

MORE ON CHARITABLE GIVING AND DONATION APPRAISALS

Please read and file the following Q&A pertaining to charitable donations of personal property and related appraisal issues. The Q&A listed below are targeted specifically to eliminate some appraisers' confusion regarding donation appraisals. The Q&A were developed by PP Education Chairwoman Sandra Tropper, ASA, who leads ASA's team of POV and USPAP instructors. Anyone with additional questions may contact Sandie at sjtropper@aol.com.

Q: Do donors have to submit an appraisal with their tax return if the Fair Market Value of their non-cash charitable contribution is \$20,000 or more? Or is that amount now \$50,000?

A: They file their taxes when they are claiming a tax deduction. Until last year, IRS had mandatory review (by the Art Advisory Panel) of all appraisals with property valued at \$20,000 or more. Last year, mandatory review was increased to \$50,000.

For the suggested format for appraisals over \$20,000 developed by the IRS Art Appraisal Services, see “Appraisal Item Format.” To access this documents, search for “Art Appraisal Services” on the IRS website, www.irs.gov .

Q: I know that the IRS regulations state that an appraisal must not be prepared more than 60 days prior to the effective date of donation. Are there any limitations on how long after the donation the appraisal can be prepared?

A: Yes. The appraisal must be prepared in time for the donor to file his/her taxes. Unless the donor files for an extension, the donor needs the appraisal in time to file on April 15 following the year of donation. (If the donation occurred on October 1, 2011, the appraisal must be completed in time for the April 15, 2012 filing.)

Clients typically believe that the report must be to them by December 31 (if that is the end of their tax year). But that is the date by which the gift must be made, not the date by which the report must be prepared.

Q: Can a client who donates property to a charity auction take a Fair Market Value deduction on their taxes?

A: Because of the requirements for related use of donated property, donors of property to charity auctions should not assume they can deduct the Fair Market Value of the donated property from their taxes. Instead they can deduct either the cost basis or the Fair Market Value of the property, whichever is the lesser amount.

Items donated to an organization that will use that property for fundraising at an auction do not meet the IRS criterion for a “related use.” Because the mission of the recipient institution is not

to sell property, the donation is not considered a “related use”—even if the funds generated are used for a “related use.” For more information on related use, see *IRS Publication 526*.

In addition, please note:

- Prices fetched for properties sold at charity auctions are not usually acceptable as evidence of comparable sales for appraisal assignments.
- Donors to non-profit organizations that sell the contributed property at a charity auction cannot use the selling price of the property at the charity auction as their deducted amount.

“Cost Basis” (or “Tax Basis”) is defined as the original price of an asset, such as stocks, bonds, mutual funds, property, or equipment. Cost basis includes the purchase price and any associated purchase costs. Additional purchase costs included in cost basis are shipping, sales tax, installation costs, commissions and fees on the purchase, and certain tax-related adjustments.

If inherited, the “cost basis” is the Fair Market Value at the time of the inheritance. (For more information on Cost Basis, see *IRS Publication 551, “Basis of Assets.”*)

Donating to a Charity Auction (*From the IRS website*)

...Donors who provide goods for charities to sell at an auction often ask the charity if the donor is entitled to claim a fair market value charitable deduction for a contribution of appreciated property to the charity that will later be sold. Under these circumstances, the law limits a donor's charitable deduction to the donor's tax basis in the contributed property and does not permit the donor to claim a fair market value charitable deduction for the contribution. Specifically, the Treasury Regulations under section 170 provide that if a donor contributes tangible personal property to a charity that is put to an "unrelated use", the donor's contribution is limited to the donor's tax basis in the contributed property. The term "unrelated use" means a use that is unrelated to the charity's exempt purposes or function, or, in the case of a governmental unit, a use of the contributed property for other than exclusively public purposes. The sale of an item is considered unrelated, even if the sale raises money for the charity to use in its programs.

Fair Market Value Definitions for IRS-Related Appraisals per the Code of Federal Regulations (CFR)

USPAP requires that all appraisal state the type of value sought by the appraiser together with the definition of value and the source of the definition. Below are the definitions of the types of value for appraisals prepared for three tax-related intended uses.

Fair Market Value for Charitable Contributions

The Fair Market Value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

If the contribution is made in a property that of a type which the taxpayer sells in the course of his business, the fair market value is the price which the taxpayer would have received if he had sold the contributed property in the usual market in which he commonly sells, at the time and place of the contribution and, in the case of a contribution of goods in quantity, in the quantity contributed.

The usual market of a manufacturer or other producer consists of the wholesalers or other distributors to or through whom he customarily sells, but if he sell only at retail the usual market consists of his retail customers.

If the donor makes a charitable contribution of property, such as stock in trade, at a time when he could not reasonably have been expected to realize its usual selling price but is the amount for which the quantity of property contributed would have been sold by the donor at the time of its contribution.

Source: 26 CFR §1.170A - 1 (c) (2)

Fair Market Value for Gift Taxes

The Fair Market Value is the price at which property would change hands between a willing buyer and a willing seller, when neither is forced to buy or sell, and when both have reasonable knowledge of all relevant facts. Fair Market Value may not be determined by a forced sale price, nor by the sale price of the item in a market other than that in which the item is most commonly sold to the public. The location of the item must be taken into account wherever appropriate.

Source: 26 CFR §25.2512-1

Fair Market Value for Calculating Estate Taxes

The Fair Market Value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includible in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market

other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate. Thus, in the case of an item of property includible in the decedent's gross estate, which is generally obtained by the public in the retail market, the fair market value of such an item of property is the price at which the item or a comparable item would be sold at retail. For example, the fair market value of an automobile (an article generally obtained by the public in the retail market) includible in the decedent's gross estate is the price for which a automobile of the same or approximately the same description, make, model, age, condition, etc., could be purchased by a member of the general public and not the price for which the particular automobile of the decedent would be purchased by a dealer in used automobiles.

Source: 26 CFR §20.2031-1(b)