Charitable Giving:

Tis Better to Give *and* Receive

by Jeffery D. Katz

With tax time nearly upon us, and charities banging down doors looking for new donors, new contributions, and new monies to maintain programs, individual and corporate donors are often left in the lurch as to how to fund their favorite charitable pursuit, and derive the greatest tax benefit. As you sit down to do your taxes this year, you may think to yourself: “Could I have given more to charity and less to the government?” In a word—Yes.

CHARITABLE GIFTS HAVE THE EFFECT OF REDUCING FEDERAL INCOME AND ESTATE TAXES!

In addition, states that impose income taxes generally allow charitable gifts as a deduction from the tax base.

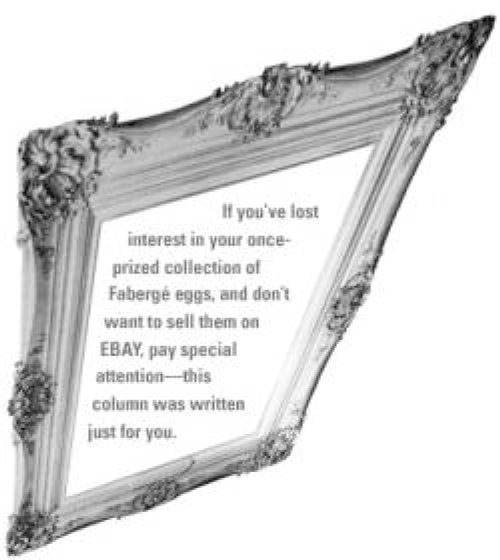
1. The Basics: Cash contributions to qualified charities are generally allowed as an itemized deduction by individuals. The maximum charitable deduction in any one year is limited to 50% of the taxpayer’s adjusted gross income (AGI) when gifts of cash are made to public charities, churches, and similar organizations. Excess contributions may be carried forward to future tax returns for up to five years. Taxpayers must itemize deductions in order to claim a charitable contribution deduction. Depending on what you’ve given, and who you’ve given it to, you may not be able to claim the deduction in whole or part.

2. Benefiting a charity while achieving tax breaks is an attractive proposition, but achieving maximum benefit requires knowledge of the rules and advance planning.

Gifts of appreciated property (such as securities) typically bring the donor a tax deduction for the full fair-market value of the securities, without the donor recognizing any income on the appreciation. If the fair-market value of your securities is less than the original cost, you may be better advised to sell the security and donate the proceeds, as no tax would be realized on the sale (appreciated property is property that has a current fair-market value that is higher than cost or basis in the property).

With the recent decline in stock market valuations over the last year, charities have begun to receive more and more donations in the form of tangible personal property. Where gifts of cash or securities are not right for you, you may want to consider a gift of appreciated tangible personal property. If you've lost interest in your once-prized collection of Fabergé eggs, and don't want to sell the collection on EBAY, pay special attention— this column was written just for you.

Your charitable deduction will depend on whether the appreciated property is ordinary income property or capital gain property. Ordinary income property is property that, if sold at its fair-market value on the date of contribution, would give rise to ordinary income or short-term capital gain. The deduction for such property is limited to the fair-market value of the property less the amount that would be ordinary income. Such property includes inventory and stock in trade, artworks and manuscripts created by the donor, letters and memoranda, and capital assets held for less than one year. Capital gain property includes any asset on which a long-term capital gain would have been realized if the taxpayer had sold the asset for its fair-market value on the date of contribution. As a general rule, gifts of capital gain property are deductible at their fair-market value on the date of contribution.



In general, your deduction for ordinary income property is limited to your basis or cost. For example, say you are a glass manufacturer, and you bought a supply of glass five months ago for $5,000. It's now worth $8,000. An immediate contribution of the glass would give you a deduction of $5,000, not $8,000. Now suppose the glass manufacturer bought a piece of glass more than one year ago for $3,000 and again contributes it when it's worth $8,000. Here, you normally would be able to deduct the full $8,000. Plus, you would not be taxed on the $5,000 in appreciation. That is a far better result than if one sold the glass, paid tax on the gain, and contributed the remaining proceeds to charity. Special percentage limitations also come into play; if the property qualifies as capital gain property and it is real estate or stock, your deduction generally is limited to 30 percent of your adjusted gross income unless you make a special election.

What else can limit my deduction for a gift of tangible personal property? Use.

If the property is held by the charity and is used by it in connection with the exempt purpose of the charity, then the full fair market value of the property may be deducted by the taxpayer subject to the same limitations as contributions of securities. However, the maximum amount of deductions for such contributions is limited to 30% of adjusted gross income rather than 50%. But watch out! If the property is not used by the charity in its exempt function (i.e., the charity sells it), then the amount of the deduction is limited to the cost of the property. Your deduction is also limited to basis in some cases including when you contribute tangible personal property that is put to an unrelated use by the charity. For example, if you contributed a Fabergé egg to a hospital and the hospital used it for display, and in its Easter egg hunt, the use of the egg would be unrelated to the hospital's charitable purpose and your deduction would be limited to basis. On the other hand, a Fabergé Egg contributed to an art museum and placed on display by it would not be an unrelated use and your deduction would not be limited.

Remember: If the property is held by the charity and is used by it in connection with the exempt purpose of the charity, then the full fair market-value of the property may be deducted by the taxpayer, subject to the same limitations as contributions of securities. You should check with your accountant or tax advisor prior to engaging in any transaction. And remember, with both Easter and tax time right around the corner, you'll want to be careful where you leave your Fabergé eggs.

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