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## **A Guide to the Substantiation Rules for Deductible Charitable Contributions**

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*This Guide is a yeoman's effort to safely navigate the piranha-filled shoals of the substantiation requirements that prey upon the charitable contribution deduction.*

*"I believe the power to make money is a gift from God - to be developed and used to the best of our ability for the good of mankind." - John D. Rockefeller*

*"Men must turn square corners when they deal with the Government." - Justice Oliver Wendell Holmes, Rock Island, Arkansas & Louisiana Railroad Co. v. United States, 254 U.S. 141 (1920).*

In its efforts to curb taxpayers from abusing the federal income tax deduction for charitable contributions, Congress has enacted a series of maddeningly complex rules to ensure the integrity of the deduction. **1** One often demanding set of rules is the substantiation requirements. **2** These requirements aim to curtail taxpayers from inflating the amount of the deduction by overvaluing contributions of property. **3** They also aim to curtail taxpayers from taking a deduction for the purchase of goods or services from a charity without a donative element, and for the portion of a contribution for which the taxpayer receives goods or services from the charity. **4**

The substantiation requirements consist of the following trio: (1) the donor's obligation to obtain a contemporaneous written acknowledgement ("CWA") from the donee organization; (2) the donee organization's written disclosure obligation for quid-pro-quo contributions; and (3) the donor's written recordkeeping requirements. The IRS can often use a violation of the requirements under (1) and (3) to deny a deduction without having to litigate the fair market value of a contribution of property, a costly and lengthy endeavor fraught with the specter of an unfavorable result. **5** Moreover, a violation of these requirements means the entire amount of the claimed deduction is denied, whereas a successful challenge to the claimed fair market value of contributed property means a portion of the amount of the claimed deduction is denied.

This Guide is a yeoman's effort to safely navigate the piranha-filled shoals of the substantiation requirements that prey upon the charitable contribution deduction.

## Permissible Donee Organizations

Contributions to the following donee organizations are eligible for the federal income tax charitable contribution deduction:

- (1) federal, state, and local governments for contributions made for exclusively public purposes
- (2) an organization created or organized in the United States or under the law of the United States or any state, and organized and operated exclusively for charitable, educational, literary, religious, or scientific purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals
- (3) a post or organization of war veterans organized in the United States
- (4) for a contribution made by an individual, a domestic fraternal society operating under the lodge system, but only if the contribution is to be used exclusively for charitable, educational, literary, religious, or scientific purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals
- (5) a nonprofit cemetery company owned and operated exclusively for the benefit of its members, or any nonprofit corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose **6**

The donee organization generally must be organized in the United States. **7** An eligible U.S. organization may use its funds abroad for charitable purposes. **8** In addition, an eligible U.S. organization may contribute to a foreign charity as long as the U.S. organization is not bound by any charter or bylaw to contribute its funds to the foreign charity, the contribution furthers the U.S. organization's tax-exempt purpose, and the U.S. organization oversees the foreign charity to ensure that it uses the funds appropriately. **9**

A donor may make deductible contributions to a foreign charity to the extent permitted by a tax treaty

between the United States and the country in which the foreign charity is located. **10** The treaties generally require that the foreign charity would be considered a charitable organization if it were organized and operated in the United States, and that the U.S. donor has income sourced in the country in which the foreign charity is located. **11**

Prospective donors can determine whether an organization is eligible to receive deductible contributions by searching IRS Publication 78 using the Tax Exempt Organization Search Tool on the IRS website. **12** Publication 78 lists all organizations that have filed an application for recognition of tax-exempt status and received a favorable determination letter. Organizations that are not required to file an application for recognition of tax-exempt status are not listed in Publication 78. For example, governmental units and churches may be treated as tax-exempt without filing an application.

## Contemporaneous Written Acknowledgement

Under the Internal Revenue Code of 1986, as amended (the "Code"), a key substantiation requirement for the deductibility of a contribution of \$250 or more in cash or property is for the donor to timely obtain a CWA from the donee organization. **13** The donor does not attach the CWA to his or her federal income tax return, but keeps it in his or her files to substantiate the contribution on audit. The burden is on the donor to obtain the CWA; the donee organization does not have an obligation to provide it. Of course, a donee organization that does not timely cooperate with a donor's request for a CWA will soon find itself without a donor.

A recent United States Tax Court case, *Albrecht v. Commissioner*, **14** shows the importance of strict compliance with the statutory requirements for a CWA for the donor to receive a charitable contribution deduction. Under these requirements, **15** the CWA must contain the following information:

- (1) the amount of any contribution of cash
- (2) a description, but not the value, of any contribution of property **16**
- (3) a statement as to whether the donee organization provided any goods or services in consideration, in whole or in part, for any contribution of property
- (4) a description and good faith estimate of the value of any goods and services referred to in clause (3), or if such goods or services consist solely of intangible religious benefits, a statement to that effect **17**

Under these requirements, a cancelled check or other bank record does not suffice as a CWA, **18** nor does a fully completed IRS Form 8328. **19** Although the Code does not require the CWA to contain the names of the donor and donee organization or the date of the contribution, as a matter of prudence the donor should ensure the CWA contains these items. The IRS takes the position that if the CWA does not show the date of the contribution, the donor must have a bank record or receipt that shows this date. **20** In addition, the Tax Court has denied a deduction when the receipts prepared by the donor left out the donee organization's name and date of contribution. **21**

In *Albrecht*, the court found the CWA did not satisfy the statutory requirement that the CWA contain a statement as to whether the donee organization provided any goods or services in consideration, in whole or in part, for any contribution of property. As a result, the court denied the donor's claimed charitable contribution deduction of \$463,676. **22**

In December 2014, the taxpayer donated approximately 120 items of Native American jewelry and artifacts to the Wheelwright Museum of the American Indian in Santa Fe, New Mexico. **23** The taxpayer and the museum executed a "Deed of Gift" of five pages. The first page stated that the taxpayer "hereby donates the material described below to the Wheelwright Museum of the American Indian under the terms stated in the Conditions Governing Gifts to the Wheelwright Museum of the American Indian." Immediately under this clause was the heading "Description of Material: See Attached List." The first page also included the museum's logo, taxpayer's address and donor identification number, and the signatures of both parties.

The second page of the deed was titled "Conditions Governing Gifts to the Wheelwright Museum of the American Indian," and set forth the conditions governing gifts to the museum. One of these conditions provided that "the donation is unconditional and irrevocable; that all rights, titles and interests held by the donor in the property are included in the donation, unless otherwise stated in the Gift Agreement." However, no such agreement was included with the deed, and the museum did not provide the donor with any further written documentation. The final three pages listed the items of donated property.

The Tax Court pointed out that although a CWA is not required to take any particular form, the requirement that the donor timely obtain a CWA that satisfies the statutory requirements is a strict one. **24** Here, the deed did not state whether the museum provided any goods or services for the donation. Without an express statement, the court looks to the deed as a whole to determine whether the donee provided goods or services in return for the donation. The court considers whether the deed: (1) effectively states whether any goods or services were provided in the exchange; (2) states that the donation is an unconditional gift; (3) recites that no consideration was received in the exchange; and (4) contains a provision that the deed is the entire agreement of the parties.

Although the deed stated the donation was "unconditional and irrevocable," it also stated "all rights, titles and interests held by the donor in the property are included in the donation, unless otherwise stated in the Gift Agreement." The court held that by referencing another document that superseded the terms of the deed regarding the donor's rights, the deed provided the donor with the ability to retain an interest in the donation, including under a potential quid-pro-quo arrangement.

The court also rejected the donor's argument that a separate agreement referenced in the deed but unattached to it creates a presumption that the deed alone satisfies the statutory requirements. Such a presumption was especially unwarranted when the deed did not have an integration clause stating the deed constituted the entire agreement of the parties or that any prior discussions, negotiations, or understandings were merged into the deed. **25** When looking exclusively at the deed and considering it as a whole, it left open a significant question of whether the parties had entered into a side agreement

that included additional, superseding terms. [26](#)

Whether a court will find that a deed or gift agreement as a whole satisfies the requirements for a CWA is a risk that borders on the speculative. Accordingly, the prudent approach is for the donor to obtain a CWA with language that expressly satisfies the Code's requirements.

Four examples of such a CWA are:

- (1) Thank you for your cash contribution of \$300 that (organization's name) received on December 12, 2015. No goods or services were provided in exchange for your contribution.
- (2) Thank you for your cash contribution of \$300 that (organization's name) received on May 6, 2015. In exchange for your contribution, we gave you a cookbook with an estimated fair market value of \$60.
- (3) Thank you for your contribution of a used oak baby crib and matching dresser that (organization's name) received on March 15, 2016. No goods or services were provided in exchange for your contribution.
- (4) Thank you for your contribution of \$450 to (organization's name) made in the name of its Special Relief Fund program. No goods or services were provided in exchange for your contribution. [27](#)

Furthermore, the donee organization should ensure the transaction documents contain a disclaimer that the donee organization, its employees, officers, directors, and outside advisors have not provided the donor with any accounting, financial, or legal advice regarding the contribution. The donee organization should use the following guidelines: (1) if there is no deed or gift agreement, the CWA should contain this disclaimer; (2) if there is a deed or gift agreement that contains the CWA, the deed or gift agreement should contain this disclaimer; or (3) if there is a deed or gift agreement and a separate CWA, the deed or gift agreement should contain this disclaimer and provide that the CWA is incorporated into the deed or gift agreement.

In addition, the donor and donee organization should ensure the transaction documents contain one of the following integration clauses: (1) if there is no deed or gift agreement, the CWA provides that the CWA and any gift acceptance policy of the donee organization constitute the entire agreement of the parties regarding the contribution and supersede all prior negotiations and agreements; (2) if there is a deed or gift agreement that contains the CWA, the deed or gift agreement provides that the deed or gift agreement constitutes the entire agreement of the parties regarding the contribution and supersedes all prior negotiations and agreements; or (3) if there is a deed or gift agreement and a separate CWA, the deed or gift agreement provides that the CWA is incorporated into the deed or gift agreement, and the deed or gift agreement and the CWA constitute the entire agreement of the parties regarding the contribution and supersede all prior negotiations and agreements.

The deed or gift agreement in clauses (2) and (3) should also state the contribution is subject to the organization's gift acceptance policy, state whether any provisions of the deed or gift agreement supersede the gift acceptance policy, and if there is any conflict or inconsistency between the deed or

gift agreement and the gift acceptance policy, the deed or gift agreement controls.

## **Determination of the \$250 Threshold for CWA**

A donor may obtain a separate CWA for each contribution of \$250 or more to the same donee organization, or one CWA, such as an annual summary, for multiple contributions of \$250 or more to the same donee organization. With one CWA, the CWA must list each contribution and the date of each contribution and show the total contributions. **28** Separate contributions of less than \$250 are not aggregated. **29** For example, weekly offerings to a church of less than \$250 are not aggregated regardless of whether the total annual contributions are \$250 or more. **30** A donor who gives \$100 a week to his or her church does not need to obtain a CWA, but a donor who gives \$400 a month does.

The \$250 threshold is determined by taking into account whether the donee organization provides any goods or services in consideration, in whole or in part, for any payment of \$250 or more. The IRS takes the position that when a donor makes a payment that is partly for goods and services, the contribution is the amount of the payment that is more than the value of the goods and services. **31** For example, if the donee organization holds a golf outing and charges \$300 to attend, and the greens fees and dinner provided to the donor have a fair market value of \$150, the donor's contribution for both CWA and deduction purposes is \$150.

For contributions made by a donor-employee by payroll deduction and the employer's payment of the contribution to the donee organization, the donor-employee's obligation to obtain a CWA may be satisfied by: (a) a pay stub, Form W-2, or other employer furnished document that sets forth the amounts withheld in a taxable year for payment to a donee organization; and (b) a pledge card or other document prepared by or at the direction of the donee organization that includes a statement to the effect that the organization did not provide goods or services in consideration, in whole or in part, for contributions made to the organization by payroll deduction. **32** If the pay stub, Form W-2, pledge card, or other document does not show the date of the contribution, the donor-employee must obtain another document that shows the date of the contribution. **33**

In applying the \$250 threshold, the amount withheld from each payment of wages is treated as a separate contribution. **34**

For example, if an employee pledges a \$100 contribution per paycheck to a donee organization, and the organization does not provide any goods or services in consideration for the contribution, the employee receives a deduction for each contribution without any obligation to obtain a CWA from the donee organization.

If a donor's payment to a donee organization is matched in whole or in part by another payor, and the donor receives goods or services in consideration for its payment and some or all contribution of the matching payment, the goods or services are treated as provided in consideration for the donor's

payment and not in consideration for the matching payment. [35](#)

For example, an employee makes a \$400 payment to a donee organization. Pursuant to a matching payment plan, his or her employer matches the \$400 payment with an additional payment of \$400. In consideration for the combined payments of \$800, the organization gives the employee an item it estimates has a fair market value of \$100, and does not give the employer any goods or services. The CWA provided to the employer must include a statement that no goods or services were provided in consideration for the employer's \$400 payment. The CWA provided to the employee must include a statement of the amount of the employee's payment, a description of the item given to the employee, and that the organization's good faith estimate of its fair market value is \$100.

[36](#)

No deduction is allowed if a donor makes a payment to an institution of higher education (as defined by Code [Sections 170\(b\)\(1\)\(A\)\(i\)](#) and [3304\(f\)](#)), and receives the right to purchase tickets for seating at an athletic event in an athletic stadium of that institution. However, if any portion of a payment is for the purchase of tickets, such portion and any remaining portion of the payment are treated as separate payments. [37](#) The regulations provide that the right to purchase tickets is treated as having a value of 20% of the total payment, and the payment for this right is not deductible. Any remaining portion is a deductible charitable contribution. [38](#) However, this regulation may not have survived the repeal by the Tax Cuts and Jobs Act of the deduction for 80% of a contribution made in return for the right to purchase such tickets.

If a partnership or S corporation makes a contribution of \$250 or more, the partnership or S corporation will be treated as the taxpayer for purposes of the CWA. The partnership or S corporation must substantiate the contribution with a CWA from the donee organization before reporting the contribution on its income tax information return for the year in which the contribution was made and maintain the CWA in its records. A partner or shareholder is not required to obtain any additional substantiation for his or her share of the partnership's or S corporation's contribution. [39](#)

## **Requirement for CWA to Describe Goods or Services Given in Consideration for Contribution and to Provide a Good Faith Estimate of Their Value**

The requirement for the CWA to describe the goods or services the donee organization gives in consideration for the contribution and to provide a good faith estimate of their fair market value is an essential element in determining the amount of a donor's deductible contribution. A donor determines this amount by reducing the total amount of the donor's payment by the fair market value of the goods or services that the donor receives from the donee organization in consideration for the payment. [40](#) The fact that the organization obtains the goods or services at a discount or no cost does not affect the



reduction in the payment by the fair market value of the goods or services received. [41](#)

Amounts that a person pays for chances to participate in raffles, lotteries, or similar drawings for valuable prizes do not qualify as deductible charitable contributions. The purchaser is purchasing that which the charitable organization sells: chances for a valuable prize. The charitable organization selling raffle or other tickets in effect disposes of its prize by sale, and each purchaser pays a small portion of the purchase price and receives the chance to win the prize for his or her payment. The purchaser receives full consideration and gets just what he or she paid for. [42](#)

The IRS takes the position that if a charity includes a raffle in the cost of an admission ticket to a fundraising event, no portion of the payment for the admission ticket is a deductible charitable contribution. For example, if an admission ticket costs \$250 and includes a dinner with a fair market value of \$100 and a raffle or the chance to win door prizes, no portion of the cost of the ticket is deductible. It is immaterial how much, if anything, in excess of the value of the dinner may have been paid. [43](#) To avoid this result, the charity should not include a raffle or eligibility for door prizes as part of the cost of the admission ticket; rather the charity should sell the raffle ticket or the chance to win door prizes separately for a nondeductible payment.

In general, a donor may rely on a CWA, or the donee organization's written disclosure statement under Code [Section 6115](#), for the fair market value of any goods or services that the donee organization provides to the donor. [44](#)

A donor may not treat a donee organization's estimate of the value of goods and services as their fair market value if the donor knows, or has reason to know, the estimate is unreasonable. For example, if a donor knows, or has reason to know, there is an error in an estimate for goods or services that have a readily ascertainable value, it is unreasonable for the donor to treat the estimate as the fair market value. Similarly, if the donor is a dealer in the type of goods or services and knows, or has reason to know, the estimate is erroneous, it is unreasonable for the donor to treat the estimate as the fair market value. [45](#)

There are two exceptions to the requirement that the CWA describe the goods or services and provide a good faith estimate of their fair market value: (1) the token exception; and (2) the membership benefits exception. [46](#) Furthermore, items that come within these exceptions do not reduce the amount of the donor's deductible contribution. [47](#)

In addition, there is no requirement to describe intangible religious benefits other than to state that the goods and services consist solely of intangible religious benefits.

Under the token exception, goods or services that have insubstantial value under the guidelines of Revenue Procedures 92-49 and 90-12 are exempt from the CWA requirement. [48](#) Goods and services are insubstantial when given as part of a fundraising campaign in which the organization informs the donor of the deductible portion of the contribution. In addition, either: (1) the fair market value of the goods and services must not exceed the lesser of 2% of the contribution, or for 2022, \$117 (adjusted for inflation); or (2) for 2022, the contribution is at least \$58.50 (adjusted for inflation) and the only items



given have the organization's name or logo and the cost of these items comes within the limit for low-cost articles under Code [Section 513\(h\)\(2\)](#) , which for 2022 is \$11.70 (adjusted for inflation). [49](#) All items given to a donor are aggregated for the year. Examples of such items are bookmarks, calendars, key chains, mugs, posters, and T-shirts.

The listing of a donor's name in a program at a charity-sponsored event, or an acknowledgment in a program that identifies, rather than promotes, a donor, is an inconsequential benefit with no significant value. However, recognition items, such as plaques or trophies with an honoree's name inscribed, may have some value even though the value may be less than cost. [50](#)

For example, if an organization gives a mug with its logo that costs it \$11.70 or less to a donor who contributes \$58.50 or more, the organization may state in its CWA that no goods or services were provided in return for the contribution.

As another example, if a donor contributes \$58.50 to a donee organization and receives a mug, and then contributes another \$58.50 later in the same year to the same organization and receives a poster, neither item is a token item if the mug and poster cost the organization \$25, which is more than \$11.70. The organization must state in its CWA that in exchange for the donor's contributions, the organization gave the donor a mug and poster with an estimated fair market value of \$25. [51](#)

Under the membership benefits exception, an annual membership benefit is insubstantial if the organization provides the benefit in exchange for an annual payment of \$75 or less, and the benefit consists of annual recurring rights or privileges. Examples of annual recurring rights or privileges are: (1) free or discounted admissions to the organization's facilities or events; (2) discounts on purchases from the organization's gift shop; (3) free or discounted parking; and (4) free or discounted admission to member-only events sponsored by the organization, and the per-person cost, other than overhead, comes within the low-cost articles limit under Code [Section 513\(h\)\(2\)](#) . [52](#) For example, an organization offers a \$75 annual membership that provides for free admission to all its weekly events and a \$20 poster. Since the free admission is insubstantial, the CWA need only refer to the \$20 poster. [53](#)

When a donee organization provides goods or services to employees of a donor-employer or partners of a donor-partnership in return for the donor's payment to the donee organization, the goods or services may be disregarded to the extent the goods or services provided to each employee or partner come within the token and membership benefits exceptions. [54](#) In addition, items that come within these exceptions do not reduce the amount of the donor's deduction. [55](#) Furthermore, if an employer or partnership makes a contribution \$250 or more to a donee organization, and in return the donee organization offers the employees or partners goods or services other than those that come within the token and membership benefits exceptions, the CWA need not include a good faith estimate of the value of the goods or services, but must include a description of the goods or services. [56](#)

The regulations provide the following example of goods and services provided to a donor's employees or

partners.

For a payment of \$40, Museum J offers a package of basic membership benefits that include free admission and a 10% discount on merchandise sold in its gift shop. J's other membership categories are for supporters who contribute \$100 or more. Corporation K makes a payment of \$50,000 to J, and in return J offers K's employees free admission for one year, a T-shirt with J's logo that costs J \$4.50, and a gift shop discount of 25% for one year. The free admission for K's employees is the same as the benefit made available to holders of the \$40 membership and otherwise comes within the membership benefits exception. The T-shirt comes within the token exception. The CWA for K's payment is not required to include a description or good faith estimate of the value of the free admission and the T-shirts. However, since the gift shop discount offered to K's employees is different than that offered to those who purchase the \$40 membership, the discount does not come within the membership benefits exception. Therefore, the CWA for K's payment must include a description of the 25% discount offered to K's employees.

**57**

With respect to intangible religious benefits, when a religious organization provides only these benefits to a donor, the CWA does not have to describe or value these benefits; rather the CWA need only state the organization provided intangible religious benefits to the donor. Intangible religious benefits are benefits provided by a tax-exempt organization operated solely for religious purposes, and are not generally sold in a commercial transaction outside the donative contest. **58** It is the long-standing position of the IRS that pew rents, building assessments, and periodic dues to a church are deductible charitable contributions regardless of the benefit received by the donor. **59** Accordingly, these items qualify as intangible religious benefits. Other examples are admission to a religious ceremony and de minimis tangible benefits incidental to a religious ceremony, such as wine. **60**

If a benefit is not an intangible religious benefit, then the CWA must describe the benefit and provide a good faith estimate of its value. Examples of benefits that are not intangible religious benefits are education leading to a recognized degree, travel services, and consumer goods. **61**

## **Definition of Contemporaneous**

For the CWA to be contemporaneous with the donor's contribution, the donor must receive the CWA on or before the earlier of: (1) the date on which the donor files his or her income tax return for the year of the contribution; and (2) the due date as extended for filing the tax return for that year. **62**

Charitable organizations often issue CWAs to their donors by January 31 of the year following the year of the contribution. A donor should promptly review the CWA to determine whether it complies with the Code's requirements. If the donor determines the CWA does not, the donor should request the donee organization to expeditiously issue a corrected CWA. The donor should make this request as early as

possible in the tax return preparation process so the donor receives a corrected CWA within the contemporaneous period.

A donor does not satisfy the contemporaneous requirement if the donor obtains a CWA after timely filing an original return, and then files an amended return with the CWA in hand. **63** If the donor files his or her return after the return's due date, but otherwise receives the CWA within the contemporaneous period, the CWA remains valid. For example, if a donor mails a \$10,000 check by certified mail to a donee organization on December 31, files his or her tax return claiming a charitable contribution deduction for the check on the following January 5, and receives the CWA on January 10, the donor has not satisfied the contemporaneous requirement.

Finally, a donee organization that knowingly provides a false CWA may be subject to the penalties under Code **Section 6701** for aiding and abetting an understatement of tax liability. **64**

## **CWAs for Contributions to Donor Advised Funds**

In *Keefer v. Commissioner*, **65** the court applied the statutory requirements for CWAs for contributions to donor-advised funds. These requirements are the regular requirements for a CWA under Code **Section 170(f)(8)** for contributions of \$250 or more, and a CWA under Code **Section 170(f)(18)(B)** from the sponsoring organization of the donor-advised fund (DAF) that states the organization has exclusive legal control over the assets contributed.

*Keefer* involved a contribution to a donor-advised fund of a 4% limited partnership interest in Burbank HHG Hotel, LP ("Burbank"), a partnership that owned and operated a hotel. The court denied a charitable contribution deduction on two grounds: (1) the donor's contribution was an anticipatory assignment of income, which meant the donor did not contribute his entire interest in the limited partner interest necessary for a charitable contribution deduction; and (2) the failure of the CWA to state that the sponsoring organization had exclusive legal control over the assets contributed.

On April 23, 2015, Burbank and Apple Hospitality REIT ("Apple") exchanged a non-binding letter of intent for Apple's purchase of the hotel. Burbank did not sign the letter of intent, but continued negotiating with Apple for the sale of the hotel while also considering other offers.

On June 5, 2015, The Pi Foundation ("Pi") sent Kevin Keefer a 12-page packet of materials for the establishment of the Keefer Donor Advised Funds (the "DAF Packet"). Keefer signed the DAF Packet on June 8, 2015, which stated, "Kevin ... hereby transfers as an irrevocable gift to [Pi] ... the property described in Schedule A attached hereto and incorporated as part of this Document." Schedule A described the property as 4% of interest in Burbank. Another Schedule contained the following provision:

### **OWNERSHIP AND CONTROL**

Donor-advised funds will be the exclusive property of The Pi Fund. ... They will be administered under and subject to the bylaws and procedures of The Pi Fund including any amendments. All donor-advised funds are subject to variance power which gives The Pi Fund the ability to redirect funds should the cause for which they were established become obsolete.

In addition, the DAF Packet cover letter stated, "It is [Pi's] understanding that you intend to donate to [Pi] 4.00% of interest in Burbank ... you agree that if 4.00% of interest in Burbank ... is not donated to [Pi] for any reason, you will be responsible for paying the [Pi's] legal fees and costs associated with your anticipated donation."

On June 15, 2015, Kevin Keefer assigned a 4% limited partnership interest in Burbank to Pi to establish the DAF. The assignment was subject to an oral agreement that Pi would only share in the net proceeds from Burbank's sale of the hotel, and not in Burbank's other assets that were not part of the sale. The other assets were cash reserves the general partner in its discretion maintained to satisfy loan and franchise obligations. The cash reserves came from pre-assignment partnership earnings that had not been distributed to the pre-assignment partners. If the sale closed and renovations to the hotel were not required, the reserves would be released and distributed to the pre-assignment partners. If the sale did not close, Pi would not have shared in the limited partners' obligation to make capital contributions to fund renovations.

On July 2, 2015, Burbank and Apple signed a contract for Apple's purchase of the hotel for \$54 million. The contract gave Apple a 30-day review period. The sale closed on August 11, 2015.

On September 9, 2015, Kevin Keefer received the following letter from Pi acknowledging his donation:

Thank you for your donation to The Pi Foundation, Inc. of a 4.00% interest in Burbank HHG Hotel, LP. The Pi Foundation is a 501(c)(3) nonprofit organization. Your contribution is tax-deductible to the extent allowed by law. No goods or services were provided in exchange for your generous financial donation. Please keep this page for your records.

The court first denied a charitable contribution deduction based on assignment of income principles. The court found Keefer carved out a portion of the 4% partnership interest before donating it to Pi. After the assignment, Pi did not have the right the other partners had to share in a distribution of the cash reserves, but only had the right to share in the net proceeds of the sale of the hotel. Furthermore, if the sale did not close, Pi would not have shared in the obligation of the limited partners to make capital contributions to fund renovations. Accordingly, Keefer retained an interest in the 4% partnership interest after the June 15, 2015 assignment, and as a result his entire interest was not transferred before the August 11, 2015 closing. <sup>66</sup> Also accordingly, the anticipatory assignment of income doctrine applied, and Keefer's failure to transfer his entire interest in the 4% limited partnership interest meant he was not entitled to a charitable contribution deduction.

The court then denied a charitable contribution deduction based on the failure to obtain a compliant CWA. The court held that the June 8, 2015 DAF Packet was not a CWA, and the September 9, 2015 acknowledgment letter could not be supplemented by the DAF Packet. For a document to be an acknowledgment, it must memorialize a gift that has been completed or is legally obligated to occur, not one that is merely contemplated or uncertain to occur. An acknowledgement means the act of making it known one has received something. The court found the DAF Packet did not complete the donation or legally obligate Keefer to donate the limited partnership interest to Pi. While the DAF Packet stated Keefer transferred an irrevocable gift to Pi, the actual assignment did not occur when Keefer signed the DAF Packet documents on June 8, 2015, but on June 15, 2015. In addition, the DAF Packet's cover letter stated it is Pi's understanding that Keefer intended to donate the partnership interest, and if the donation did not occur, Keefer would be responsible for Pi's legal fees and costs associated with Keefer's anticipated donation. The cover letter showed that by signing the DAF Packet, Keefer was not legally obligated to complete the donation, but was only legally obligated to pay Pi's legal fees and costs. Accordingly, the DAF Packet was not a CWA because it did not acknowledge a contribution.

Finally, since the September 9, 2015 acknowledgment letter could not be supplemented by the DAF Packet, the acknowledgment letter failed to satisfy the requirement that the CWA state the sponsoring organization has exclusive legal control over the assets contributed to the DAF. Under the CWA case law, a court might consider outside documents to supplement an otherwise non-compliant CWA as long as the plain text of the CWA directs and limits the inquiry. Critically, the acknowledgment letter did not incorporate by reference or refer to the DAF Packet or the DAF, state the donated interest was destined for any DAF, or state Pi was a provider of DAFs. Therefore, the text of the acknowledgment letter did not provide the court with any reason to incorporate the provisions of the DAF Packet.

The court also held that by its plain text, Code [Section 170\(f\)\(18\)\(B\)](#) supplements and cross-references the CWA requirements of Code [Section 170\(f\)\(8\)](#), which require strict compliance. Therefore, Code [Section 170\(f\)\(18\)\(B\)](#) likewise requires strict compliance.

The lesson of *Keefer* is that the date of a contribution starts the period for the donor to obtain a CWA; therefore, the donor should carefully analyze the facts of the transaction to determine the exact date of the contribution.

## **CWAs for Contributions of Qualified Vehicles**

For a donor to receive a charitable contribution deduction for the contribution of a qualified vehicle with a claimed value of more than \$500, the donor must satisfy the special CWA rules under Code [Section 170\(f\)\(12\)](#). [67](#) A qualified vehicle means a: (1) motor vehicle manufactured primarily for use on public streets, roads, and highways; (2) boat; or (3) airplane. It does not include any property under Code [Section 1221\(a\)\(1\)](#) (inventory and property held by the donor primarily for sale to customers in the ordinary course of the donor's trade or business). [68](#)

If the donee organization sells the vehicle without any significant intervening use or material improvement of the vehicle, the donor's deduction cannot exceed the gross proceeds received from the sale. **69** If there is a significant intervening use or material improvement by the donee organization, the deduction is equal to the vehicle's fair market value. **70**

If the organization gratuitously transfers or sells the vehicle at a price significantly below fair market value to a needy individual in direct furtherance of the donee organization's charitable purpose of relieving the poor and distressed or the underprivileged who are in need of a means of transportation, the deduction is equal to the vehicle's fair market value. Mere application of the proceeds from the sale to a needy individual to a charitable purpose does not directly further a donee organization's charitable purpose. **71**

The IRS defines significant intervening use and material improvement in Section 7.01 of **Notice 2005-44**, and provides guidance on substantiation of fair market value in Section 5 of the Notice. **72**

The CWA must contain the following information:

- (1) the donor's name and taxpayer identification number **73**
- (2) the vehicle identification number or similar number **74**
- (3) if the donee organization sells the vehicle without any significant intervening use or material improvement: (a) the date of sale; (b) a certification that the vehicle was sold in an arm's length transaction between unrelated parties; (c) the gross proceeds received from the sale; and (d) a statement that the deductible amount may not exceed the amount of the gross proceeds **75**
- (4) if the donee organization intends a significant intervening use or material improvement to the vehicle: (a) a certification and detailed description of the intended significant intervening use and the intended duration of the use, or the intended material improvement; and (b) a certification that the vehicle will not be sold before completion of the use or improvement **76**
- (5) if the donee organization sells the vehicle at a price significantly below fair market value, or gratuitously transfers the vehicle to a needy individual in direct furtherance of the organization's charitable purpose of relieving the poor and distressed or the underprivileged who are in need of a means of transportation: (a) a certification that the donee organization will sell the vehicle to a needy individual at a price significantly below fair market value, or that the organization will gratuitously transfer the vehicle to a needy individual; and (b) the sale or transfer will be in direct furtherance of the organization's charitable purpose of relieving the poor and distressed or the underprivileged who are in need of a means of transportation **77**
- (6) whether the donee organization provided any goods or services in consideration, in whole or in part, for the qualified vehicle **78**
- (7) a description and good faith estimate of the value of any goods or services referred to in clause (6), or if such goods or services consist solely of intangible religious benefits, a statement to that effect **79**

The donee organization can use a completed IRS Form 1098-C for the CWA. **80**

For the CWA to be contemporaneous with the contribution: for a contribution under (3), the donee must provide the CWA within 30 days of the date of the sale; for a contribution under (4), within 30 days of the date of the contribution; and for a contribution under (5), within 30 days of the date of the contribution. **81** In addition, the donor must include the CWA with the donor's tax return that includes the deduction. **82** The donee organization also must report the information contained in the CWA to the IRS; **83** the donee organization uses IRS Form 1098-C to report this information. **84**

The IRS has also provided guidance for CWA requirements for a contribution of a vehicle of \$250 but not more than \$500, and for the sale of a vehicle that yields gross proceeds of \$500 or less. **85**

The following example shows the application of the qualified vehicle rules.

Neal contributes his car, which he bought new in 2015 for \$30,000. A used vehicle pricing guide shows the car's fair market value as \$9,000. Neal receives a Form 1098-C from the donee organization showing the gross proceeds from the sale of his car as \$7,000. The Form 1098-C does not include certifications from the donee organization that it made material improvements or significant intervening use of the car, or transferred it to a needy individual for significantly below fair market value in furtherance of the donee organization's charitable purpose.

Neal can claim a deduction of \$7,000 for the contribution as long as he completes Section A of Form 8283, and attaches to his return the Form 1098-C or other CWA that satisfies the requirements of Code **Section 170(f)(12)(B)**. **86**

Code **Section 6720** imposes penalties on a donee organization that knowingly furnishes a false or fraudulent acknowledgment, or knowingly fails to furnish an acknowledgment in the manner, at the time, and with the information required under Code **Section 170(f)(12)** or the regulations thereunder.

The following two categories of acknowledgments are subject to a presumption of being false or fraudulent. First, for a contribution for which the donee organization intends to have a significant intervening use or material improvement, the acknowledgment must contain a certification and detailed description of the intended significant intervening use and its duration, or the intended material improvement, and a certification that the vehicle will not be sold before completion of the use or improvement.

Second, for a contribution of a vehicle that the donee organization sells at a price significantly below fair market value or gratuitously transfers to a needy individual in direct furtherance of its charitable purpose, the acknowledgment must contain the certification that the donee organization will sell the vehicle to a needy individual at a price significantly below fair market value, or that the organization will gratuitously transfer the vehicle to a needy individual, and that the sale or transfer will be in direct furtherance of the organization's charitable purpose of relieving the poor and distressed or the underprivileged who are in need of a means of transportation.



These acknowledgments are presumed to be false or fraudulent if the vehicle is sold to a buyer, other than a needy individual, without a significant intervening use or material improvement within six months of the date of the contribution. **87** The penalty for a false or fraudulent acknowledgment for a vehicle sold by the donee organization without a significant intervening use or material improvement is the greater of (1) the product of the highest rate of tax under Code **Section 1** and the sales price stated on the acknowledgment; or (2) the gross proceeds received from the sale. **88**

The penalty for a false or fraudulent acknowledgement for any other vehicle with a claimed value of more than \$500 is the greater of (1) the product of the highest rate of tax under Code **Section 1** and the claimed value of the vehicle, or (2) \$5,000. **89**

Finally, the IRS intends to issue regulations providing that the donee information report to the IRS is an integral part of the CWA requirement and therefore subject to the penalty. **90**

## Substantial Compliance Doctrine

In *Izen v. Commissioner*, **91** the court denied a charitable contribution deduction because the donor, Izen, did not obtain a CWA that satisfied the statutory requirement that the CWA contain his taxpayer identification number for his contribution of a qualified vehicle to the Houston Aeronautical Society. A letter from the Society discussing the contribution was addressed to Philippe Tanguy, not Izen, and did not contain Izen's taxpayer identification number. In addition, the contribution agreement between the Society, Tanguy, and Izen did not contain Izen's taxpayer identification number.

The court rejected the argument that the doctrine of substantial compliance applied to the statutory requirements for a CWA:

The doctrine of substantial compliance may support a taxpayer's claim where he or she acted in good faith and exercised due diligence but nevertheless failed to meet a *regulatory* requirement. We cannot accept the argument that substantial compliance satisfies *statutory* requirements. Congress specifically required the contemporaneous written acknowledgment include the taxpayer identification number, but that is lacking here.

Taxpayers have often asserted the doctrine of substantial compliance when they have not satisfied the written recordkeeping requirements of the substantiation regulations. In *Bond v. Commissioner*, **92** the court held that since the reporting requirements of the Treasury regulations are directory, and not mandatory, these requirements may be met by substantial, rather than strict, compliance. In *Bond*, the court excused the failure to obtain a written qualified appraisal prior to filing the return. The court found the taxpayers had the property timely appraised by a qualified appraiser, and substantially all the information required by the regulations, other than the appraiser's qualifications, was provided in the appraisal summary signed by a qualified appraiser on the Form 8283 attached to the return. In addition,

the taxpayers promptly provided the revenue agent with the appraiser's qualifications at or near commencement of the audit. Finally, the parties stipulated there was no valuation overstatement.

Courts have applied the holding of *Bond* narrowly. Substantial compliance is satisfied only when taxpayers provide most of the information required, and a single defect in furnishing everything required is not significant. [93](#) A court determines substantial compliance by considering whether the donor provided sufficient information for the Commissioner to evaluate the reported contributions. [94](#) As a general matter, donors have had great difficulty in satisfying the substantial compliance doctrine. [95](#)

## Donee Organization's Written Disclosure Statement for Quid-Pro-Quo Contributions

A donee organization, other than a federal, state, or local government, must provide a written disclosure statement to a donor who makes a quid-pro-quo contribution of more than \$75. [96](#) It is important to note the donor's tax deduction is not contingent on the donor's receipt of this statement. Rather, the remedy for the donee organization's failure to satisfy its obligation is a penalty on the donee.

A quid-pro-quo contribution means a payment is made partly as a contribution and partly in consideration for goods or services provided to the donor by the donee organization. It does not include any payment made to an organization organized exclusively for religious purposes in return for which the donor receives solely an intangible religious benefit that generally is not sold in a commercial transaction outside the donative context. [97](#)

The disclosure statement must inform the donor that the amount of the contribution deductible for federal income tax purposes is limited to the excess of the money and fair market value of property given by the donor over the value of the goods and services provided by the organization. [98](#) The statement must also contain a good faith estimate of the fair market value of the goods or services. [99](#)

The donee organization must provide the statement in connection with a solicitation, or its receipt of a payment. [100](#) The statement must be in writing and be provided in a manner likely to come to the donor's attention. For example, a disclosure in small print in comparison with the print in the rest of the document may not suffice. [101](#)

For example, a donor gives an organization \$200 in exchange for a concert ticket with a fair market value of \$75. The donor is entitled to a \$125 deduction. Since the donor's payment is more than \$75, the organization must provide the donor with a written disclosure statement.

As another example, a donor gives an organization \$100 in exchange for a concert ticket with a fair market value of \$40. The donor is entitled to a \$60 deduction. Since the donor's payment is more than \$75, the organization must provide the donor with a written

disclosure statement even though the donor's deductible contribution is not more than \$75. **102**

The donee organization may disregard goods and services it provides that satisfy the token and membership benefits exceptions. **103** It may also disregard transactions without a donative element, such as a purchase at a museum gift shop. **104**

Goods or services that a donee organization provides to employees of a donor or partners of a partnership donor in return for the employer's or partnership's payment to the donee organization may be disregarded to the extent the goods or services come within the token and membership benefits exceptions. **105** In addition, the written disclosure statement may provide a description of goods or services in lieu of a good faith estimate of their value if, in return for the employer's payment, the donee organization provides the donor's employees with goods or services other than those that come within the token and membership benefits exceptions. A similar rule applies for partnership donors and their partners. **106**

Under the regulations, the right to purchase tickets for seating at an athletic event in exchange for a payment under Code Section 170(l) to an institution of higher education (as defined by Code **Sections 170(b)(1)(A)(i)** and **3304(f)**) is treated as having a value equal to 20% of the payment. **107** However, this regulation may not have survived the repeal by the Tax Cuts and Jobs Act of the deduction for 80% of a contribution made in return for the right to purchase such tickets.

The Code imposes a penalty on a donee organization that fails to satisfy its disclosure statement obligation. The donee organization is subject to the penalty if it does not make any disclosure or makes a disclosure that is incomplete or inaccurate.

For example, the organization does not estimate the value of goods or services in good faith. The penalty is \$10 per contribution, not to exceed \$5,000 per fundraising event or mailing. No penalty is imposed if it is shown the failure is due to reasonable cause. **108**

## **Donor's Written Recordkeeping Requirements**

The Code and regulations prescribe a series of increasingly demanding written recordkeeping requirements as the value of contributions increases. There are recordkeeping requirements for six categories of contributions: (1) cash, check, or other monetary gift; (2) property of less than \$250; (3) property of \$250 or more but not more than \$500; (4) property of more than \$500 but not more than \$5,000; (5) property of more than \$5,000; and (6) property of more than \$500,000.

Since the thresholds for contributions of property are not indexed for inflation, as inflation increases more donors and more contributions of property will become subject to increasingly demanding written recordkeeping requirements.

The written recordkeeping requirements discussed in the main text of this Guide are those found in **Treas. Reg. §1.170A-15** dealing with contributions of cash, check, or other monetary gifts; **Treas. Reg. §1.170A-16** dealing with noncash contributions; and **Treas. Reg. §1.170A-17** dealing with qualified appraisals and qualified appraisers.

The applicability and effective dates of these regulations are: (1) **Treas. Reg. §1.170A-15** applies to contributions made after July 30, 2018, and taxpayers may rely on the rules of this section for contributions made in taxable years beginning after August 17, 2006; **109** (2) **Treas. Reg. §1.170A-16** applies to contributions made after July 30, 2018, and taxpayers may rely on the rules of this section for contributions made after June 3, 2004, or appraisals prepared for returns or submissions filed after August 17, 2006; **110** and (3) **Treas. Reg. §1.170A-17** applies to contributions made on or after January 1, 2019, and taxpayers may rely on the rules of this section for appraisals prepared for returns or submissions filed after August 17, 2006. **111**

For contributions made before the foregoing applicability dates, the rules of **Treas. Reg. §1.170A-13(a)** -(c) apply unless the taxpayer elects to have the rules of **Treas. Reg. §§1.170A-15** to 17 apply. The cases cited in the footnotes of this Guide apply the rules of **Treas. Reg. §1.170A-13(a)** -(c).

The rules of **Treas. Reg. §1.170A-15** to 17 are similar to the rules of **Treas. Reg. §1.170A-13(a)** -(c) and contain additional provisions that reflect Section 883 of the American Jobs Creation Act of 2004 **112** and Sections 1216 , 1217, and 1219 of the Pension Protection Act of 2006. **113** The additional provisions deal with qualified appraisals and qualified appraisers, contributions of clothing and household items, and the written recordkeeping requirements for contributions of cash.

In determining whether a donor's contributions of property exceed the \$500, \$5,000, or \$500,000 thresholds, the donor must aggregate all similar items of property contributed in the same taxable year to all donee organizations. **114** Similar items of property are items of the same generic category or type. Examples are books, buildings, china, clothing, coin collections, crystal, electronic equipment, furniture, household appliances, jewelry, land, lithographs, non-publicly traded stock, paintings, photographs, silver, and toys. **115**

In determining whether a donor's contributions of property meet the \$250 threshold, separate contributions made during the taxable year are not aggregated regardless of whether the total value of the contributions equals or exceeds \$250. **116**

In addition, in determining whether the donor's contributions of property exceed a particular threshold, if the donor received goods or services in return for a contribution, the donor reduces the amount of the contribution by the value of the goods or services received. **117**

Virtual currency is treated as property, **118** and a donor does not recognize income, gain, or loss from a contribution of virtual currency. **119** The donor's deduction is generally equal to the fair market value of the virtual currency at the time of the contribution if the donor has held the virtual currency for more than one year. If the donor has held the virtual currency for one year or less, the deduction is the lesser of the

donor's basis or the fair market value at the time of the contribution. **120**

For example, if a donor claims deductions of \$2,000 for books given to College A, \$2,500 for books given to College B, and \$600 for books given to College C, the contribution is \$5,100. The donor must comply with the recordkeeping requirements for contributions of property of more than \$5,000. **121**

As another example, if a donor contributes \$1,000 in virtual currency to six donee organizations, the contribution is \$6,000. The donor must comply with the recordkeeping requirements for contributions of property of more than \$5,000. **122**

When the filing of a Form 8283 is required, a separate form for each item of property must be attached to the donor's tax return. If the donor contributes similar items of property to the same donee, as long as the donor includes the required information for each item of property in the Form 8283, the donor may attach a single Form 8283. If the donor contributes similar items of property to more than one donee, the donor must attach a separate form for each donee. In the prior examples, for the contributions of the books, the donor must attach to the donor's return a separate Form 8283 for the books given to each college. For the contributions of the virtual currency, the donor must attach to the donor's return a separate Form 8283 for the virtual currency given to each donee organization. **123**

If the donor is a partnership or S corporation, the donor must provide a copy of the completed Form 8283 to each partner or shareholder who receives an allocation of a charitable contribution deduction for the property described in the form. **124** A partner or shareholder who receives an allocation of the deduction must attach a copy of the partnership's or S corporation's completed Form 8283 to the partner's or shareholder's return on which the deduction is claimed. **125**

When a qualified appraisal is required, a separate appraisal is necessary for each item of property that is not included in a group of similar items of property. Only one qualified appraisal is necessary for a group of similar items of property contributed in the same taxable year, but a donor may obtain a separate qualified appraisal for each item of property. **126** In the prior examples, the donor may obtain one qualified appraisal or separate appraisals for the books contributed to each college, and the donor may obtain one qualified appraisal or separate appraisals for the virtual currency contributed to each donee organization.

The recordkeeping requirements for publicly traded securities include separate rules, the most important of which is an exemption from the qualified appraisal requirement. Therefore, to determine whether the exemption applies, the donor must determine whether the contributed securities come within the definition of publicly traded security. **127** Examples of publicly traded securities are securities listed on an exchange in which quotations are published daily; securities regularly traded in national or regional over-the-counter markets for which published quotations are available; and securities that are shares of a mutual fund for which quotations are published on a daily basis in a newspaper of general circulation throughout the United States. **128**

Securities are not treated as publicly traded if they are subject to restrictions that materially affect their value to the donor or prevent the securities from being freely traded. **129** Securities that are subject to the restrictions on public resale under SEC Rules 144 and 145 are not treated as publicly traded and do not come within the qualified appraisal exemption.

Virtual currency does not come within the exemption for publicly traded securities as virtual currency is not a security. A security is a: (1) share of stock in a corporation; (2) right to subscribe for, or to receive, a share of stock in a corporation; or (3) bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form. **130**

For all contributions of tangible personal property, the donor should take photographs of each item to have a record of the number and types of items and their condition. The donor should also prepare a list of the items that includes the value of each item and attach this list to the receipt or CWA for the items.

Finally, if a donor does not satisfy certain substantiation requirements, the deduction is not denied if the donor shows the failure is due to reasonable cause and not to willful neglect. **131** There are three substantiation requirements eligible for this defense. First, for a contribution of property for which a deduction of more than \$500 is claimed, the donor must include with the return a description of the contributed property and such other information required by the Secretary. This requirement does not apply to a C corporation that is not a personal service corporation or a closely held C corporation. **132**

Second, for a contribution of property for which a deduction of more than \$5,000 is claimed, the donor must obtain a qualified appraisal of the property and attach to the return such information regarding the property and appraisal required by the Secretary. **133**

Third, for a contribution of property for which a deduction of more than \$500,000 is claimed, the donor must attach a qualified appraisal to the return. **134**

It is important to note the reasonable cause defense does not apply to the donor's failure to timely obtain a compliant CWA.

## **Contributions of Cash**

No deduction is allowed for any contribution of cash, check, or other monetary gift unless the donor maintains, as a record of such contribution, a bank record or written communication from the donee organization showing the name of the organization, the date of the contribution, and the amount of the contribution. **135** A monetary gift means a transfer of a gift card redeemable for cash, or a payment made by credit card, electronic fund transfer under Code **Section 5061(e)(2)**, an online payment service, text message, or payroll deduction. **136** A contribution of virtual currency is not a monetary gift; rather, it is a contribution of property. **137**

Under the regulations, the donor must maintain the following records for each contribution:

- (1) a bank record, which may be a statement from a bank, credit union, or other financial institution, an electronic fund transfer receipt, a cancelled check, a scanned image of both sides of a cancelled check obtained from a bank or credit union website, or a credit card statement **138**
- (2) in lieu of the bank record under (1), a written communication, such as a receipt, letter, or email, from the donee organization showing the name of the donee organization, the date of the contribution, and the amount of the contribution **139**
- (3) for contributions of more than \$250, a timely and compliant CWA **140**

The donor must receive the substantiation under (1) or (2) by the due date for a CWA. **141** The requirements under (1) to (3) may be met by a single document that contains all the required information as long as the donor obtains the document by the due date for a CWA. **142**

For contributions made by a donor-employee by payroll deduction, the donor-employee satisfies the requirements under (1) or (2) if the donor-employee obtains no later than the due date for receipt of a CWA: (a) a pay stub, Form W-2, or other employer furnished document that sets forth the amount withheld in a taxable year for payment to a donee organization; and (b) a pledge card or other document prepared by or at the direction of the donee organization that shows the name of the donee organization. **143**

However, outside the payroll deduction context, since a blank pledge card provided by the donee organization and completed by the donor does not show the date of the contribution or the amount, it does not satisfy the written recordkeeping requirement. **144**

## **Contributions of Property of Less than \$250**

No deduction is allowed for a noncash charitable contribution of less than \$250 by an individual, partnership, S corporation, or C corporation that is a personal service corporation or closely held corporation, unless the donor maintains for each contribution a receipt from the donee organization that contains the following information:

- (1) the name of the donee organization
- (2) the date of the contribution
- (3) a description of the property in sufficient detail under the circumstances, taking into account the value of the property, for a person who is not generally familiar with the type of property to ascertain that the described property is the contributed property
- (4) for securities, the name of the issuer, the type of security, and whether the securities are publicly traded securities under **Treas. Reg. §1.170A-13(c)(7)(xi)** . **145**

If it is impracticable to obtain a receipt, such as when a donor deposits property in a charity's unattended drop site, the donor may satisfy the foregoing requirements by maintaining reliable written records. The



reliability of written records is determined based on all the facts and circumstances, including the proximity in time of creation of the written record to the contribution.

Reliable written records must contain:

- (1) the information described in (1) to (4) above
- (2) the fair market value of the property on the date of the contribution and the method used to determine fair market value
- (3) for a contribution of clothing or household item (as defined under [Treas. Reg. §1.170A-18\(c\)](#) ), the condition of the item [146](#)

In light of the more demanding recordkeeping requirements imposed in the absence of a receipt, the best course is for the donor to obtain a receipt.

## **Contributions of Property of \$250 or More but not More than \$500**

No deduction is allowed for a noncash charitable contribution of property of \$250 or more but not more than \$500, unless the donor timely obtains a compliant CWA. [147](#)

## **Contributions of Property of More than \$500 but not More than \$5,000**

No deduction is allowed for a noncash charitable contribution of property of more than \$500 but not more than \$5,000, unless the donor timely obtains a compliant CWA. [148](#) For a contribution of a qualified vehicle for which the donor must obtain a CWA, the donor must attach a copy of the CWA to the Form 8283 (Section A) for the return on which the deduction is claimed. [149](#)

In addition, an individual, partnership, S corporation, or C corporation that is a personal service corporation or closely held corporation must complete IRS Form 8283 (Section A), "Noncash Charitable Contributions," and file it with the tax return on which the donor claims the deduction. [150](#)

The donor must provide the following information on the form:

- (1) the donor's name and taxpayer identification number
- (2) the name and address of the donee organization
- (3) the date of the contribution
- (4) a description of the property in sufficient detail under the circumstances, taking into account the value of the property, for a person who is not generally familiar with the type of property to ascertain that the described property is the contributed property
- (5) for real or tangible personal property, the condition of the property
- (6) for securities, the name of the issuer, the type of security, and whether the securities are

publicly traded securities under [Treas. Reg. §1.170A-13\(c\)\(7\)\(xi\)](#)

(7) the fair market value of the property on the date of contribution and the method used to determine fair market value

(8) the manner of acquisition, such as by purchase, gift, bequest, inheritance, or exchange, and the approximate date of acquisition by the donor (for a contribution of publicly traded securities, a representation that the donor held the securities for more than one year is sufficient), or if the property was created, produced, or manufactured by or for the donor, the approximate date the property was substantially completed

(9) the cost or adjusted basis under Code Section 1016 of the property (the cost or basis is not required for contributions of publicly traded securities that would have resulted in long-term capital gain if sold on the contribution date, unless the donor has elected to limit the deduction to basis under Code [Section 170\(b\)\(1\)\(C\)\(iii\)](#) )

(10) for tangible personal property, whether the donee has certified it for a use related to the purpose or function constituting the donee's basis for exemption under Code [Section 501](#) , or for a governmental unit an exclusively public purpose [151](#)

## Contributions of Property of More than \$5,000

No deduction is allowed for a noncash charitable contribution of more than \$5,000 unless the donor: (1) timely obtains a compliant CWA; (2) obtains a qualified appraisal prepared by a qualified appraiser; [152](#) and (3) completes IRS Form 8283 (Section B) and files it with the tax return on which the donor claims the deduction. [153](#)

A qualified appraisal must be signed and dated by the qualified appraiser no earlier than 60 days before the date of the contribution and no later than: (1) the due date, including extensions, of the return on which the deduction for the contribution is first claimed; (2) in the case of a donor that is a partnership or S corporation, the due date, including extensions, of the return on which the deduction for the contribution is first reported; or (3) in the case of a deduction first claimed on an amended return, the date on which the amended return is filed. [154](#)

For contributions of art with a total value of \$20,000 or more, the return must include a copy of the signed appraisal. If any single work of art is worth \$20,000 or more, the IRS may request an 8 × 10 color photo or a 4 × 5 color slide of the work. [155](#) The donor should ensure that he or she has the photo or slide before filing the return. Art means antiques, carpets, ceramics, decorative arts, drawings, historical memorabilia, paintings, prints, rare manuscripts, sculptures, silver, textiles, watercolors, and other similar objects. [156](#)

The IRS has provided a procedure for donors of art with an appraised value of \$50,000 or more to request a Statement of Value from the IRS to further substantiate the art's value. A donor cannot rely on a Statement of Value issued to another taxpayer. The donor must submit the request before filing the return that first reports the contribution and must attach the Statement to that return regardless of

whether the donor agrees with the value on the Statement. If the donor disagrees with that value, the donor may submit additional information in support of a different value with the return. Since the donor must provide a qualified appraisal and extensive information about the art with the request, the IRS may look askance at any additional information submitted with the return. If the donor must file the return before the donor has received the Statement of Value, the donor must attach a copy of the request to the return and then file an amended return with the Statement attached. **157**

A qualified appraisal prepared by a qualified appraiser is not required, and a completed Form 8283 (Section A) satisfies the Form 8283 requirement for the following contributions of property even if the claimed value is more than \$5,000 per item or group of similar items:

- (1) publicly traded securities
- (2) intellectual property under Code **Section 170(e)(1)(B)(iii)**
- (3) a qualified vehicle for which the donor's deduction is limited to the gross proceeds from its sale and the donee organization provides the appropriate CWA
- (4) property under Code **Section 1221(a)(1)** (inventory and property held by the donor primarily for sale to customers in the ordinary course of the donor's trade or business). **158**

For example, a donor contributes \$7,000 of publicly traded securities, \$600 of inventory, and a collection of 15 books, each with a value of \$400 for a total value of \$6,000. The donor reports the securities and inventory in Section A of Form 8283 and the books in Section B of Form 8283.

The donor must provide the following information on IRS Form 8283 (Section B):

- (1) the donor's name and taxpayer identification number
- (2) the donee's name, address, taxpayer identification number, signature, the date signed by the donee, and the date the donee received the property
- (3) the appraiser's name, address, taxpayer identification number, appraiser declaration under **Treas. Reg. §1.170A-16(d)(4)**, signature, and the date signed by the appraiser **159**
- (4) the fair market value of the property on the valuation effective date under **Treas. Reg. §1.170A-17(a)(5)(i)**
- (5) a description of the property in sufficient detail under the circumstances, taking into account the value of the property, for a person who is not generally familiar with the type of property to ascertain that the described property is the contributed property **160**
- (6) for real property or tangible personal property, the condition of the property
- (7) the manner of acquisition, such as by purchase, gift, bequest, inheritance, or exchange, and the approximate date of acquisition by the donor, or if the property was created, produced, or manufactured by or for the donor, the approximate date the property was substantially completed
- (8) the cost or adjusted basis under Code Section 1016 of the property **161**
- (9) a statement explaining whether the charitable contribution was made through a bargain

sale, and if so, the amount of any consideration received for the contribution. [162](#)

## Contributions of Property of More than \$500,000

No deduction is allowed for a noncash charitable contribution of more than \$500,000 unless the donor: (1) timely obtains a compliant CWA; (2) obtains a qualified appraisal prepared by a qualified appraiser and attaches it to the tax return on which the donor claims the deduction; [163](#) and (3) completes IRS Form 8283 (Section B) and files it with that return. [164](#)

A qualified appraisal is not required, and a completed Form 8283 (Section A) satisfies the Form 8283 requirement for contributions of:

- (1) publicly traded securities
- (2) intellectual property under Code [Section 170\(e\)\(1\)\(B\)\(iii\)](#)
- (3) a qualified vehicle for which an acknowledgement under Code [Section 170\(f\)\(12\)\(B\)](#) is provided
- (4) property under Code [Section 1221\(a\)\(1\)](#) (inventory and property held by the donor primarily for sale to customers in the ordinary course of the donor's trade or business). [165](#)

## Contributions of Clothing and Household Items

For an individual, partnership, or corporation, no deduction is allowed for any contribution of clothing or a household item unless the clothing or household item is in good used condition or better, [166](#) a standard of amoeba-like amorphousness. [167](#) In addition, the donor must satisfy the recordkeeping requirements for contributions of property that apply to the value of the clothing or household item. [168](#)

The good used condition standard does not apply to a contribution of a single item of clothing or a household item for which the donor claims a deduction of more than \$500. In this situation, the donor must submit with the return on which the deduction is claimed: (1) a qualified appraisal prepared by a qualified appraiser; and (2) a completed Form 8283 (Section B), "Noncash Contributions." [169](#)

Household items are appliances, electronics, furniture, furnishings, linens, and other similar items. [170](#) Household items do not include collections, food, jewelry and gems, and paintings, antiques, and other objects of art. [171](#)

## Date of Contribution

The date of contribution is important because a donor receives a deduction for the taxable year in which the contribution occurs, and the value of a contribution of property is determined by the date of contribution. This rule applies regardless of the donor's method of accounting or the date on which the donor makes a pledge of a contribution in the future. [172](#) In addition, as shown by *Keefe*, the date of the

contribution starts the time period for the donor to obtain a CWA.

As part of the Donee Acknowledgment in Part V of Section B of Form 8283, the donee organization acknowledges it is a qualified organization under Code [Section 170\(c\)](#) , and it received the contributed property on the date provided by the donee organization on the form.

The general rule is that a contribution is made at the time of delivery of cash or property. [173](#)

## Contributions of Cash

The unconditional delivery or mailing of a check that clears in due course and does not have any restrictions on its time or manner of payment is a contribution on the date of delivery or mailing. [174](#) The rule of delivery upon mailing applies only to deposits into United States mail and not to delivery to a private delivery service, such as UPS or Federal Express. [175](#) When a donor uses a private delivery service, the contribution is made on the date the service delivers the check to the donee organization.

To ensure a donor has the benefit of the rule of delivery upon mailing, the donor should mail the check by certified or registered mail of the United States Postal Service. In this manner, the donor will have proof of mailing, which is especially important if the donor mails a check on or shortly before December 31.

When a donor uses a pay-by-phone feature of an account with a financial institution, the contribution is made on the date the institution mails the check, transfers funds to an account of the donee organization, or delivers a check to the organization, all as shown on the institution's statement to the donor. [176](#)

When a donor makes a contribution by text message, the contribution is made on the date the donor sends the text message as long as the contribution simultaneously is charged to the donor's telephone or wireless account. [177](#)

When a donor makes a contribution by credit card, the contribution is made on the date the credit card company or financial institution charges the card. The credit card holder, by using the card to make the contribution, becomes immediately indebted to the credit card company or financial institution in such a way that the cardholder cannot prevent the donee organization from receiving payment. [178](#)

When a donor makes a purchase by credit card, and has the choice of receiving a cash rebate or directing the credit card company to pay the rebate to a charity selected by the donor from a list provided by the credit card company, the donor's choice is voluntary. As a result, when the donor chooses to have the rebate paid to a charity, the donor makes a charitable contribution in the amount of the rebate on the date the credit card company remits payment to the charity. [179](#)

## Contributions of Stock

If a donor unconditionally delivers or mails via United State mail a properly endorsed stock certificate or a stock certificate with a signed stock power to a donee organization or its agent, the contribution is made on the date of delivery, or if the certificate is received in the ordinary course of the mails, on the date of mailing. **180**

If the donor delivers the stock certificate to the donor's bank or broker as the donor's agent, or to the issuing corporation or its agent for transfer into the name of the donee organization, the contribution is made on the date the books of the corporation reflect the transfer. **181**

Since the timing of a transfer of stock on the books of the corporation is usually beyond a donor's control, the prudent course for the donor is to deliver the stock certificate to the donee organization or its agent, mail the certificate via United States certified or registered mail, or arrange for the donor's bank or broker to transfer the certificate to the donee organization's account or its bank or broker as the donee organization's agent.

Finally, the donor should ensure the transfer of all the donor's rights in the stock so as not to run afoul of the partial interest rules. For example, a donor who retains voting rights transfers only a partial interest in the stock and is not entitled to a deduction. **182** Line 5b of Part II of Section B of Form 8283 specifically requires the donor to state whether the donor gave the right to vote contributed securities to anyone other than the donee organization or another organization participating with the donee organization in cooperative fundraising.

## **Contributions of Property**

For tangible personal property, delivery occurs when the donee organization receives title to and possession of the property. **183** If the donee organization is given the immediate right to possession, but through no fault of the donor the organization does not exercise this right until a later date, the property is deemed delivered when the donor conveyed the right to possession. **184**

For a work of art, a donor that owns both the copyright and the work must transfer both interests to the donee organization. Since the IRS does not treat the copyright and the work as two properties, if the donor does not transfer both interests, the IRS can invoke the partial interest rules to deny a deduction. **185**

For real property, delivery occurs when the donor delivers an executed deed to the donee organization or its agent, unless applicable state law requires recordation of the deed to complete the transfer. **186** Donors should review applicable state law to determine when real estate is delivered, and if recordation of the deed is required, ensure the donee organization promptly records it.

Finally, pledges are not treated as delivered until the donor fulfills the pledge regardless of its enforceability under applicable state law. **187**

**1** See Joint Committee on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions*, JCX-2-22 (March 11, 2022); IRS Publication 526 *Charitable Contributions* (2021); IRS Publication 561 *Determining the Value of Donated Property* (January 2022); Jere Doyle, "Tax and Estate Planning for Charitable Gifts of Art and Other Collectibles," 47 *Estate Planning* 19 (November 2020). Cf. The Temptations, *Ball of Confusion (That's What the World Is Today)*, Music and lyrics by Barrett Strong & Norman Whitfield, on *Greatest Hits II* (Gordy 1970) ("Eve of destruction, tax deduction, city inspectors, bill collectors, mod clothes in demand, population out of hand, suicide, too many bills, hippies moving to the hills. People all over the world are shouting, 'End the war.' And the band played on. Great Googology, can't you hear me talking to you? It's a ball of confusion, that's what the world is today, hey, hey.").

**2** See *Addis v. Commissioner*, 374 F.3d 881 (9th Cir. 2004) (the government depends on the good faith and integrity of each potential taxpayer to disclose honestly all information relevant to tax liability; the "deterrence value of section 170(f)(8)'s total denial of a deduction [for the failure to satisfy the contemporaneous written acknowledgment rules for charitable contributions] comports with the effective administration of a self-assessment and self-reporting system"), *cert. denied*, 543 U.S. 1151 (2005); see also *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79 (1992) (since deductions are a matter of legislative grace, the taxpayer must prove his or her entitlement to deductions allowed by the Internal Revenue Code and substantiate the amounts underlying the claimed deductions). See generally Laura Saunders, "The Fine Print Cost a Widow a \$464,000 Tax Deduction," *WSJ.com* (July 22, 2022) ("Charitable donors, beware: A widow has lost a \$464,000 tax deduction for a gift to a museum because her tax paperwork lacked a few key words. The recent Tax Court decision in *Albrecht v. Commissioner* is a fresh reminder of how rigid the standards for charitable deductions often are." ) (available at <https://www.wsj.com/articles/charitable-donation-tax-deduction-irs-rules-11658444288>).

**3** See *RERI Holdings I, LLC v. Commissioner*, 149 T.C. 1 (2017) (Congress intended the substantiation requirements "to alert the Commissioner to potential overvaluations of contributed property and thus deter taxpayers from claiming excessive deductions"), *aff'd sub nom. Blau v. Commissioner*, 924 F.3d 1261 (D.C. Cir. 2019); *Hewitt v. Commissioner*, 109 T.C. 258 (1997) (Tannenwald, J.) (the principal objective of the requirement of a qualified appraisal is to provide a mechanism whereby the Commissioner would obtain sufficient return information in support of the claimed valuation of charitable contributions of property to enable the Commissioner to deal more effectively with the prevalent use of overvaluations), *aff'd without opinion*, 166 F.3d 332 (4th Cir. 1998). Under Code **Section 6662(b)(3)** and (e)(1), a donor is subject to a penalty of 20% of the portion of any underpayment that is attributable to a substantial valuation misstatement. A substantial valuation misstatement means the value or adjusted basis of any property claimed on a return is 150% or more of the correct value or adjusted basis. The penalty does not apply if that portion does not exceed \$5,000, or \$10,000 in the case of a corporation other than an S corporation or a personal



holding company. **I.R.C. §6662(e)(2)** ; **Treas. Reg. §1.6662-5(a)** . There is no disclosure exception to the penalty. **Treas. Reg. §1.6662-5(a)** . The penalty is increased to 40% of any underpayment that is attributable to a gross valuation misstatement. A gross valuation misstatement means the claimed value or adjusted basis of the property is 200% or more of the correct amount. **I.R.C. §6662(h)(1)** and (2)(A)(i). A reasonable cause defense applies to both misstatements only if the claimed value of charitable deduction property was based on a qualified appraisal made by a qualified appraiser, and the donor made a good faith investigation of the contributed property's value. **I.R.C. §6664(c)(3)** . This rule applies regardless of whether the donor receives a charitable contribution deduction without a qualified appraisal. **Treas. Reg. §1.6664-4(h)(3)** . Charitable deduction property means property for which a charitable contribution deduction is claimed other than securities for which as of the date of the contribution market quotations were readily available on an established market. **I.R.C. §6664(c)(4)(A)** .

**4** See *Hernandez v. Commissioner*, 490 U.S. 680 (1989) (tuition payments to parochial schools, which were made with the expectation of a substantial benefit or quid pro quo, were not deductible charitable contributions); *United States v. American Bar Endowment*, 477 U.S. 105 (1986) ("The *sine qua non* of a charitable contribution is a transfer of money or property without adequate consideration." ); *Sklar v. Commissioner*, 549 F.3d 1252 (9th Cir. 2008) (court denied deduction for tuition and fees paid by parents to their children's Orthodox Jewish day schools), *cert. denied*, 558 U.S. 829 (2009); **Treas. Reg. §1.170A-1(h)(1)** (no transfer is a contribution or gift unless the donor intends to make a payment in an amount that exceeds the fair market value of the goods or services received in exchange for the payment, and makes a payment in an amount that exceeds the fair market value of the goods or services).

**5** See, e.g., *Champions Retreat Golf Founders LLC v. Commissioner*, T.C. Memo. 2022-106 (Tax Court allowed \$7.8 million of a claimed \$10.4 charitable contribution deduction on a 2010 tax return for the contribution of a conservation easement on a golf course; court rejected IRS position that easement only had a value of \$20,000); *Estate of Jackson v. Commissioner*, T.C. Memo. 2021-48 (IRS valued the image and likeness of Michael Jackson and his interests in two trusts that held interests in Sony/ATV Music Publishing and Mijac Music, a music publishing catalog, at \$481,000,000; 12 years after Jackson's death, the Tax Court found they had a value of \$111,100,000). See generally IRS Publication 561 *Determining the Value of Donated Property* (January 2022); Jerald David August, "Proceeding With a Valuation Case Involving Closely Held Business Interests Before the United States Tax Court (Part 1)," 34 No. 4 *Practical Tax Lawyer* 27 (September 2020); Jerald David August, "Proceeding With a Valuation Case Involving Closely Held Business Interests Before the United States Tax Court (Part 2)," 35 No. 1 *Practical Tax Lawyer* 19 (November 2020); Jerald David August, "Proceeding With a Valuation Case Involving Closely Held Business Interests Before the United States Tax Court (Part 3)," 35 No. 2 *Practical Tax Lawyer* 22 (March 2021).

**6 I.R.C. §170(c)** .

**7 I.R.C. §170(c)(2)(A)** .

**8 Treas. Reg. §1.170A-8(a)(1)** .

**9 Revenue Ruling 75-65, 1975-1 C.B. 79 ; Revenue Ruling 69-80, 1969-1 C.B. 65 ; Revenue Ruling 66-79, 1966-1 C.B. 48 ; Revenue Ruling 63-252, 1963-2 C.B. 101** . See generally Alyssa R. Wan & Richard J. Razook, "Charitable Giving in a Global Environment," 94 *Florida Bar Journal* 32 (May/June 2020).

**10** IRS Publication 526 *Charitable Contributions*, at 3 (2021) (Canada, Israel, and Mexico).

**11** United States - Canada Income Tax Convention, Article XXI; Convention Between the Government of The United States of America and The Government of The State of Israel with Respect to Taxes on Income, Article 15-A; United States - Mexico Income Tax Convention, Article 22.

**12** The URL for the Tax Exempt Organization Search Tool is <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search>.

**13 I.R.C. §170(f)(8)(A)- (B); Treas. Reg. §1.170A-13(f)(8)** .

**14** T.C. Memo. 2022-53.

**15 I.R.C. §170(f)(8)(A)- (B); Treas. Reg. §1.170A-13(f)(2)** .

**16** Cf. *Chiarelli v. Commissioner*, T.C. Memo. 2021-27 (court denied charitable contribution deduction when receipts did not describe the items of property contributed in detail).

**17** See *Addis v. Commissioner*, 118 T.C. 528 (2002) (court denied charitable contribution deduction when CWA omitted the consideration received by the donor from the donee organization), *aff'd*, 374 F.3d 881 (9th Cir. 2004), *cert. denied*, 543 U.S. 1151 (2005); *Cohan v. Commissioner*, T.C. Memo. 2012-8 (same).

**18** H.R. Rep. No. 103-111, at 785, 103rd Cong., 1st Sess. (1993); H.R. Conf. Rep. No. 103-213, at 565, 103rd Cong., 1st Sess. (1993).

**19** Department of the Treasury, Internal Revenue Service, "Substantiation and Reporting

Requirements for Cash and Noncash Charitable Contribution Deductions," Preamble to Final Regulations, 83 F.R. 36,417, 36,419 (July 30, 2018).

**20** IRS Publication 526 *Charitable Contributions*, at 20 (2021). For the requirements of a bank record or receipt, see *infra* notes 135 to 144 and accompanying text.

**21** *Burrell v. Commissioner*, 1994 T.C. Memo. 574.

**22** Laura Saunders, "The Fine Print Cost a Widow a \$464,000 Tax Deduction," *WSJ.com* (July 22, 2022) (available at <https://www.wsj.com/articles/charitable-donation-tax-deduction-irs-rules-11658444288>). For other cases in which the court denied a charitable contribution deduction for the same reason, see *Riether v. United States*, 919 F. Supp. 2d 1140 (D.N.M. 2012); *Campbell v. Commissioner*, T.C. Memo. 2020-41; *French v. Commissioner*, T.C. Memo. 2016-53; *Kunkel v. Commissioner*, T.C. Memo. 2015-71; *Villareale v. Commissioner*, T.C. Memo. 2013-74; *Durden v. Commissioner*, T.C. Memo. 2012-140; *Friedman v. Commissioner*, T.C. Memo. 2010-45.

**23** The URL for the website of the Wheelwright Museum of the American Indian is <https://wheelwright.org/>.

**24** See *Addis v. Commissioner*, 374 F.3d 881 (9th Cir. 2004) (plain language of Code **Section 170(f)(8)** requires the total denial of a charitable contribution deduction if the taxpayer fails to comply with the statutory requirements for a CWA), *cert. denied*, 543 U.S. 1151 (2005); *French v. Commissioner*, T.C. Memo. 2016-53 ("The doctrine of substantial compliance does not apply to excuse compliance with the strict substantiation requirements of section 170(f)(8)(B)."); *Averyt v. Commissioner*, T.C. Memo. 2012-198 (same).

**25** Compare *French v. Commissioner*, T.C. Memo. 2016-53 (although the deed for a conservation easement provided that the parties' intent was to preserve the property, this provision did not show that preservation of the property was the only consideration; the deed did not state that it was the entire agreement of the parties, and without such a statement the IRS could not by reviewing the deed determine whether the donor received consideration in exchange for the contribution of the conservation easement) with *Averyt v. Commissioner*, T.C. Memo. 2012-198 (conservation deed served as a CWA; "[T]he conservation deed was signed by a representative from WAT, provided a detailed description of the property and the conservation easement, and was contemporaneous with the contribution. Additionally, the conservation deed in the instant case states that the conservation easement is an unconditional gift, recites no consideration received in exchange for it, and stipulates that the conservation deed constitutes the entire agreement between the parties with respect to the contribution of the conservation easement. Accordingly, the conservation deed, taken as a whole,

provides that no goods or services were received in exchange for the contribution").

**26** One commentator questions whether an integration clause or the declaration of an irrevocable gift makes a difference in the CWA analysis: "I see some red herrings in the [*Albrecht*] opinion. First, the parties apparently argued over whether the Deed would qualify as a CWA if it had an integration clause - you know, a clause that says 'this is the entire agreement between the parties ...' I don't see how that would matter. The Deed would still have failed to recite whether or not something was given to Ms. Albrecht in exchange for the donation, such as a lifetime pass to the Museum. Just because the document does not give Ms. Albrecht a legal right to receive something in the future does not mean nothing was actually given! Second, the parties apparently thought it important that the deed recited the irrevocable nature of the gift. Again, who cares? I don't see how that creates any presumption, much less any substantiation, that no goods or services were given in exchange for the irrevocable gift. It may go to the valuation of the gift, but not to the quid-pro-quo requirement." Bryan Camp, George H. Mahon Professor of Law, Texas Tech University School of Law, "Lesson From The Tax Court: *The Sharp Corners Of The §170 Substantiation Requirements*," *TaxProf Blog* (May 31, 2022) (available at [https://taxprof.typepad.com/taxprof\\_blog/2022/05/lesson-from-the-tax-court-the-sharp-corners-of-170-substantiation-re](https://taxprof.typepad.com/taxprof_blog/2022/05/lesson-from-the-tax-court-the-sharp-corners-of-170-substantiation-re)

**27** IRS Publication 1771, *Charitable Contributions Substantiation and Disclosure Requirements*, at 5 (March 2016).

**28** IRS Publication 526 *Charitable Contributions*, at 20 (2021).

**29** **Treas. Reg. §1.170A-13(f)(1)** .

**30** IRS Publication 1771, *Charitable Contributions Substantiation and Disclosure Requirements*, at 3 (March 2016).

**31** IRS Publication 526 *Charitable Contributions*, at 20 (2021).

**32** **Treas. Reg. §1.170A-13(f)(11)(i)** .

**33** IRS Publication 526 *Charitable Contributions*, at 20 (2021).

**34** **Treas. Reg. §1.170A-13(f)(11)(ii)** .

**35** **Treas. Reg. §1.170A-13(f)(17)(i)** .

**36** Treas. Reg. §1.170A-13(f)(17)(ii) .

**37** I.R.C. §170(l) .

**38** Treas. Reg. §1.170A-13(f)(14) .

**39** Treas. Reg. §1.170A-13(f)(15) .

**40** *Hernandez v. Commissioner*, 490 U.S. 680 (1989); *United States v. American Bar Endowment*, 477 U.S. 105 (1986); *Sklar v. Commissioner*, 549 F.3d 1252 (9th Cir. 2008), *cert. denied*, 558 U.S. 829 (2009); **Treas. Reg. §1.170A-1(h)(1) - (2)**; **Revenue Ruling 76-185, 1976-1 C.B. 60** ; **Revenue Ruling 67-246, 1967-2 C.B. 104** .

**41** **Revenue Ruling 67-246** , ex. 12, 1967-2 C.B. 104.

**42** *Goldman v. Commissioner*, 46 T.C. 136 (1966), *aff'd*, 388 F.2d 476 (6th Cir. 1967); **Revenue Ruling 67-246** , ex. 5, 1967-2 C.B. 104.

**43** James Bloom & David Jones, "Substantiation and Disclosure Rules of OBRA '93," *IRS 1995 EO CPE Text* §J Q&A-2.

**44** **Treas. Reg. §1.170A-1(h)(6)(i)** and (7), ex. 2 and 3. For the requirements of the donee organization's written disclosure statement, see *infra* notes 96 to 108 and accompanying text.

**45** **Treas. Reg. §1.170A-1(h)(6)(ii)** .

**46** **Treas. Reg. §1.170A-13(f)(8)** .

**47** **Treas. Reg. §1.170A-1(h)(5)** .

**48** **Treas. Reg. §1.170A-13(f)(8)(i)(A)** ; **Revenue Procedure 92-49, 1992-1 C.B. 987** ; **Revenue Procedure 90-12, 1990-1 C.B. 471** .

**49** **Revenue Procedure 2021-45, §3.34, 2021-48 I.R.B. 764** .

**50** Department of the Treasury, Internal Revenue Service, *Deductibility, Substantiation, and*

*Disclosure of Certain Charitable Contributions, Good Faith Estimate*, 61 F.R. 65,946, 65,950 (December 16, 1996).

**51 Revenue Procedure 90-12, §4** , ex. 5, 1990-1 C.B. 471.

**52 Treas. Reg. §1.170A-13(f)(8)(i)(B)** ; IRS Publication 1771, *Charitable Contributions Substantiation and Disclosure Requirements*, at 4 (March 2016).

**53 Treas. Reg. §1.170A-13(f)(8)(ii)** , ex. 1; IRS Publication 1771, *Charitable Contributions Substantiation and Disclosure Requirements*, at 4 (March 2016).

**54 Treas. Reg. §1.170A-13(f)(9)(i)**

**55 Treas. Reg. §1.170A-1(h)(5)** .

**56 Treas. Reg. §1.170A-13(f)(9)(ii)** .

**57 Treas. Reg. §1.170A-13(f)(9)(iii)** .

**58 I.R.C. §170(f)(8)(B)(iii)** .

**59 Revenue Ruling 76-185, 1976-1 C.B. 60** .

**60** S. Rep. No. 103-36, 103rd Cong., 1st Sess. n. 11 (1993).

**61** *Id.*; see also *Hernandez v. Commissioner*, 490 U.S. 680 (1989) (tuition payments to parochial schools, which were made with the expectation of a substantial benefit, or quid pro quo, were not deductible charitable contributions); *Sklar v. Commissioner*, 549 F.3d 1252 (9th Cir. 2008) (court denied deduction for tuition and fees paid by parents to their children's Orthodox Jewish day schools), *cert. denied*, 558 U.S. 829 (2009).

**62 I.R.C. §170(f)(8)(C)** ; **Treas. Reg. §1.170A-13(f)(3)** ; see also *Durden v. Commissioner*, T.C. Memo. 2012-140 (court denied deduction due to donor's failure to timely obtain a contemporary written acknowledgement).

**63** Department of the Treasury, Internal Revenue Service, *Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions, Meaning of Contemporaneous*, 61 F.R. 65,946, 65,949

(December 16, 1996); *French v. Commissioner*, T.C. Memo. 2016-53.

**64** H.R. Conf. Rep. No. 103-213, at 67, 103rd Cong., 1st Sess. (1993).

**65** 2022 WL 2473369 (N.D. Tex. July 6, 2022).

**66** *Compare Humacid Co. v. Commissioner*, 42 T.C. 894 (1964) (controlling shareholder of a corporation contributed notes to three charitable foundations, and in the same month the corporation redeemed the notes; under assignment of income principles the shareholder did not realize income on the redemption; a donor does not realize income from a gift of appreciated property so long as he gives the property away absolutely and parts with title thereto before a sale of the property triggers income) *with Alkeny v. Commissioner*, T.C. Memo. 1987-247 (quitclaim deed, never recorded and purporting to convey to the Dunlap Baptist Church an equity interest in the donor's duplex house that he owned and rented was not executed until February 23, 1981, a full month after the donor had contracted to sell the property; at that point the donor had to convey the property to the purchaser and was entitled to the proceeds of the sale; the church took whatever interest it received under the quitclaim deed subject to the contract of sale and therefore the quitclaim deed was an anticipatory assignment of income that did not protect the donor from taxation on the full amount of the gain realized on the sale).

**67** The special rules reflect, at least in part, the special place that cars have in American society. See, e.g., Aretha Franklin, the Queen of Soul, *Freeway of Love*, Music and lyrics by Jeffrey Cohen & Narada Michael Walden, *on Who's Zoomin' Who?* (Arista 1985) (RIAA certified Platinum album) ("With the radio playin' our song, we keep rollin' on. Who knows how far a car can get before you think about slowin', slowin' down, yeah. City traffic's movin' way too slow, drop the pedal and go, go, come on now, go. We goin' ridin' on the freeway of love, wind's against our back. We goin' ridin' on the freeway of love in my pink Cadillac."); The Ides of March, *Vehicle*, Music and lyrics by Jim Peterik, *on Vehicle* (Warner Bros. 1970) ("Hey, well, I'm the friendly stranger in the black sedan. Woncha hop inside my car. I got pictures, I got candy, I'm a lovable man. And I can take you to the nearest star. I'm your vehicle, baby, I can take you anywhere you wanna go. I'm your vehicle woman, by that I'm sure you know.").

**68** I.R.C. §170(f)(12)(E) .

**69** I.R.C. §170(f)(12)(A)(ii) ; IRS Notice 2005-44, 2005-1 C.B. 1287 , §3.02(1).

**70** I.R.C. §170(f)(12)(A) ; IRS Notice 2005-44, 2005-1 C.B. 1287 , §3.02(2).



**71 I.R.C. §170(f)(12)(A)** and (F); **IRS Notice 2005-44, 2005-1 C.B. 1287** , §3.02(3).

**72 2005-1 C.B. 1287.**

**73 I.R.C. §170(f)(12)(B)(i)** .

**74 I.R.C. §170(f)(12)(B)(ii)** .

**75 I.R.C. §170(f)(12)(B)(iii)** ; **IRS Notice 2005-44, 2005-1 C.B. 1287** , §3.03(2).

**76 I.R.C. §170(f)(12)(B)(iv)** ; **IRS Notice 2005-44, 2005-1 C.B. 1287** , §3.03(3).

**77 I.R.C. §170(f)(12)(F)** ; **IRS Notice 2005-44, 2005-1 C.B. 1287** , §3.03(4).

**78 I.R.C. §170(f)(12)(B)(v)** .

**79 I.R.C. §170(f)(12)(B)(vi)** .

**80 IRS Notice 2006-1, 2006-1 C.B. 347** , §3.

**81 I.R.C. §170(f)(12)(C)** ; **IRS Notice 2005-44, 2005-1 C.B. 1287** , §3.03(2)-(4); *see also Izen v. Commissioner*, 38 F.4th 459 (5th Cir. 2022) (per curiam), petition for rehearing denied, No. 21-60679 (Sept. 30, 2022) (court denied charitable contribution deduction for contribution of Izen's 50% interest in an airplane to the Houston Aeronautical Heritage Society; Izen's Form 8283 was not a contemporaneous CWA since it was not signed by the Society until well past 30 days after the contribution).

**82 I.R.C. §170(f)(12)(A)(i)** ; *Izen v. Commissioner*, 38 F.4th 459 (5th Cir. 2022) (per curiam), petition for rehearing denied, No. 21-60679 (Sept. 30, 2022) (court denied charitable contribution deduction when a CWA was not attached to the return that included the deduction).

**83 I.R.C. §170(f)(12)(D)** .

**84 IRS Notice 2006-1, 2006-1 C.B. 347** , §§2-3.

**85 IRS Notice 2005-44, 2005-1 C.B. 1287** , §4.

**86** Instructions for IRS Form 8283, at 4 (December 2021).

**87** IRS Notice 2005-44, 2005-1 C.B. 1287 , §7.03.

**88** I.R.C. §6720(1) ; IRS Notice 2005-44, 2005-1 C.B. 1287 , §7.03.

**89** I.R.C. §6720(2) ; IRS Notice 2005-44, 2005-1 C.B. 1287 , §7.03.

**90** IRS Notice 2006-1, 2006-1 C.B. 347 , §6.

**91** 38 F.4th 459 (5th Cir. 2022) (per curiam), petition for rehearing denied, No. 21-60679 (Sept. 30, 2022).

**92** 100 T.C. 32 (1993).

**93** *Hewitt v. Commissioner*, 109 T.C. 258 (1997) (Tannenwald, J), *aff'd without opinion*, 166 F.3d 332 (4th Cir. 1998).

**94** *Smith v. Commissioner*, T.C. Memo. 2007-368, *aff'd*, 364 Fed. App'x 317 (9th Cir. 2009).

**95** See, e.g., *Chiarelli v. Commissioner*, T.C. Memo. 2021-27 ("Most often we have found substantial compliance in cases that involved procedural regulatory requirements where, despite a lack of strict compliance, the taxpayer substantially complied by fulfilling the essential statutory purpose." ); *Alli v. Commissioner*, T.C. Memo. 2014-15 (substantial compliance should not be liberally applied); *Mohamed v. Commissioner*, T.C. Memo. 2012-152 ("[T]he problems of misvalued property are so great that Congress was quite specific about what the charitably inclined have to do to defend their deductions;" court catalogued the cases in which the donor failed to show substantial compliance with the substantiation regulations).

**96** I.R.C. §6115 .

**97** I.R.C. §6115(b) .

**98** I.R.C. §6115(a)(1) . For the legal authorities in support of this rule, see *supra* note 40.

**99** I.R.C. §6115(a)(2) ; Treas. Reg. §1.6115-1(a) (definition of good faith estimate).

**100 I.R.C. §6115(a)** .

**101** IRS Publication 1771, *Charitable Contributions Substantiation and Disclosure Requirements*, at 6 (March 2016).

**102** *Id.*

**103 Treas. Reg. §1.6115-1(b)** .

**104** IRS Publication 1771, *Charitable Contributions Substantiation and Disclosure Requirements*, at 6 (March 2016).

**105 Treas. Reg. §1.6115-1(d)(1)** .

**106 Treas. Reg. §1.6115-1(d)(2)** .

**107 Treas. Reg. §1.6115-1(c)** . For the rules under Code Section 170(l), see *supra* note 37 and accompanying text.

**108 I.R.C. §6714** .

**109 Treas. Reg. §1.170A-15(h)** .

**110 Treas. Reg. §1.170A-16(g)** .

**111 Treas. Reg. §1.170A-17(c)** .

**112** Public Law 108-357, 118 Stat. 1418, 1631.

**113** Public Law 109-280, 120 Stat. 780, 1079-83.

**114 I.R.C. §170(f)(11)(F) ; Treas. Reg. §1.170A-16(f)(5)** .

**115 Treas. Reg. §1.170A-13(c)(7)(iii)** .

**116 Treas. Reg. §1.170A-13(f)(1)** .

**117** IRS Publication 526 *Charitable Contributions*, at 20 (2021).

**118 IRS Notice 2014-21, 2014-16 I.R.B. 938** , Q&A-1.

**119** Internal Revenue Service, "Frequently Asked Questions on Virtual Currency Transactions," Q&A-34 (available at <https://irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions>).

**120 I.R.C. §170(e)(1)(A)** ; *Jones v. Commissioner*, 560 F.3d 1196 (10th Cir. 2009); Internal Revenue Service, "Frequently Asked Questions on Virtual Currency Transactions," Q&A-35 (available at <https://irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions>).

**121 Treas. Reg. §1.170A-13(c)(7)(iii)** ; *see also Riether v. United States*, 919 F. Supp. 2d 1140 (D.N.M. 2012) (court denied deduction for donor's failure to obtain qualified appraisals; since two contributions were of similar items of property, medical equipment, the items in each contribution had to be aggregated; because the donor claimed the 2001 contribution had a value of \$639,195, and the 2003 contribution had a value of \$365,610, the donor had to obtain a qualified appraisal for each contribution); *Tilman v. United States*, 644 F. Supp. 2d 391 (S.D.N.Y. 2009) (court denied deduction for donor's failure to obtain a qualified appraisal; since contributions were of similar items of property, furniture, the items had to be aggregated; because the donor claimed the furniture had a value of \$11,995, the donor had to obtain a qualified appraisal); *Grainger v. Commissioner*, T.C. Memo. 2018-117 (court denied deduction for donor's failure to obtain a qualified appraisal; since contributions were of similar items of property, clothing, the items had to be aggregated; because the donor claimed the clothing had a value of \$34,401, the donor had to obtain a qualified appraisal).

**122** See Sanford J. Schlesinger & Andrew S. Auchincloss, "Review of Charitable Planning for Cryptocurrency," 49 *Estate Planning* 32, 34-35 (June 2022) ("Because virtual currency remains a relatively recent phenomenon, the necessary courses and appraisal designations are at least rare and hard to find, and possibly do not really exist yet," counsel should "interview with care any appraisers or appraisal companies claiming to have the necessary credentials. The appraisers should be asked why they believe they have sufficient credentials for issuing a qualified appraisal of virtual currency and also about any adverse events experienced by their clients with the Service on this question").

**123 Treas. Reg. §1.170A-16(f)(2)** .

**124 Treas. Reg. §1.170A-16(f)(4)(i)** .

**125** [Treas. Reg. §1.170A-16\(f\)\(4\)\(ii\)](#) .

**126** [I.R.C. §170\(f\)\(11\)\(C\)](#) and (F); [Treas. Reg. §§1.170A-13\(c\)\(3\)\(iv\)\(A\)](#) and [1.170A-17\(a\)\(7\)](#) .

**127** [Treas. Reg. §1.170A-13\(c\)\(7\)\(xi\)](#) .

**128** Instructions for IRS Form 8283, at 2 (December 2021).

**129** [Treas. Reg. §1.170A-13\(c\)\(7\)\(xi\)\(C\)\(1\)](#) .

**130** [I.R.C. §165\(g\)\(2\)](#) ; [Treas. Reg. §1.170A-13\(c\)\(7\)\(xi\)\(A\)](#) .

**131** [I.R.C. §170\(f\)\(11\)\(A\)\(ii\)\(II\)](#) .

**132** [I.R.C. §170\(f\)\(11\)\(B\)](#) .

**133** [I.R.C. §170\(f\)\(11\)\(C\)](#) .

**134** [I.R.C. §170\(f\)\(11\)\(D\)](#) .

**135** [I.R.C. §170\(f\)\(17\)](#) .

**136** [Treas. Reg. §1.170A-15\(b\)\(1\)](#) .

**137** [IRS Notice 2014-21](#), [2014-16 I.R.B. 938](#) , Q&A-1.

**138** [Treas. Reg. §1.170A-15\(a\)\(1\)](#) and (b)(2); IRS Publication 526 *Charitable Contributions*, at 20 (2021).

**139** [Treas. Reg. §1.170A-15\(a\)\(1\)](#) and (b)(3).

**140** [Treas. Reg. §1.170A-15\(a\)\(2\)](#) .

**141** [Treas. Reg. §1.170A-15\(c\)](#) .

**142 Treas. Reg. §1.170A-15(a)(3)** and (c).

**143 Treas. Reg. §1.170A-15(d)(1)** .

**144** Department of the Treasury, Internal Revenue Service, "Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions," Preamble to Final Regulations, 83 F.R. 36,417, 36,418 (July 30, 2018).

**145 Treas. Reg. §1.170A-16(a)(1)** .

**146 Treas. Reg. §1.170A-16(a)(2)** . For the rules on contributions of clothing or household items, see *infra* notes 166 to 171 and accompanying text.

**147 Treas. Reg. §1.170A-16(b)** .

**148 Treas. Reg. §1.170A-16(c)(1)** .

**149 Treas. Reg. §1.170A-16(c)(4)** .

**150 I.R.C. §170(f)(11)(B)** ; **Treas. Reg. §1.170A-16(c)(2)** .

**151 I.R.C. §170(f)(11)(B)** ; **Treas. Reg. §1.170A-16(c)(3)** .

**152 I.R.C. §170(f)(11)(C)** and (E); **Treas. Reg. §§1.170A-16(d)(1)(ii)** and **1.170A-17(a)(1)** and (b)(1); *see also* *Hewitt v. Commissioner*, 109 T.C. 258 (1997) (Tannenwald, J.) (court denied deduction when donor failed to obtain a qualified appraisal), *aff'd without opinion*, 166 F.3d 332 (4th Cir. 1998); *Ohde v. Commissioner*, T.C. Memo. 2017-137 (same); *Mohamed v. Commissioner*, T.C. Memo. 2012-152 (same); *Friedman v. Commissioner*, T.C. Memo. 2010-45 (same). *See also* *Campbell v. Commissioner*, T.C. Memo. 2020-41 (court denied charitable contribution deduction when donors contributed 3,432 new designer eyeglass frames, but appraisal valued 349,629 frames; the 349,629 frames valued varied in price between \$37 and \$80, yet the donors could not discern whether their 3,432 frames were from the low end of the price spectrum, the high end, or some varying combination); *Estate of Evenchik v. Commissioner*, T.C. Memo. 2013-34 (court denied charitable contribution deduction when individual shareholder contributed corporate stock to nonprofit housing corporation, but appraisal valued the two apartment buildings owned by the corporation whose stock was contributed); *Smith v. Commissioner*, T.C. Memo. 2007-368 (court denied charitable contribution deduction when donors contributed fractional interests in family limited partnership, but appraisal

valued the partnership's sole underlying asset).

**153 Treas. Reg. §1.170A-16(d)(1)** .

**154 Treas. Reg. §1.170A-17(a)(4)** ; see also *Mohamed v. Commissioner*, T.C. Memo. 2012-152 (appraisal performed after the due date of the donor's tax return was not a qualified appraisal); *Friedman v. Commissioner*, T.C. Memo. 2010-45 (appraisal performed more than 60 days before the date of contribution was not a qualified appraisal).

**155** Instructions for IRS Form 8283, at 5 (December 2021).

**156 Revenue Procedure 96-15, 1996-1 C.B. 627** ; IRS Form 8283, Section B, Part I (December 2021).

**157 Revenue Procedure 96-15, 1996-1 C.B. 627** . See generally IRS Publication 561 *Determining the Value of Donated Property* (January 2022).

**158 I.R.C. §170(f)(11)(A)(ii)(I)** ; **Treas. Reg. §1.170A-16(d)(2)** .

**159** See *Alli v. Commissioner*, T.C. Memo. 2014-15 (court denied charitable contribution deduction; Form 8283 did not include the appraiser's name, address, identifying number, and the appraiser declaration).

**160** See *Campbell v. Commissioner*, T.C. Memo. 2020-41 (court denied deduction when donors contributed 3,432 new designer eyeglass frames, but appraisal valued 349,629 frames and did not provide a description of the 3,432 frames).

**161** See *RERI Holdings I, LLC v. Commissioner*, 149 T.C. 1 (2017) (court denied charitable contribution deduction when the donor partnership did not provide the cost basis of contributed property on Form 8283), *aff'd sub nom. Blau v. Commissioner*, 924 F.3d 1261 (D.C. Cir. 2019); *Chiarelli v. Commissioner*, T.C. Memo. 2021-27 (court denied charitable contribution deduction when donor failed to provide the basis of each donated property; "For each item or group of items that exceeded the \$500 threshold, the Forms 8283 instructed petitioner, inter alia, to state the manner and approximate date of acquisition (month and year) and the cost basis or other basis. For each of the years at issue, rather than listing each item or group of items separately as instructed, petitioner provided a single aggregated line of information for all items donated. Rather than providing a month and year as instructed, petitioner wrote 'various' in the box provided for the date of acquisition. As to the manner of acquisition, on petitioner's Forms 8283 for 2012 and 2015, he wrote that the donated



property was acquired by purchase, but he testified that he inherited all of the donated property. Additionally, for each year at issue petitioner offered an aggregate basis in the donated property as a whole, without providing credible evidence as to his bases in individual items"). *Oakhill Woods, LLC v. Commissioner*, T.C. Memo. 2020-24 (court denied charitable contribution deduction when donor did not provide the cost or adjusted basis on Form 8283; "The requirement to disclose 'cost or adjusted basis' when that information is reasonably obtainable is necessary to facilitate the Commissioner's efficient identification of overvalued property. The cost of property typically corresponds to its FMV when the taxpayer acquired it. When a taxpayer claims a charitable contribution deduction for recently purchased property, a wide gap between cost basis and claimed value raises a red flag suggesting that the return merits examination. Unless the taxpayer complies with the regulatory requirement that he disclose his cost basis and the date and manner of acquiring the property, the Commissioner will be deprived of an essential tool that Congress intended him to have") (citations omitted); *Mohamed v. Commissioner*, T.C. Memo. 2012-152 (court denied charitable contribution deduction when donor did not provide basis in contributed properties on Form 8283); *Friedman v. Commissioner*, T.C. Memo. 2010-45 (court denied charitable contribution deduction when donors did not provide the manner of acquisition and the cost or adjusted basis on Form 8283). For the methods to track the cost basis of virtual currency on a tax lot basis, see Internal Revenue Service, "Frequently Asked Questions on Virtual Currency Transactions," Q&A-39 to 41 (available at <https://irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions>); Sanford J. Schlesinger & Andrew S. Auchincloss, "Review of Charitable Planning for Cryptocurrency," 49 *Estate Planning* 32, 36 (June 2022).

**162 Treas. Reg. §1.170A-16(d)(3) .**

**163 I.R.C. §170(f)(11)(D)- (E); Treas. Reg. §§1.170A-16(e) and 1.170A-17(a)(1) and (b)(1).**

**164 Treas. Reg. §1.170A-16(e)(1) .**

**165 Treas. Reg. §1.170A-16(d)(2) and (e)(2).**

**166 I.R.C. §170(f)(16)(A) ; Treas. Reg. §1.170A-18(a)(1) .**

**167** See generally Lewis Carroll, *Through the Looking-Glass* 205 (Macmillan 1934) ("When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean-neither more nor less." "The question is," said Alice, "whether you *can* make words mean so many different things." "The question is," said Humpty Dumpty, "which is to be master-that's all.").

**168 Treas. Reg. §1.170A-18(a)(2) .**

**169 I.R.C. §170(f)(16)(C) ; Treas. Reg. §§1.170A-16(d)(3) and 1.170A-18(b) .**

**170 I.R.C. §170(f)(16)(D)(i) ; Treas. Reg. §1.170A-18(c) .**

**171 I.R.C. §170(f)(16)(D)(ii) ; Treas. Reg. §1.170A-18(c) .**

**172 I.R.C. §170(a)(1) ; Treas. Reg. §1.170A-1(a) .**

**173 Treas. Reg. §1.170A-1(b) .**

**174 Treas. Reg. §1.170A-1(b) ; Estate of Spiegel v. Commissioner, 12 T.C. 524 (1949); Somes v. Commissioner, T.C. Memo. 1987-387.**

**175 Cf. Blank v. Commissioner, 76 T.C. (1981) (under I.R.C. §7502(a)- (b), delivery of petition for redetermination of a tax deficiency occurs on deposit into United States mail, and not with a private delivery service). This rule is different from the rule that filing of a tax return is deemed to occur on delivery to an IRS authorized private delivery service. I.R.C. §7502(f) .**

**176 Revenue Ruling 80-335, 1980-2 C.B. 170 .**

**177 IRS Publication 526 Charitable Contributions, at 14 (2021).**

**178 Revenue Ruling 78-38, 1978-1 C.B. 67 .**

**179** PLR 201027015; PLR 200228001; *see also Londen v. Commissioner, 45 T.C. 106 (1965)* (delivery to a third-party for subsequent delivery to a charitable organization does not satisfy the requirement for delivery to the charitable organization). *Cf. United States v. American Bar Endowment, 477 U.S. 105 (1986)* (membership organization maintained a group insurance program for its members; every year excess insurance premiums paid by the members were refunded to the organization; the excess was known as dividends, and as a condition of participating in the program, members were required to assign their rights to the dividends to the organization; organization used the dividends to fund charitable grants; court held that the assignments were not voluntary and denied the members a charitable contribution deduction).

**180 Treas. Reg. §1.170A-1(b) .**

**181** *Id.*; see also *Ferguson v. Commissioner*, 174 F.3d 997 (9th Cir. 1999) (donor's broker was not acting as the charities' agent; contribution was not made until completion of transfer of stock to charities' accounts); *Londen v. Commissioner*, 45 T.C. 106 (1965) (donor's instruction to his own bank or broker to transfer a stock certificate to a charitable donee was insufficient to be a contribution; the transfer must actually take place); *Morrison v. Commissioner*, T.C. Memo. 1987-112 (on February 12 donor instructed her broker to transfer stock held in her brokerage account to a church; on the same day the church directed the broker to sell the stock; the sale was completed on February 20 but the transfer did not occur until February 25; court held that donor had to value the stock as of the February 25 transfer date; had the donor held the stock in her own name and retained possession of it, the date of delivery would have been the date the donor endorsed the certificates to the church and either delivered or mailed the certificates to the church).

**182** I.R.C. §170(f)(3) ; Treas. Reg. §1.170A-7(b) ; Revenue Ruling 81-282, 1981-2 C.B. 78 .

**183** *Guest v. Commissioner*, 77 T.C. 9 (1981), *acq.*, 1982 WL 600363 (Dec. 31, 1982).

**184** See *Greer v. Commissioner*, 70 T.C. 294 (1978) (failed attempts to deliver J. Gould bird prints to university before December 31 during the time it was closed for the holidays), *aff'd*, 634 F.2d 1044 (1980); *Murphy v. Commissioner*, T.C. Memo. 1991-276 (large rock sculpture of John Wayne kept in storage due to lack of space), *rev'd as to assessment of penalties on taxpayer*, 8 F.3d 28 (9th Cir. 1993) (unpublished opinion).

**185** I.R.C. §170(f)(3) ; Treas. Reg. §1.170A-7(b) ; see also Jere Doyle, "Tax and Estate Planning for Charitable Gifts of Art and Other Collectibles," 47 *Estate Planning* 19, 25 (November 2020).

**186** *Johnson v. United States*, 280 F. Supp. 412 (N.D.N.Y. 1967); *Guest v. Commissioner*, 77 T.C. 9 (1981), *acq.*, 1982 WL 600363 (Dec. 31, 1982); *Oughton v. Commissioner*, T.C. Memo. 1994-84; PLR 8901004.

**187** Revenue Ruling 75-348, 1975-2 C.B. 75 ; PLR 200241044 (donor receives a deduction for amounts contributed to a charity in satisfaction of a pledge in the year of payment; if donor defaults on pledge and charity holds collateral securing the pledge, donor receives the deduction when the charity becomes entitled to transfer the collateral to itself).