



COMMITTEE REPORT: PHILANTHROPY

By **Conrad Teitell**, **Stefania L. Bartlett** & **Cara Howe Santoro**

Charitable Deductions for Gifts by Individuals, Partnerships and Corporations

A primer on a plethora of philanthropic provisions

Do you know a philanthropist when you see one?

A lawyer agreed to pay an artist \$10,000 to paint the lawyer's portrait. When the portrait was delivered, the lawyer told the artist, "That's the ugliest thing I've ever seen. It looks nothing like me."

"Well, you don't have to pay for it," the artist told him. The artist took the portrait, and they parted ways.

The artist then displayed the portrait nationwide with a plaque reading, "The Thief."

The lawyer threatened to sue the artist for libel. The artist countered that he was only an artist and didn't know anything about the law, but it seemed to him that his defense would be the lawyer's statement that the portrait looked nothing like him.

They worked things out. The portrait was retitled, "The Philanthropist," and the lawyer paid the artist \$50,000.

Motives for Giving

Our clients make charitable gifts mainly to benefit worthy causes. Sometimes other factors are also in play: to gain or maintain social standing, promote business, make contacts—and to get income tax charitable deductions.

And, for the few lucky devils still subject to the federal estate tax, there's an unlimited estate tax charitable deduction.

Note the contribution deduction is last on our list of motives for making charitable gifts. It reduces the cost of generosity, but a donor is ahead financially by keeping his money and assets. The cost of generosity is reduced by the income and estate tax charitable deductions. In many cases, the reduced cost of generosity enables donors to contribute more than originally imagined.

The out-of-pocket cost of generosity for lifetime gifts is further reduced by avoidance of capital gains taxes on contributions of appreciated property. Further, donors who create life income charitable gifts get lifetime income, income tax savings and avoidance or reduction of capital gains taxes on changing investments.

Counterpoint. Some "donors," without an ounce of generosity in their hearts, try to make money on their charitable gifts by grossly overvaluing the contributed property—for example, giving conservation easements as part of a syndicated conservation scheme.¹ But, that's a topic for another time.

Gifts by Individuals: Overview

A number of rules govern the amount deemed contributed—and of that amount, how much is deductible. To determine the amount deductible, the donor's contribution base comes into play.

The contribution base is the donor's adjusted gross income (AGI) without regard to any net operating loss carryback to the taxable year.² Only itemizers may deduct their charitable gifts.³

The income tax charitable deduction is subject to limitations of 60 percent, 50 percent, 30 percent or 20 percent of the donor's AGI—depending on the classification of donee-recipient, the amount contributed, the assets contributed and any elections made by the donor.

From left to right: **Conrad Teitell** is chairman of the National Charitable Planning Group, **Stefania L. Bartlett** and **Cara Howe Santoro** are members of the National Charitable Planning Group, all in the Stamford,

Conn. office of Cummings & Lockwood LLC





Almost always, the benefits are greater for gifts to public charities (PCs) than for gifts to private foundations (PFs). For the definition of a PC, see “What Are Public Charities?” p. 35.

Gifts by Individuals to PCs

Cash gifts. The amount contributed is, of course, the cash on the barrelhead.⁴ Cash includes checks, credit cards, debit cards and wire transfers.⁵

Increased 60 percent of AGI ceiling. The AGI deductibility ceiling for cash gifts is increased from 50 percent to 60 percent starting this year⁶—with a 60 percent AGI 5-year carryover for any “excess.”⁷

For securities with an FMV below the donor’s basis, consider selling the stock to take advantage of the capital loss.

Fly in the ointment.⁸ The American Institute of Certified Public Accountants (AICPA) recommends Congress provide a technical correction to Internal Revenue Code Section 170(b)(1)(G)(iii) as changed by the Tax Cuts and Jobs Act of 2017 (the Act) Section 11023 for the 60 percent of AGI charitable deduction limitation to function as intended.⁹

Not everyone agrees with the AICPA’s interpretation, including Gordon Clay, the Legislation Counsel on the Joint Committee on Taxation.¹⁰

Gifts of long-term (held more than one year) appreciated securities and real estate. The income tax deduction is limited to 30 percent of the donor’s AGI¹¹ with a 5-year carryover for any excess.¹² The donor may, however, make an irrevocable election to limit his deduction to the tax basis of the donated property. The income tax deduction is then increased to 50 percent of his AGI with a 5-year 50 percent of AGI carryover.¹³

This election may be valuable if: the donor is in a much higher tax bracket in the year of the gift than he would be in carryover years; the donor’s health or age would make the carryover less valuable; or the

appreciation is small.

The election applies to all long-term appreciated property donated in the year in which the election is made¹⁴ and contributions carried over from previous years;¹⁵ the election can’t be made on an amended return;¹⁶ and it can’t be revoked.¹⁷ So, be careful before making the election.

Your client won’t thank you but his heirs will. The 30 percent to 50 percent election should be made by the executor on a decedent’s final income tax return. Why? The carryover is lost on death; it’s a carryover, not a carryunder.

Gifts of long-term appreciated securities and real estate give a double tax benefit. For example, a donor owning long-term appreciated stock could sell it, pay capital gains tax on the appreciation and donate the net proceeds to the charity. Alternatively, he could contribute the stock to the charity and get a charitable deduction for the stock’s full fair market value (FMV) (subject to the ceiling limitations discussed above). He avoids capital gains tax on the appreciation. Charities—being tax-exempt—pay no capital gains tax if they sell the gifted stock. This also applies for long-term appreciated artwork and other “collectibles” when the property’s use is “related” to the charity’s exempt function. The charity must use the property for the donor to get an FMV deduction.

Contributions of tangible personal property held long-term (artworks, antiques, collectibles, books). The value of the contribution depends on whether the donee’s use of the property is related to its exempt purpose. It’s related when the charity uses the gift in a manner “consistent with its exempt purpose.”¹⁸

For related use gifts, the deduction is the full FMV with a limit of 30 percent of the donor’s AGI and a 5-year 30 percent carryover for any “excess.” The donor has the option of making the 50 percent election discussed above.¹⁹ If the use is unrelated, the deduction is limited to the cost basis. But, the ceiling on deductibility is then 50 percent of the donor’s AGI with a 5-year carryover for any “excess.”²⁰

For example, a donor contributes a first edition book to a public charity with a \$5,000 basis, now valued at \$10,000.²¹ The book is made available to the public. The donor has a \$10,000 charitable deduction (limited to 30 percent of the donor’s AGI with a 5-year carryover). If instead, the first edition is contributed to a homeless



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shelter and is sold by the organization to purchase supplies, the donor would receive a \$5,000 charitable deduction (limited to 50 percent of the donor's AGI with a 5-year carryover).

Suppose the shelter keeps a donated painting and displays it for the benefit of its clients. It could be a "related use" gift.²²

Securities, real estate and tangible personal property held short-term (one year or less). The value of the contribution is the lesser of FMV or cost basis,²³ and the income tax deduction is 50 percent of the donor's AGI with a 5-year carryover.²⁴ The results are the same when ordinary income property is contributed (that is, property that generates ordinary income when it's sold, such as inventory or crops), but see some exceptions later.


Pointer: For securities with an FMV below the donor's basis, consider selling the stock to take advantage of the capital loss. Then donate the proceeds—rather than donating the security and deducting the lower

FMV of the gone-down-in-value securities.

Qualified conservation contributions—an entire interest in property, a remainder interest or an easement restricting the use of the property in perpetuity. Conservation purposes include: (1) preserving land for outdoor recreational use by, or education of, the general public; (2) protecting relatively natural habitats of fish, wildlife or plants; (3) preserving open space (including farmland or forest space) for scenic enjoyment of the general public or under a governmental conservation policy yielding significant public benefit; and (4) preserving a historically important land area or certified historic structure.²⁵

The easement allows the donor to retain the property's ownership but subject to a perpetual easement for a public use or benefit. The easement has value, and that's the charitable contribution. An easement meeting the requirements of IRC Section 170(h) entitles the donor to a deduction equal to the FMV of the easement's value,

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limited to 50 percent of a donor's AGI with a 15-year carryover.²⁶ Yes, 15 years. That's not a typo. To qualify, the donor's covenant granting the easement must obligate the donor, and subsequent purchasers, to preserve the underlying building or land.

No deduction out of thin air. The Tax Court has held that a conservation easement of air space over a historic structure that was donated to a non-profit organization didn't meet the qualified conservation easement requirements. The donor's covenant granting the easement didn't oblige the donor or subsequent purchasers to preserve the underlying building or land.²⁷

Historic buildings already subject to local ordinances

Income interests in property, whether or not in trust, are deemed "for the use of" charity and subject to the same charitable income tax deduction limitations as gifts to PFs.

restricting the owner from modifying the structure. The IRS isn't wearing blinders and has seen much abuse of qualified conservation easements. It carefully scrutinizes these transactions.²⁸

Documentation. Proper documentation is crucial to get a deduction. That includes a qualified appraisal meeting numerous requirements, a Form 8283 signed by the appraiser and the recipient charity and photographs of the property. The easement deed must also substantiate the contribution deduction by including the appropriate conservation restrictions.²⁹

Special benefits for qualified farmers and ranchers. The conservation easement benefits are even greater—100 percent of AGI ceiling with a 15-year carryover.³⁰ To be a qualified farmer or rancher, the donor's gross income from the trade or business of farming must be greater than 50 percent of his gross taxable income.³¹ In addition, the contribution must be subject to a restriction

that the property remains available for production.³²

*Oh the farmer and the cowman should be friends.*³³ Why these special benefits for farmers and ranchers? When these provisions for farmers and ranchers were enacted, Max Baucus (D-Mont.) and Charles Grassley (R-Iowa) were chairman and ranking member, respectively, of the Senate Finance Committee.

Gifts "For the Use of" PCs

Income interests in property, whether or not in trust, are deemed "for the use of" charity and subject to the same charitable income tax deduction limitations as gifts to PFs (below). And, that's less favorable.³⁴ Legislative history suggests that by "for the use of" charity Congress meant "in trust for."³⁵ As Justice Felix Frankfurter wrote in *Greenwood v. United States*, "But this is a case for applying the canon of construction of the wag who said, when the legislative history is doubtful, go to the statute."³⁶

For example, a charitable lead trust (CLT) gift is an income interest in property "for the use of" the donee. But, a charitable deduction is allowable only if the CLT is deemed a grantor trust—the donor is taxable on the payments made to the charity.³⁷

Gifts to Private Operating Foundations Organizations that make qualifying distributions directly for the active conduct of its exempt purposes, or private operating foundations (POFs), qualify for the ceiling on deductibility up to 30 percent or 50 percent—depending on the type of gift—of the donor's AGI with a 5-year carryover for any "excess."³⁸

Gifts to PFs

(Note: This section doesn't apply to gifts to POFs and pass-through foundations).

The tax benefits are less favorable than those for gifts to PCs.

Cash, ordinary income and short-term property gifts. The charitable income tax deduction is limited to the property's cost basis³⁹ up to 30 percent of a donor's AGI.⁴⁰

Long-term appreciated securities and real estate. The charitable deduction is limited to the property's cost basis.⁴¹ The deductibility ceiling is 20 percent of a donor's AGI⁴² with a 5-year carryover.⁴³

Special rule for some contributions of publicly



What Are **Public** Charities?

IRC Section 170(b)(1)(A) provides a definition

These organizations described in Internal Revenue Code Section 170(b)(1)(A) are commonly referred to as “public charities”:

- Churches or conventions or association of churches
- Educational organizations typically maintaining a regular facility and curriculum and typically having regularly enrolled students in attendance at the place where the educational activities are regularly carried on
- Hospitals providing medical care, medical education or medical research or medical research organizations directly engaged in the continuous active conduct of medical research in conjunction with hospitals
- Organizations operated exclusively to receive, hold, invest and administer property and to make expenditures to or for the benefit of colleges or universities
- Governmental units
- Publicly supported organizations satisfying one of the following tests:
 - *33 1/2 percent test*: organizations that typically receive at least 33 1/2 percent of total support from the general public or governmental units (based on a 5-year computation period)
 - *Facts and circumstances test*: organizations that are in the nature of publicly supported organizations that establish by all *facts and circumstances*¹ that they typically receive a substantial part (at least 10 percent) of total support from the general public or governmental units
- Private operating foundations (POFs) spending at least 85 percent of their adjusted net income or minimum investment return, whichever

is less, directly for the active conduct of their exempt activities and meeting one of the following tests:

- *Assets test*: at least 65 percent of the POF's assets are devoted to the active conduct of exempt activities
- *Endowment test*: at least 2/3 of minimum investment return is used for the active conduct of exempt activities
- *Support test*: at least 85 percent support is typically received from the general public and five or more unrelated exempt organizations, not more than 25 percent of support is typically received from any one exempt organization and not more than 50 percent of its support is typically received from gross investment income
- Private non-operating foundations that distribute 100 percent of their contributions to public charities no later than three and one half months after the close of their taxable year (also known as pass-through or conduit private foundations)

What's a private foundation? Simple. A charitable organization not qualifying as a public charity described above.² A private foundation has also been described as a large body of money surrounded by those who want some.

Endnotes

1. At law school graduations, the graduates march in to Elgar's *Facts and Circumstances*.
2. Internal Revenue Code Section 509(a).

— *Conrad Teitell, Stefania L. Bartlett and Cara Howe Santoro*

traded long-term appreciated securities to PFs. A full FMV deduction is allowable if the security falls within the definition of a qualified security, that is: (1) the security is listed on the New York Stock Exchange, the American Stock Exchange or any city or regional exchange in which quotations are published daily;⁴⁴ (2) the security is regularly traded in the national or regional market, and quotations are published;⁴⁵ or (3) it's a mutual fund for which quotations are published daily in a newspaper.⁴⁶ But, the deductibility ceiling is 20 percent, not 30 percent, of AGI.⁴⁷

Pitfall alert. A stock could fail to meet the definition

of a qualified security if there are restrictions on the sale of the stock under Securities Exchange Commission (SEC) Rule 144 of the federal securities law.⁴⁸ The charitable deduction is then limited to the cost basis. If the stock is subject to SEC Rule 145(e) and can be sold under that rule, a full FMV deduction is allowable. The deductibility ceiling, however, is 20 percent of AGI with a 5-year carryover.⁴⁹

Finally, a donor should keep track of the stock he and his family are currently giving and have given to a PF. For a full FMV deduction to be allowed, the donor's contribution, along with his prior contributions of the same



stock and his family's contributions of the same stock, can't exceed 10 percent of the value of the corporation's outstanding stock.⁵⁰

Gifts to Pass-through Foundations

These foundations serve as intermediaries—a donor makes a gift to his PF, and in turn, the PF makes outright grants to PCs. If the PF, within three and a half months following the year of receipt, makes qualifying distributions equal to all contributions (that is, cash, long-term securities, real estate and tangible personal property) received during the tax year, along with 100 percent of

The charitable deduction for gifts by an S corp—a pass-through entity—flows through to the shareholders based on each shareholder's proportionate S corp ownership.

its current year income and prior undistributed income to PCs (churches, schools, hospitals, POFs), a full FMV deduction is allowable.⁵¹ To qualify for this special rule, the required distributions must be treated as principal distributions.⁵² The AGI ceiling limitations are the same as for PCs.⁵³

Carryover Rules

The carryover rules are detailed and complicated. Here are some highlights:

- A donor must claim charitable contributions for the current year before using carryover amounts.⁵⁴
- Current year and carryover charitable deductions combined are limited to the applicable AGI percentage limit.⁵⁵
- Gifts made in the current year must be deducted first so if a donor gives up to his maximum AGI ceiling

each year, he could lose all prior carryovers.⁵⁶

- A donor claiming a standard deduction in any year must reduce any carryover for that year as if he itemized and claimed the full allowable charitable deduction.⁵⁷
- A carryover can be used on a decedent's final income tax return,⁵⁸ but it can't be bequeathed or inherited.⁵⁹
- For spouses who divorce or switch to married filing separately status, the carryover is reallocated as if the spouses had filed separate tax returns for the year in which the carryover occurred, and the carryover is reallocated based on the ratio of each spouse's contribution.⁶⁰
- The percentage limitations and carryover periods may overlap if a donor contributes different types of property to different charitable organizations in the same year.⁶¹
- The total maximum amount a donor could claim as a charitable deduction has been 50 percent of his AGI regardless of the property contributed and the charitable recipient. Note, however, the 60 percent AGI ceiling for cash gifts starting this year. But, also note the caution about the 60 percent ceiling pointed out by AICPA (above). And, note the 100 percent of AGI for easement gifts by ranchers and farmers.
- Contributions to public charities are considered first before contributions to other charitable organizations, and contributions subject to the 20 percent limitation are considered last.⁶²

Gifts by Business Entities

Corporations, partnerships and other business entities also make tax deductible charitable gifts.

To make life interesting, here are a slew of differing rules.

C corporations (C corps). The rules about holding periods and related use are the same as for gifts by individuals. But, corporate charitable contributions have a 10 percent of "contribution base ceiling." A corporation's contribution base means the corporation's taxable income without regard to charitable deductions, net operating loss carryback (under IRC Section 172), deductions for certain trade corporations (under IRC Section 922) or capital loss carrybacks (under IRC Section 1212).

From now on, we'll call this the "taxable income



expect to realize its usual selling price for perishable products with imminent expiration dates.⁶⁹ However, exceptions apply. For example, in *Lucky Stores, Inc. v. Commissioner*,⁷⁰ a bakery regularly sold its 4-day old bread in its stores at the full retail price. It donated unsold 4-day old bread to food banks and claimed a charitable deduction based on the FMV price. The IRS agreed that the bakery qualified for a deduction, but disputed the valuation. The IRS argued that the bread was surplus inventory that could only be sold at a discount. The Tax Court found that since the bakery only sold the bread at retail, its usual market was its retail customers and thus the FMV of the bread when donated was its retail price. The court found this wouldn't apply to items that couldn't be sold beyond a certain date, such as pharmaceuticals.

S corps. The charitable deduction for gifts by an S corp—a pass-through entity—flows through to the shareholders based on each shareholder's proportionate S corp ownership. For example, a 50 percent shareholder can deduct 50 percent of the S corp's gift (subject to limitations). The charitable deduction reduces the shareholder's income tax basis in his stock by the tax basis of the asset contributed by the S corp to the charity.⁷¹ As a result, the shareholder can deduct up to the value of his basis in his stock, subject to the individual AGI limitations discussed earlier. The Protecting Americans From Tax Hikes Act of 2015 permanently gives parity to the basis reduction rules applicable to S corps and partnerships.⁷²

Gift of S corp stock vs. S corp assets. Shareholders might consider giving either the S corp stock or its assets to a charity, with the hope of receiving a deduction for the appreciated property donated. When a shareholder gives S corp stock to a charity, the shareholder is subject to the individual limitations outlined above.

Caution. If a charity holds S corp stock, any gains from the sale of that stock or income derived from ownership is unrelated business income (UBI) and taxable to the charity. That often makes S corp stock an unattractive gift for charities. PCs may choose to liquidate donated shares of S corp stock (or refuse a gift of S corp stock). Note that only certain exempt organizations are permitted as shareholders of S corp stock.⁷³ Only those organizations described in IRC Section 401(a) (qualified pension, profit-sharing and stock bonus plans)

or IRC Section 501(c)(3) and exempt from taxation under Section 501(a) are permitted shareholders. Other entities that don't meet these requirements that are or become shareholders of an S corp could cause the S corp election to terminate.

Gifts by C corps and S corps to a PF. Consider the excess business holdings rules. The PF may have to dispose of the stock within five years of receipt or sooner.⁷⁴ Alternatively, S corps may donate their assets to a charity, and the charitable deduction that would pass through to the corporation's shareholders would be either the FMV of the property or limited to the property's basis, depending on the nature of the property, as outlined above. A C corp that donates assets to charity would receive a charitable deduction against its income at the entity level, subject to the 10 percent limitation outlined above.

Warning: An S corp donating all or substantially all its assets to charity will be treated as if it sold its assets to an unrelated third-party buyer and donated the cash to the charity.⁷⁵ This rule also applies to the donation of C corp assets or stock, but typically doesn't apply to the donation of S corp stock because that stock would generate UBI tax.⁷⁶

Gifts by partnerships—and limited liability companies (LLCs) taxed as partnerships. These gifts aren't deductible at the entity level. Rather, each shareholder gets a pro rata share of the deduction to be taken on his personal income tax return and subject to his own personal deductibility limits, similar to the charitable deduction for S corps. For example, a partnership that consists of two equal partners gives \$10,000 to a qualified charity. Each partner will ultimately receive a charitable deduction of \$5,000 to be taken on his personal income tax return—and subject to the individual AGI limitations outlined earlier.

A partner (or member of an LLC) who gives his partnership interest in unrealized receivables and inventory can trigger income recognition. Charities can be taxed on earnings from the donated partnership interest if the partnership generates debt-financed income and income from ordinary regularly carried on trade or business that could result in the charity recognizing UBI.⁷⁷ Charities holding interests in C corps don't have this concern because income from the corporation is in the form of dividends. And, that isn't UBI.

The Saga of Another Philanthropist

We started with a tale of one philanthropist and now for the saga of another:

A fellow had just moved to a new community. He joined the local church.

After contributing \$100 to the church's building fund, he was astonished to see his name in the local newspaper along with those who contributed \$10,000.

Being an honest guy, he called the minister and told him he'd only contributed \$100.


The minister said the error would be remedied by the church's printing a correction in the newspaper.

He didn't want that embarrassment—so he came up with another \$9,900.

All who contributed \$10,000 could choose a passage from the Bible to be placed below a new stained-glass window.

Our hero chose: "I was a stranger and you took me in."

—Matthew 25:35

Final thought. Americans also contribute the most precious asset of all—their time as volunteers. And, that ain't deductible. 

Endnotes

1. Internal Revenue Service Notice 2017-10.
2. Internal Revenue Code Section 170(b)(1)(H).
3. Taxpayers generally have a choice whether to itemize deductions or take a standard deduction, which is a fixed dollar amount based on filing status. Prior to 2018, the charitable deduction, along with certain other itemized deductions, was subject to a 3 percent limitation, known as the "Pease limitation." The Pease limitation was temporarily repealed by the Tax Cuts and Jobs Act of 2017 until 2026. IRC Section 68(a).
4. This term originated in the days when upended barrels served as tables in bars. Customers were required to pay for their drinks immediately, putting their money on the top (head) of a barrel. And, good chaps, if you were in England, it would be cash on the nail. But you would, of course, pay in the currency of that realm. In the good old U. S. of A., you pay in greenbacks. That's a U.S. legal tender note printed in green on the back since the U.S. Civil War.
5. Gifts made by check are deductible when the check is mailed or is unconditionally delivered to the donee-recipient. Treasury Regulations

Section 1-170A-1(b). A gift by a credit card is deemed made as of the date the charge is made to the card. Revenue Ruling 80-335. For gifts a donor directs out of his bank account, the gift is deemed made as of the date the bank mails, transfers or delivers the funds to the recipient. Rev. Rul. 80-335.

6. IRC Section 170(b)(1)(G)(i).
7. Section 170(b)(1)(G)(ii).
8. Dead flies cause the ointment of the apothecary to send forth a stinking savour. Ecclesiastes 10:1, *King James Version*.
9. The American Institute of Certified Public Accountants (AICPA), in a letter to Congress dated Feb. 22, 2018, set forth its recommendation:

We recommend that Congress replace the statutory provision with the language below:

Notwithstanding subparagraphs (A)-(F), a taxpayer may deduct a cash contribution to an organization described in subparagraph A up to 10 percent of their adjusted gross income (AGI) in addition to any amount allowed in the current year (or under a carryover) under this subsection. Any amount contributed to an organization under this paragraph in excess of the 10 percent described in the preceding sentence shall be treated as a carryover paid in each of the five succeeding years in order of time.

The current statutory language in the Tax Cuts and Jobs Act (the Act) reduces the allowed charitable deduction if assets other than cash are donated. This reduction results in a total percentage of 50 percent, rather than 60 percent of AGI. This reduction is the result even if one dollar of non-cash assets is donated (such as securities).

This change would confirm Congress' intent to allow for the increased 60 percent of AGI limitation, assuming the additional amount is in cash (for example, 30 percent appreciated securities and 30 percent cash). Currently under the Act, the taxpayer can only receive the increased 60 percent of AGI limitation if the entire donation is in cash.

10. The June 18, 2018 remarks of Gordon Clay, Legislation Counsel, Joint Committee on Taxation, as delivered to attendees of the AICPA Not-for-Profit Industry Conference and as moderated by Alex Reid of Morgan, Lewis & Bockius, Washington, D.C., provide that the rumor that a gift of \$1 of property would make the 60 percent limit unavailable isn't correct based on the coordination rule of the new statutory provision. Clay provided the following example:

For example, if a taxpayer has a contribution base or AGI of 100, so your 50 percent limit is 50, your 30 percent limit is 30, and your new 60 percent limit is 60, and assume the taxpayer gave contributions of cash to a public charity of \$30 and gave another \$30 worth of ordinary income property to a public charity, so you have \$60 in contributions.



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How much is the deduction? The cash contribution under this new rule, section 170(b)(1)(G), is \$30, your \$30 of cash given to the public charity. So how much of the \$30 of ordinary income property can you take under section 170(b)(1)(A)? That's normally a 50 percent limit but this coordination rule says that for the \$30 of cash you've taken under the new rule, you have to reduce that 50 percent limit dollar for dollar, so it's reduced from 50 to 20. So of your other \$30 in ordinary income property in my example, you're limited to \$20 for a total deduction of \$50. You've given \$60, but you're still only able to deduct \$50 under the provision by reason of this coordination rule. Essentially the way it operates, to get a deduction in excess of 50 percent of your contribution base, you have to have given more than 50 percent in cash.

11. Section 170(b)(1)(C)(i).
12. Section 170(b)(1)(C)(ii).
13. Section 170(b)(1)(C)(iii).
14. *Ibid.*
15. *Ibid.*
16. Rev. Rul. 77-217.
17. *Grynberg v. Comm'r*, 83 T.C. 255 (1984); *Woodbury v. Comm'r*, 900 F.2d 1457 (1990).
18. Section 170(e)(1)(B)(i).
19. *Ibid.*
20. *Ibid.*
21. For donations of noncash items worth more than \$5,000, a qualified appraisal must be obtained from a qualified appraiser. Section 170(f)(1)(C).
22. For example, the IRS found that a painting given to a retirement center to be displayed in its facilities was a related use gift because it related to the center's exempt function of providing care for the residents by stimulating artistic creativity and having therapeutic value. Private Letter Ruling 8347062 (Aug. 23, 1983).
23. Section 170(e)(1)(A).
24. Section 170(e)(1)(C)(iii)(I).
25. Section 170(h)(4)(A).
26. Section 170(b)(1)(E).
27. T.C. Memo 2009-205.
28. Notice 2004-41.
29. Treas. Regs. Section 1.170A-14 and Instructions to Form 8283.
30. Section 170(b)(1)(E)(iv)(I).
31. Section 170(b)(1)(E)(v).
32. Section 170(b)(1)(E)(iv)(II).
33. The "Farmer and the Cowman" is a song composed by Richard Rogers and with lyrics by Oscar Hammerstein II for their musical *Oklahoma*.
34. Treas. Regs. Section 1.170 A-8(a)(2).
35. *Rockefeller v. Comm'r*, 676 F.2d 35 (2d Cir. 1982) and Rev. Rul. 84-61.
36. *Greenwood v. United States*, 350 U.S. 366, 374 (1956).
37. Section 170(f)(2)(B).
38. Section 170(b)(1)(A)(vii) and Section 170(b)(1)(F)(i). To qualify as a private operating foundation, an organization must meet an income test and one of three alternative tests—assets test, endowment test or support test. IRC Section 4942(j)(3)(B).
39. Section 170(e)(1)(A).
40. Section 170(b)(1)(B).
41. Section 170(e)(1)(B)(ii).
42. Section 170(b)(1)(D)(i).
43. Section 170(b)(1)(D)(ii).
44. Treas. Regs. Section 1.170A-13(c)(7)(xi)(A)(1).
45. Treas. Regs. Section 1.170A-13(c)(7)(xi)(A)(2).
46. Treas. Regs. Section 1.170A-13(c)(7)(xi)(A)(3).
47. Section 170(b)(1)(D)(i).
48. Securities and Exchange Commission Rule 144 allows the resale of restricted securities and control securities to the public only if a number of conditions are met.
49. Section 170(b)(1)(D)(i).
50. Section 170(e)(5)(C)(i).
51. Section 170(b)(1)(F)(ii) and Treas. Regs. Section 1.170A-9(h)(1)(ii).
52. Section 170(b)(1)(F)(ii).
53. Section 170(b)(1)(A)(vii) and Section 170(b)(1)(F)(ii).
54. Section 170(d)(1) and Treas. Regs. Section 1.170A-10.
55. Treas. Regs. Section 1.170A-10.
56. Section 170(d)(1).
57. Treas. Regs. Section 1.170A-10(a)(2).
58. Treas. Regs. Section 1.170A-10(d)(4)(iii).
59. Section 1.170A-10(d)(4)(iii) and T.C. Memo. 1997-293.
60. Treas. Regs. Section 1.170A-10(d)(4)(i).
61. Treas. Regs. Section 1.170A-10.
62. Section 170(b)(1)(d)(i).
63. Technical Advice Memorandum 7802001 (Sept. 20, 1977).
64. Treas. Regs. Section 1.170A-11(b)(2).
65. Section 170(e)(3).
66. Treas. Regs. Section 1.170A-4A(b)(2)(ii)(F).
67. Sections 170(e)(3) and 170(f)(4).
68. Section 170(e)(3)(C).
69. Rev. Rul. 85-8.
70. *Lucky Stores, Inc. v. Comm'r*, 105 T.C. 420 (1995).
71. Section 1367(a)(2)(E).
72. P.L. 114-113, Section 115.
73. IRC Section 1361(c)(6).
74. IRC Section 4945.
75. IRC Section 337(d) and Treas. Regs. Section 1.337(d)-4.
76. Treas. Regs. Section 1.337(d)-4.
77. IRC Sections 512(b)(4), 512(a) and 511.