120] This is generally true, though it can be complicated by interactions with other features of the Code, such as the alternative minimum tax.

[121] 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.

[122] JCT Tabulations of 2009 Center on Philanthropy Panel Study module of the Panel Study of Income Dynamics.

therefore have a greater impact on education, health care and arts institutions than on other types of charities, such as religious organizations.

Crowd-out effects and the deduction for charitable contributions

As discussed earlier in this section, a substantial literature shows that the amount of private contributions by individuals to charities is influenced by changes in the after-tax cost of giving. These contributions are 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. As a result, changes in private donations to charities will exactly offset changes in public donations. In other words, public donations 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 changes in private donations will not exactly offset changes in public funding.

A substantial empirical literature documents the existence of "warm-glow" effects in charitable giving.[123] As a result, it may be reasonable to assume that increased government funding of a charity will not fully crowd out private giving; that is, it will not lead to a dollar for dollar decline in 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 policy which provides preferences for contributions may further support this increase in overall funding for the museum.

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[123] 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.

C. Analysis of Selected Special Rules for Charitable Contributions

Congress has created special rules governing charitable contributions that may affect the incentive to give. For example, special rules governing the contribution of food inventory and of conservation easements provide additional incentives for donors to contribute. Others, such as the Pease limitation on itemized deductions, do not specifically target charitable giving, but may nevertheless affect such contributions.

Special temporary rule for contributions of food inventory

In the absence of the enhanced deduction for food inventory, a taxpayer may have an incentive to throw away food rather than give it away. If a taxpayer were to dispose of excess inventory by dumping the excess food in a garbage dumpster, the taxpayer generally may claim the purchase price of the inventory (the taxpayer's basis in the property) as an expense against his or her gross income. In the absence of the enhanced deduction, if the taxpayer were to donate the excess food inventory to a charitable organization that maintains a food bank, the taxpayer generally may claim a charitable deduction equal to the taxpayer's basis in the food inventory (subject to certain limits on charitable contributions). Viewed from the taxpayer's profit motive, the taxpayer would be indifferent between donating the food and disposing the food as waste. If the taxpayer incurs cost to deliver the food to the charity that maintains the food bank, the taxpayer would not find it in his or her financial interest to donate the excess food inventory to the food bank. The enhanced deduction creates an incentive for the taxpayer to contribute excess food inventory to charitable organizations that provide hunger relief.

In general, the enhanced deduction is intended to give businesses greater incentive to contribute food to those in need. However, some argue that if the intended policy is to support food programs for the needy, it would be more direct and efficient to provide a direct government subsidy instead of making a tax expenditure through the tax system, which may result in abuse and cannot be monitored under the annual budgetary process. On the other hand, proponents of the rule may argue that a government program may be less effective in identifying the needy and overseeing delivery of the food than would the enhanced charitable deduction.[124]

Special temporary rule for contributions of conservation easements

A special provision incentivizes charitable giving for conservation purposes by enhancing the tax benefits to donors who make qualified conservation contributions. This provision increases the limits on deductions of qualified conservation contributions and permits excess contributions to be carried over to more future years than otherwise would be permitted. However, some argue that the benefits of the provision are available only to donors of partial interests in property (such as easements) and not to donors who donate an entire parcel of real property for conservation purposes without retaining an interest in such property. Arguably, providing a greater tax benefit to donors who retain an interest in property given to charity than to donors who do not retain an interest will in some cases discourage more significant

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[124] See, *e.g.*, Jane G. Gravelle, Congressional Research Service, *Charitable Contributions of Food Inventory: Proposals for Change Under the 'Community Solutions Act of 2001*, (Report RL 31097) August 23, 2001.

contributions in favor of more limited ones. Such a result might be seen as inconsistent with the intended purpose of the provision. On the other hand, one could argue that the provision will lead to an overall increase in contributions for conservation purposes, which is consistent with stated policy goals.

The provision provides for even greater tax benefits to qualified farmers and ranchers who make qualified conservation contributions by replacing the otherwise applicable percentage limitations with a 100-percent limitation. If an intended goal of the provision is to provide financial support to farmers and ranchers, some might argue that it would be more efficient to provide a direct government subsidy than to provide indirect benefits through the tax system. On the other hand, proponents may argue that such a government program is less likely to encourage owners of significant tracts of land to protect the land in perpetuity for conservation purposes.

Effect of the Pease limitation on charitable contributions

Some argue that the Pease limitation creates a disincentive to give to charity.[125] If a taxpayer is subject to the 80 percent cap, then an additional dollar of giving only yields an additional 20 cents in deductions. However, in most cases, taxpayers are not subject to the 80 percent cap. In such cases, the gift of an additional dollar to charity will result in an additional dollar of allowable deductions since the three percent Pease limitation is determined by AGI and not the level of giving.

An exception to the general rule that the three percent Pease limitation does not reduce the incentive to give to charity could occur in cases where the taxpayer is effectively prevented from taking a charitable deduction due to the joint operation of the three percent limitation and the standard deduction. For example, suppose a taxpayer has no charitable deductions; other itemized deductions exactly equal to the standard deduction of $6,100; and an AGI such that the three percent Pease rule would result in a loss of $1,000 of any itemized deductions. Then an additional dollar of charitable contribution would not yield any additional tax benefits for this taxpayer, even though his combined deductions would exceed the standard deduction. This outcome results from the fact that the three percent rule reduces the combined amount of itemized deductions to an amount below the standard deduction, incentivizing the taxpayer to choose the standard deduction over itemizing.

[125] See section I.B.2 of this document for an overview of the effect of the Pease limitation on the charitable contribution deduction and taxable income.

D. Tax Expenditure Estimates of the Charitable Contributions Deduction

Table 2 in Part II. F., 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.[126] 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 would be expected for a number of reasons. First, the deduction is available only to those who itemize deductions, and itemizing is more prevalent the greater is one's income. Second, the amount of giving generally rises with income. Third, upper-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.

[126] 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 2012-2017* (JCS-1-13), February 1, 2013, pp. 24-25.

E. Tax Compliance and the Valuation of Charitable Contributions

Valuing contributions of non-cash property, in general

The valuation of contributions of property presents significant tax compliance challenges. The determination of fair market value creates a significant opportunity for error or abuse by taxpayers making charitable contributions of property.[127] 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. [128]

In addition, 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. Such hurdles often mean, as a practical matter, that attacking valuation misstatements in the charitable contribution context is not a high priority for the IRS because the probable revenue collected does not compare favorably with the resource cost (at least when compared to other tax compliance areas).

Unlike in an arm's length negotiation, in a charitable contribution situation, the interests of a donor and a donee organization are not adverse. A donee organization may have no knowledge of the amount a donor has claimed as the value of the easement and, even if known, has no incentive to question a donor's inflated value because there is no countervailing tax consequence to the donee if a donor inflates the value of contributed property, *i.e.*, the donee generally does not pay tax on the receipt of the contribution or a 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 cause the valuation of property in the charitable contribution context to be a particularly difficult determination.

In recent years, the 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, the Congress, enacted provisions regarding the deductibility of charitable contributions of used motor vehicles

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[127] 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.

[128] 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.

and intellectual property.[129] In 2006, the Congress enacted additional provisions that addressed concerns about valuation of charitable contributions, including provisions: (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.[130]

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.

In response to concerns about charitable deductions for conservation easements, in 2004 the IRS issued a notice informing taxpayers that it will examine conservation easement donations closely and, where appropriate, will deny tax benefits to, or impose sanctions on, donors, recipient organizations, appraisers, and promoters of conservation easement transactions.[131] The

[129] 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).

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

[131] Notice 2004-41, 2004-1 C.B. 31, June 30, 2004.

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 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."[132]

[132] *Ibid.*

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

Table 2, below, shows the distribution of the charitable contribution deduction by income class for 2012. The Joint Committee staff estimates that, for 2012, 47.0 million individual tax returns will claim itemized deductions of any type, and 38.7 million of those will claim the charitable contributions deduction, in amounts totaling $184.8 billion prior to application of the present-law limitations on the charitable contribution deduction (such as the percentage-of-AGI limitations).[133] The dollars claimed include those charitable contributions allowed as a deduction before the application of any present law limitations on the deductibility of charitable contributions, such as the percentage of AGI limitations or the overall limitation on itemized deductions ("Pease").

Table 2.−Tax Returns Claiming an Itemized Deduction For a Charitable Contribution, and Estimated Tax Expenditure (2012 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 amount 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	17,486	402	197	252	1,279	1	[1]	75
$10,000 to $20,000	16,769	726	394	651	1,652	93	9	96
$20,000 to $30,000	18,203	1,261	750	1,283	1,711	414	67	162
$30,000 to $40,000	15,572	2,166	1,425	2,745	1,926	944	185	196
$40,000 to $50,000	14,185	3,111	2,237	4,590	2,052	1,796	398	222
$50,000 to $75,000	26,252	8,400	6,467	15,939	2,465	5,900	2,018	342
$75,000 to $100,000	17,001	7,797	6,449	18,340	2,844	6,275	2,730	435
$100,000 to $200,000	23,661	16,890	14,921	51,816	3,473	14,530	10,584	728
$200,000 to $500,000	5,588	5,179	4,800	29,001	6,042	4,481	8,362	1,866
$500,000 to $1,000,000	760	703	663	9,578	14,446	621	2,379	3,831
$1,000,000 and over	403	379	362	50,585	139,738	336	10,856	32,310
Total	155,880	47,014	38,665	184,780	4,779	35,389	37,589	1,062

[1] Less than $500.000.
Source: Joint Committee on Taxation.
Note: Excludes individuals who are dependants of other taxpayers and taxpayers with negative income. Details may not add to totals due to rounding. Calculations based on 2012 model and baseline. Estimates are in nominal dollars.

A substantial amount of charitable donations made by individuals is not claimed as itemized deductions. However, there are no data that directly measure the magnitude of

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133 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.

charitable giving by nonitemizers. Tables 3 and 4, below, offer some indirect evidence on the magnitude of such giving. Table 3 presents estimates by the Giving USA Foundation of the total amount of charitable donations received by qualifying organizations from individuals. By contrast, Table 4 reports individual itemized deductions claimed for charitable contributions as reported to the Internal Revenue Service. Comparison of the two tables suggests that, in 2010, nearly $39.4 billion in charitable contributions made by individuals was not claimed as itemized deductions.[134]

Individual charitable contributions claimed as itemized deductions on individual tax returns have generally grown in every year since 1984, except from 1986 to 1987, as a result of tax reform,[135] and from 2000 to 2001 and 2007 to 2009, as a result of downturns in the stock market and the economy generally. Itemized deductions and total individual charitable contributions have grown more rapidly than the rate of inflation over this period.[136] As a share of personal income, total individual donations have generally risen over this time period. In 1984, total individual donations were 1.73 percent of personal income, rising to 1.85 in 2008. Between 1984 and 1999, individual donations as a share of personal income averaged 1.70 percent of personal income, and from 2000 to 2008 individual donations averaged 1.98 percent of personal income.

[134] For this to be an accurate estimate of nonitemizer giving, the numbers reported for total giving and those for itemizers must be accurate.

[135] 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.

[136] The price level, as measured by changes in the consumer price index, increased by 116.5 percent over the period 1984 through 2011.

Table 3.−Total Individual Charitable Donations Estimated to Have Been Received By Charitable Organizations, 1984-2011 (Billions of Dollars)

Year	1984	1985	1986	1987	1988	1989	1990
Total Individual Donations	56.46	57.39	67.09	64.53	69.98	79.45	81.04
Year	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**
Total Individual Donations	84.27	87.70	92.00	92.52	95.36	107.56	124.20
Year	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**
Total Individual Donations	138.35	154.63	174.51	173.35	174.44	181.96	202.97
Year	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**
Total Individual Donations	221.99	224.76	233.11	213.76	200.66	209.64	217.79

Source: *Giving USA* 2009. Data do not include donations from trusts. Tabulations prepared by the staff of the Joint Committee on Taxation. Figures are in nominal dollars.

Table 4.−Individual Itemized Charitable Donations Claimed on Tax Returns, 1984-2010 (Billions of Dollars)

Year	1984	1985	1986	1987	1988	1989	1990
Total Individual Donations	42.12	45.96	53.82	49.62	50.95	55.46	57.24
Year	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**
Total Individual Donations	60.58	63.84	68.35	70.54	74.99	86.16	99.10
Year	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**
Total Individual Donations	109.20	125.80	140.70	139.20	140.60	145.70	165.60
Year	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	
Total Individual Donations	183.40	186.60	193.60	172.90	158.00	170.20	

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.

Because of difficulties with proper valuation of non-cash charitable donations, these present particularly serious policy and compliance issues. Table 5 shows that non-cash charitable donations deducted as an itemized deduction in 2010 totalled $44.32 billion.

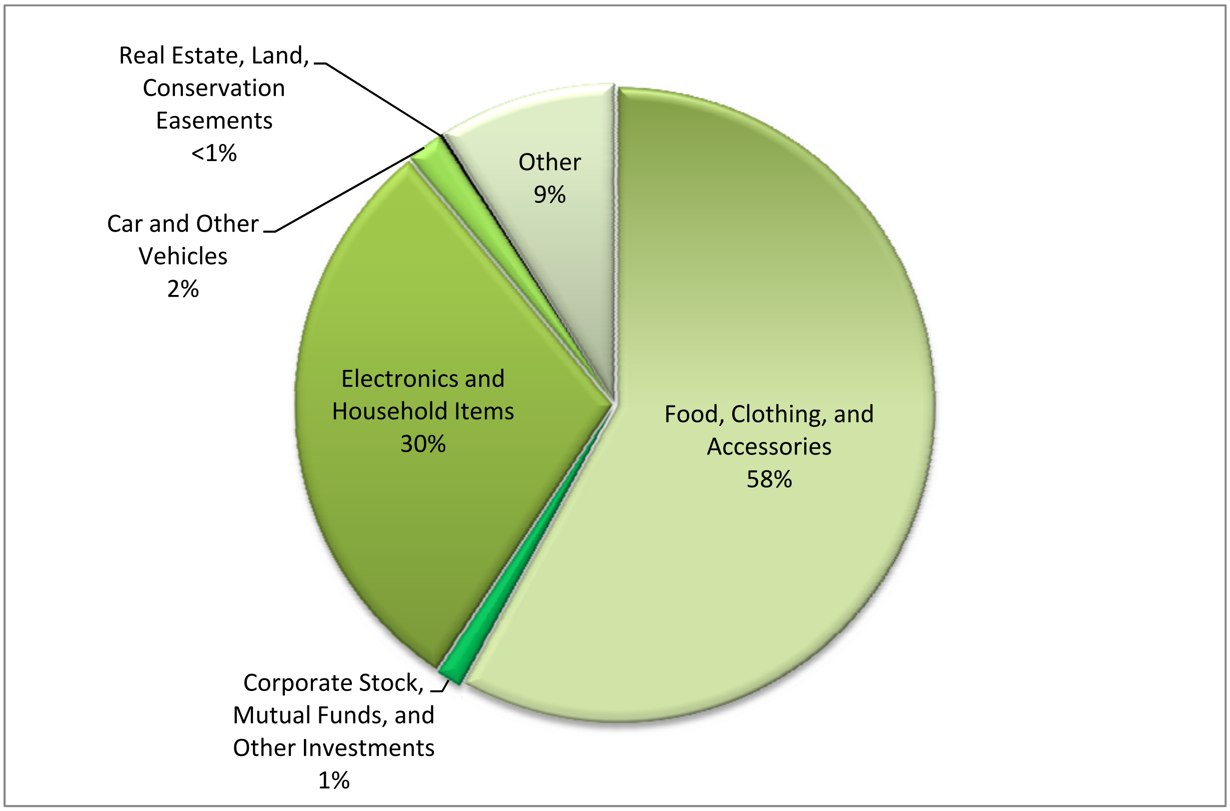
Table 5.−Total Individual Non-Cash Charitable Donations, 2004-2010 (Billions of Dollars)

Year	2004	2005	2006	2007	2008	2009	2010
Total Individual Non-Cash Donations	43.37	48.06	52.63	58.75	40.42	31.82	44.32

Source: *SOI Bulletin, Spring 2007-2012* and *Publication 1304, Table 1.2, 2013*.
Note: Figures are in nominal dollars.

As Figure 2 shows, the majority (58 percent) of non-cash charitable contributions are donations of food, clothing, and accessories; 30 percent are contributions of electronics and household items; and each of motor vehicles, conservation easements, and corporate stock constitute less than one percent of total non-cash contributions.[137]

Figure 2.−Non-Cash Charitable Donations Reported on Form 8283 by Type of Asset, 2010



Source: *SOI Bulletin*.
Note: Includes individual and corporate non-cash charitable donations.

[137] Form 8283 is filed by individuals, partnerships and corporations with greater than $500 of non-cash gifts.

III. PROPOSALS TO REFORM THE TAXATION OF CHARITABLE CONTRIBUTIONS

A. Summary

Over the past several years, a number of reforms have been proposed relating to the Federal tax treatment of charitable contributions. The proposals described here include those aimed at modifying the general tax benefits available to taxpayers making charitable contributions as well as those focusing specifically on ways to improve tax compliance and tax administration.

B. General Reform Proposals

Extending the tax benefit of charitable contribution to nonitemizers

Because the charitable contribution deduction is an itemized deduction, in any given tax year it does not benefit individuals who take the standard deduction.[138] Various proposals would extend the tax benefit of charitable contribution to these individual nonitemizers, usually in combination with another measure that would offset the resulting revenue loss.[139]

Holding other elements of the tax system fixed, such a change has the potential to extend the tax benefit of charitable contribution to many more individual taxpayers.[140] Proponents argue that this would increase charitable giving.[141] Opponents believe that it would decrease tax

[138] The standard deduction, however, arguably includes a certain assumed amount of charitable contribution. See *supra*, Part I.

[139] For example, some propose that the charitable deduction be made available to all taxpayers, subject to a contribution-based floor, *see* Deena Ackerman and Gerald Auten, "Floors, Ceilings, and Opening the Door for a Non–Itemizer Deduction," *National Tax Journal*, vol. 59, September 2006 (hereinafter "Ackerman and Auten"), or in combination with a decrease in the standard deduction amount, Congressional Budget Office, *Effects of Allowing Nonitemizers to Deduct Charitable Contributions*, December 2002 (hereinafter "CBO *Nonitemizer Deduction*"), p. 24. Others would replace the charitable contribution deduction with a tax credit, also subject to a contribution-based floor. National Commission on Fiscal Responsibility and Reform ("Simpson-Bowles Commission"), *The Moment of Truth*, December 2010, p. 31.

[140] See Internal Revenue Service, News Release, IR-2011-104 (Oct. 20, 2011) ("Nearly two out of three taxpayers take the standard deduction, rather than itemizing deductions, such as mortgage interest, charitable contributions and state and local taxes.").

[141] Jane G. Gravelle and Molly F. Sherlock, *Tax Issues Relating to Charitable Contributions and Organizations*, Congressional Research Service, Report No. RL34608, January 18, 2011 (hereinafter "Gravelle and Sherlock"), p. 6 ("The main objective of extending the charitable deduction to non-itemizers was to increase charitable giving."); see Ackerman and Auten, p. 510.

revenue without any substantial change in charitable giving[142] while simultaneously increasing tax complexity for nonitemizing donors.[143]

To the extent that such a change would increase charitable contributions from nonitemizers, it may disproportionately benefit charities favored by lower-income taxpayers, who are less likely to itemize. Such charities include religious organizations and charities that meet basic needs.[144]

Limiting the marginal tax benefit of itemized deductions (including the charitable contribution deduction)

As discussed above, the charitable contribution deduction decreases the after-tax cost of giving for itemizing taxpayers, in proportion to the taxpayer's marginal income tax rate. For example, for a taxpayer who itemizes deductions and is in the 33-percent tax bracket, a $100 cash gift to charity reduces the taxpayer's taxable income by $100, and thereby reduces tax liability by $33. As a consequence, the $100 cash gift to charity reduces the taxpayer's after-tax income by only $67. Economists say that the after-tax cost of giving $100 cash to charity is $67 for this taxpayer.

The President has proposed a revenue-raising provision that would limit the tax benefit of certain deductions and exclusions (including the charitable contribution deduction) to 28 percent.[145] This change would effectively place a $72 floor ($100 minus $28) on the after-tax cost of making a $100 cash contribution. It would, consequently, increase the after-tax cost of charitable giving for itemizing taxpayers whose marginal income tax rate exceeds 28 percent.

Some believe that this change would decrease overall charitable giving because it would both increase the after-tax marginal cost of giving and also decrease total after-tax income for

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[142] Ackerman and Auten, p. 510.

[143] Gravelle and Sherlock, p. 6. *But see* Congressional Budget Office, *Effects of Allowing Nonitemizers to Deduct Charitable Contributions*, December 2002, p. 13 ("But the burden might be reduced for itemizers under current law who would be certain to take the standard deduction if contributions were deductible for nonitemizers; those taxpayers would no longer be required to keep records of all their other deductions.").

[144] Jane G. Gravelle and Donald J. Marples, *Charitable Contributions: The Itemized Deduction Cap and Other FY2011 Budget Options*, Congressional Research Service, Report No. R40518, March 18, 2010 (hereinafter "Gravelle and Marples"), p. 12 ("Higher-income donors contribute larger shares of their donations to contribute to health, education, art, environmental, and similar organizations, and less to religious organizations, those meeting basic needs, and combined purpose organizations.").

[145] U.S. Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2013 Revenue Proposals*, February 2012, pp. 73-74; Joint Committee on Taxation, *Description of Revenue Provisions Contained in the President's Fiscal Year 2013 Budget Proposal* (JCS-2-12), June 2012, p. 222; see *Message From the President of the United States Transmitting a Legislative Proposal Entitled the ''American Jobs Act of 2011,''* H. Doc. No. 53, 112th Cong., 1st Sess. (2011), pp. 41, 184-86; *see generally* Gravelle and Marples. Our Fiscal Security (a partnership of Demos, the Economic Policy Institute, and the Century Foundation) has also proposed limiting the tax benefit of itemized deductions to 15 percent, in combination with offsetting benefits for charitable contributions and home mortgage interest payments, discussed below. Our Fiscal Security, *Investing in America's Economy: A Budget Blueprint for Economic Recovery and Fiscal Responsibility*, November 29, 2010, p. 32.

some donors.[146] Others believe this provision would have little or no effect because affected donors are motivated more by altruism and broader economic conditions than by tax rules.[147] To the extent that such a change would decrease overall charitable contributions, it would disproportionately affect higher-income donors. As a consequence, it may disproportionately affect charities favored by such donors, such as health, education, art, environmental, and similar organizations.[148]

Some argue that this provision would make the tax treatment of charitable contributions more equitable by more closely aligning the tax benefit provided to high-income and low-income donors.[149] Under present law, a high-income taxpayer generally receives a larger tax benefit than a low-bracket taxpayer for an identical contribution, even though the low-bracket taxpayer has arguably been more generous by contributing a higher percentage of his taxable income.[150] The proposed provision would mitigate this disparate treatment. Others argue that charitable donations reduce a taxpayer's ability to pay income tax without providing any personal benefit that the tax law should recognize. On this view, a full deduction should be allowed, regardless of the taxpayer's statutory marginal tax rate. Otherwise, taxpayers similarly situated with respect to resources available for private consumption would face differential tax burdens.

Putting a contribution-based floor on the tax benefit of charitable contribution

Some advocate for a contribution-based floor on the tax benefit of charitable contributions.[151] The floor could be set at either a fixed-dollar amount or a percentage of AGI. Under this regime, taxpayers would receive no tax benefit for charitable contributions below a threshold contribution level.

Proponents argue that this type of change would raise tax revenue without substantially decreasing overall charitable contributions because it would maintain the marginal tax incentive for donors making larger contributions while removing the tax benefit for those making smaller

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[146] Joint Committee on Taxation, *Description of Revenue Provisions Contained in the President's Fiscal Year 2013 Budget Proposal* (JCS-2-12), June 2012, p. 225.

[147] *Ibid.*, pp. 225-26.

[148] Gravelle and Marples, p. 12.

[149] Joint Committee on Taxation, *Description of Revenue Provisions Contained in the President's Fiscal Year 2013 Budget Proposal* (JCS-2-12), June 2012, p. 226.

[150] *Ibid.*

[151] For example, the Congressional Budget Office has proposed allowing the charitable contribution deduction only for contributions in excess of two percent of the taxpayer's AGI. Congressional Budget Office, *Reducing the Deficit: Spending and Revenue Options*, March 2011 (hereinafter "CBO *Options*"), p. 150. The Simpson-Bowles Commission suggested replacing the charitable contribution with a 12-percent nonrefundable credit, subject to a two-percent AGI floor. National Commission on Fiscal Responsibility and Reform, *The Moment of Truth*, December 2010, p. 31.

contributions.[152] Some believe that donors who make smaller contributions are less sensitive to marginal tax incentives, so that they would substantially maintain current levels of giving even with a floor in place.[153] One commentator even suggests that a properly designed floor could set a normative benchmark, causing some taxpayers whose donations approach the floor to increase their charitable contributions in order to exceed it.[154]

Some urge that a floor would also promote administrative simplicity and decrease compliance costs for taxpayers, who would no longer be required to substantiate small contributions.[155] In addition, a floor could decrease IRS enforcement costs, and opportunities for taxpayer abuse, by removing the tax benefit for difficult-to-verify small contributions.[156]

One disadvantage of a floor is that it would likely decrease overall charitable giving, at least to some extent.[157] Commentators also note that a contribution-based floor may encourage certain taxpayers to "bunch" donations that would otherwise be spread across multiple years into a single year, in order to qualify for the tax benefit.[158] This could result in increased planning costs for both donors and charities.[159]

Capping the total allowance for itemized deductions (including the charitable contribution deduction)

Some propose limiting the total deduction allowed under the itemized deduction provisions, either to a fixed-dollar amount or to a specified percentage of AGI.[160]

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[152] See, *e.g.*, CBO *Options*, p. 150; C. Eugene Steuerle, *The Tax Treatment of Charities & Major Budget Reform*, Testimony Before the U.S. Senate Committee on Finance, October 18, 2011 (hereinafter "Sturle testimony"); *see* Gravelle and Sherlock, p. 6; Gravelle and Marples, p. 24; Ackerman and Auten, p. 513.

[153] CBO *Options*, p. 150 ("People who make large donations often are more responsive to that tax incentive than people who make small contributions."). But see Frank J. Sammartino, *Options for Changing the Tax Treatment of Charitable Giving*, Testimony Before the U.S. Senate Committee on Finance, October 18, 2011 (hereinafter "Sammartino testimony"), p. 10 ("[T]here is little evidence that higher-income taxpayers are more responsive to the after-tax price of giving than other taxpayers are.").

[154] Steuerle testimony, p. 8.

[155] Ackerman and Auten, p. 513; Gravelle and Sherlock, p. 6; CBO *Nonitemizer Deduction*, p. 22.

[156] Ackerman and Auten, p. 513; CBO *Nonitemizer Deduction*, p. 22.

[157] CBO *Nonitemizer Deduction*, p. 22; Ackerman and Auten, p. 513; Sammartino testimony, p. 16.

[158] CBO *Nonitemizer Deduction*, p. 22; Ackerman and Auten, p. 513; Sammartino testimony, p. 16.

[159] Ackerman and Auten, p. 513.

[160] For example, former governor and presidential candidate Mitt Romney suggested an explicit dollar cap of $17,000 for middle class families. Damian Paletta, "Romney Floats Idea of Itemized Deduction Cap," *Wall Street Journal*, October 3, 2012. Likewise, the Congressional Budget Office has suggested capping total itemized deductions at 15 percent of AGI. CBO *Options*, pp. 151-52. Similarly, Feldstein, Feenberg, and MacGuineas propose capping a taxpayer's "total tax expenditure benefit," of which the tax savings from charitable contributions

Proponents emphasize that this change would raise revenue without singling out any particular tax benefit.[161] They also argue that an itemized deduction cap would increase economic efficiency by decreasing excessive expenditures in tax-favored categories.[162] Finally, they argue that capping the tax benefit of charitable contribution would result in more equitable treatment by bringing the average tax benefits for higher-income and lower-income donors into closer alignment.[163] To the extent that present law disproportionately benefits charities favored by higher-income donors, this change may consequently mitigate such distortion.[164]

Opponents argue that a deduction cap would decrease overall charitable giving by eliminating the marginal tax incentive to give above the specified ceiling.[165] A related objection to a fixed-dollar cap on deductions arises because charitable contributions are discretionary while other currently deductible expenditures (such as the deduction for state and local taxes) are not. To the extent a taxpayer's nondiscretionary deductions equal or exceed the amounts allowed under the cap, the marginal tax incentive for charitable giving is reduced to zero.[166] Even deductions that are technically discretionary, such as the home mortgage deduction, can be locked in for prolonged periods, increasing the disproportionate effect of a fixed-dollar cap on charitable giving.

Finally, the Congressional Budget Office has noted that a cap may encourage abuse if the IRS does not sufficiently scrutinize contribution amounts below the cap.[167]

(and other itemized deductions) would be one component, at two percent of AGI. Martin Feldstein, Daniel Feenberg, and Maya MacGuineas, *Capping Individual Tax Expenditure Benefits*, National Bureau of Economic Research, Working Paper No. 16921, April 2011 (hereinafter "Feldstein, Feenberg and MacGuineas").

[161] Feldstein, Feenberg and MacGuineas, p. 10-11.

[162] *Ibid.*, p. 11; CBO *Options*, p. 151. The plan proposed by Feldstein et al. would additionally cause certain taxpayers to switch from itemization to the standard deduction, thereby simplifying tax administration with respect to those taxpayers. Feldstein, Feenberg and MacGuineas, pp. 4, 11.

[163] CBO *Options*, p. 151.

[164] *Ibid.*, pp. 151-52.

[165] Ackerman and Auten, p. 514; Brian A. Gallagher, United Way Worldwide, Testimony Before the U.S. Senate Committee on Finance, October 18, 2011; Steuerle testimony, p. 4 ("Capping the deduction or converting the deduction to a credit likely creates a greater loss of charitable giving than do some limitations on the deduction because they affect taxpayers who are considered by some researchers to be more sensitive to tax incentives."). Ackerman and Auten note that contributions may decrease even among taxpayers who can carry forward all excess charitable contribution deductions, because of the time value of money.

[166] Fred Stokeld, "Charity Reps. Argue That Cap on Deduction Would Be Too Harsh," *Tax Notes*, December 17, 2012, p. 1299.

[167] CBO *Nonitemizer Deduction*, p. 21.

Replacing the charitable contribution deduction with a tax credit

Some would replace the existing charitable contribution deduction with a tax credit.[168] The credit could be made either nonrefundable or refundable. A nonrefundable credit is one that can be used to offset the taxpayer's tax liability but provides no additional benefit once tax liability reaches zero. A refundable credit, in contrast, is paid out to the taxpayer to the extent that it exceeds the taxpayer's tax liability.

Because a credit would provide the same tax benefit for each dollar of charitable contribution, irrespective of the contributor's marginal income tax rate, it is arguably more equitable than the charitable contribution deduction.[169] On the other hand, a credit is inconsistent with the rationale some offer to support the charitable contribution deduction that donations reduce the donor's ability to pay income tax and should, consequently, reduce tax liability in proportion to the contributor's marginal income tax rate.[170]

Compared to a deduction, a charitable contribution tax credit is likely to increase the after-tax cost of giving for higher-income donors and decrease the after-tax cost of giving for lower-income donors. For example, for an itemizing taxpayer in the 33-percent marginal tax bracket, the present after-tax cost of making a $100 cash contribution is $67. If the deduction were replaced with a 12 percent credit, the after-tax cost would be $88 ($100 contribution minus $12 credit), assuming the taxpayer could claim the full credit amount. On the other hand, for nonitemizing taxpayers who currently receive no charitable contribution tax benefit, the after-tax cost of a $100 cash contribution would decrease from $100 to $88. Because nonitemizing taxpayers tend to have lower incomes, replacing the existing deduction with a credit is likely to favor low-income taxpayers over high-income taxpayers.[171] Some believe that this will cause a

[168] For example, Our Fiscal Security (a partnership of Demos, the Economic Policy Institute, and the Century Foundation) proposes replacing the charitable contribution deduction with a 25 percent refundable credit, combined with a 15 percent limit on the tax benefit of most other itemized deductions, as part of a broader reform plan. Our Fiscal Security, *Investing in America's Economy*, November 29, 2010, p. 32. The Simpson-Bowles Commission suggested replacing the charitable contribution deduction with a 12-percent nonrefundable credit, subject to a two-percent contribution-based AGI floor. National Commission on Fiscal Responsibility and Reform, *The Moment of Truth*, December 2010, p. 31; see generally Gravelle and Sherlock, p. 21.

[169] Roger Colinvaux, Brian Galle, and Eugene Steuerle, *Evaluating the Charitable Contribution Deduction and Proposed Reforms*, Urban Institute, June 2012 (hereinafter "Colinvaux, Galle, and Sueurle."), p. 14; Joseph J. Cordes, "Re-Thinking the Deduction for Charitable Contributions: Evaluating the Effects of Deficit-Reduction Proposals," *National Tax Journal*, vol. 64, December 2011, p. 1010 ("[T]he distribution of tax savings from a charitable tax incentive would become more evenly distributed under a flat rate tax credit (or a flat rate deduction match). Such reforms are favored by those who believe that the benefits of the charitable deduction are inequitably distributed.").

[170] Colinvaux, Galle, and Steurle, p. 14.

[171] *Ibid.*, see Sammartino testimony, p. 20 ("A 25 percent nonrefundable credit would tend to benefit lower- and middle-income taxpayers, who generally face marginal tax rates of less than 25 percent. Taxpayers facing tax rates above 25 percent would see a decrease in subsidies under this option.").

disproportionate reduction in overall charitable giving because high-income donors may be more responsive to tax incentives.[172]

Replacing the charitable contribution deduction with a matching grant program

Under one proposal, the charitable contribution deduction would be replaced with a 15 percent matching grant program.[173] Under this proposal, recipient charities could claim the grant amount directly from the IRS. This would likely decrease compliance costs for contributing taxpayers, but it may increase administrative costs for recipient charities.[174]

Like a credit, a matching grant program avoids one concern sometimes raised about the charitable deduction, *i.e.*, that it provides an unequal tax benefit for equal contributions, depending on the contributor's marginal income tax rate. Consequently, a matching grant program is arguably more equitable than a charitable deduction, but less consistent with the "ability to pay" rationale discussed above.[175]

It is unclear how a matching grant program would affect overall charitable giving.[176] Because the donor would no longer receive a direct tax benefit, it is possible that overall charitable contributions would decrease.[177] On the other hand, to the extent that donors give without regard for the matching grant amounts, overall transfers to charitable organizations could increase.[178]

Commentators have observed that matching grants to religious organizations may raise constitutional issues, at least where the grants were not restricted to funding secular services.[179]

[172] Steuerle testimony, p. 4.

[173] Pete Domenici and Alice Rivlin, *Restoring America's Future*, Bipartisan Policy Center, November 2010, pp. 33-34; see also Colinvaux, Galle, and Steurle, p. 12.

[174] Colinvaux, Galle, and Steurle, p. 16 ("Grants would replace one set of bureaucratic interactions for another and cannot easily be assessed on the net gains or losses in administrative costs without examining specific proposals.").

[175] *Ibid.*, p. 14.

[176] *Ibid.*

[177] *Ibid.*, pp. 14-15.

[178] *Ibid.*, p. 15.

[179] *Ibid.*, p. 15.

C. Proposals Relating to Tax Compliance and Administration

In addition to proposals to reform the tax treatment of charitable giving generally, some reform proposals are specifically targeted at improving tax compliance and administration.

Limiting the charitable deduction for contributions of appreciated property

Under present law, taxpayers who contribute appreciated property may deduct the fair market value of such property. Some have proposed limiting this deduction to the lesser of fair market value or basis to eliminate excess deductions based on overvalued property. One variation of this proposal would permit a fair market value deduction where the charitable organization uses the donated property to further its exempt purposes.[180]

The proposal would likely reduce the amount of contributions of hard-to-value property. In general, donors would be better off selling the property instead of contributing it, paying tax at long term capital gain rates, and contributing (and deducting) all or a portion of the after-tax proceeds to charity. In such a case, the charity might receive less from a donor, but would avoid any transaction costs associated with disposing of the property.[181]

Other proposals

Other reform proposals include (1) eliminating the charitable deduction for contributions of conservation easements on golf courses;[182] (2) allowing deductions for contributions made up until the tax return filing deadline (rather than the end of the taxable year);[183] (3) increasing information reporting requirements and verification efforts; [184] (4) facilitating certain contributions such as those from IRAs or lottery winnings;[185] (5) simplifying and raising the existing charitable contribution deduction limits, including the 10-percent corporate limit;[186] (6) and generally simplifying and restructuring section 170 of the Code.[187]

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180 Joint Committee on Taxation, *Options to Improve Tax Compliance and Reform Tax Expenditures* (JCS-02-05), January 27, 2005, p. 297.

181 *Ibid.*, p. 305.

182 See U.S. Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2013 Revenue Proposals,* February 2012, p. 140; Joint Committee on Taxation, *Description of Revenue Provisions Contained in the President's Fiscal Year 2013 Budget Proposal* (JCS-2-12), June 2012, pp. 565-73.

183 Steuerle, p. 9.

184 *Ibid.*, pp. 7-8.

185 *Ibid.*, p. 9.

186 *Ibid.*, p. 10, see also Gravelle and Sherlock, p. 8 (analyzing House proposals from 2003 that would have gradually increased the corporate charitable contribution deduction cap from 10 percent to 20 percent).

187 Dan Halperin, *Legislative Options for Simplifying and Restructuring the Charitable Deduction*, Urban Institute, December 2012.

Some of these proposals would enhance incentives to make charitable donations by simplifying rules or expanding contribution limits. Others would target tax avoidance through improved reporting requirements. Still others, such as the limitation on conservation easements on golf courses, attempt to limit deductions that are perceived as benefiting the private interests of donors rather than the general public.

APPENDIX

Table A1.–Eligible Donee Status and Number of Section 501(c) Tax-Exempt Organizations in the United States, September 30, 2011

Code Sec.	Description	Contributions Deductible	Number of Organizations
501(c)(1)	Corporations originated under Act of Congress	Only if exclusively for public purposes	216
501(c)(2)	Title holding corporations	No	5,176
501(c)(3)	Charitable organizations	Yes	1,080,130
501(c)(4)	Social welfare organizations	No	97,382
501(c)(5)	Labor, agricultural, and horticultural organizations	No	51,586
501(c)(6)	Business leagues, chambers of commerce, trade associations	No	70,330
501(c)(7)	Social and recreational clubs	No	57,793
501(c)(8)	Fraternal beneficiary societies and associations with lodges, providing for payment of life insurance and other benefits	Yes, if used for charitable purposes	53,245
501(c)(9)	Voluntary employees' beneficiary assoc.	No	7,810
501(c)(10)	Domestic fraternal societies and associations-lodges devoting their net earnings to charity and not providing insurance	Yes, if used for charitable purposes	16,678
501(c)(12)	Cooperatives (benevolent life insurance associations, mutual ditch or irrigation companies, etc.)	No	5,666
501(c)(13)	Cemetery companies	Yes, under certain circumstances[1]	9,842
501(c)(14)	State credit unions, etc.	No	3,080
501(c)(15)	Small insurance companies or associations	No	1,104

Code Sec.	Description	Contributions Deductible	Number of Organizations
501(c)(17)	Supplemental unemployment benefit trusts	No	158
501(c)(19)	Post or organization of war veterans	Yes, with exceptions[2]	33,654
501(c)(25)	Multi-parent title holding company	No	922
Misc.[3]	Other 501(c) subsections	--	110
501(d)-(f), (k), (n)	Religious and apostolic associations, cooperative hospital service organizations, cooperative service organizations of operating educational organizations, child care organizations, and charitable risk pools	--	238
	Total		1,494,882

Source for number of organizations: Internal Revenue Service, *2012 Data Book*, p. 56.

Notes to table

[1] Deduction for contribution to cemetery organizations is for income tax only, no deduction for estate and gift tax purposes.

[2] Certain organizations of war veterans are eligible for income and gift tax charitable deductions, and certain organizations incorporated by Act of Congress are eligible for the estate tax charitable deduction.

[3] This line item includes teachers' retirement funds (sec. 501(c)(11)), corporations to finance crop operations (section 501(c)(16)), employee-funded pension trusts (sec. 501(c)(18)), black lung trusts (sec. 501(c)(21)), multiemployer pension plans (sec. 501(c)(22)), veterans' associations founded prior to 1880 (sec. 501(c)(23)), trusts described in section 4049 of ERISA (sec. 501(c)(24)), State-sponsored high-risk health insurance organizations (sec. 501(c)(26)), State-sponsored workers' compensation organizations (sec. 501(c)(27)), and the National Railroad Retirement Investment Trust (sec. 501(c)(28)).