

# Charitable Giving



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## BASIC RULES

Deductible Contributions	Nondeductible Contributions
<ul style="list-style-type: none"> <li>• Money or property given to:                             <ul style="list-style-type: none"> <li>– Churches, synagogues, temples, mosques, and other religious organizations.</li> <li>– Federal, state and local governments, if contribution is solely for public purposes.</li> <li>– Nonprofit schools and hospitals.</li> <li>– Public parks and recreation facilities.</li> <li>– Salvation Army, Red Cross, CARE, Goodwill, United Way, Boy/Girl Scouts, etc.</li> <li>– War veterans' groups.</li> <li>– Eligible charitable organizations listed in the IRS's online EO Select Check tool.</li> </ul> </li> <li>• Charitable travel: transportation, meals, and lodging.</li> <li>• Volunteer out-of-pocket expenses.</li> <li>• Housing exchange students (sponsored by a qualified organization): up to \$50 per month.</li> </ul>	<ul style="list-style-type: none"> <li>• Money or property given to:                             <ul style="list-style-type: none"> <li>– Civic leagues, social and sports clubs, labor unions, and chambers of commerce.</li> <li>– Foreign organizations (except certain Canadian, Israeli, and Mexican charities).</li> <li>– Groups run for personal profit.</li> <li>– Groups whose purpose is to lobby for law changes.</li> <li>– Homeowners' associations.</li> <li>– Individuals.</li> <li>– Political groups or candidates for public office.</li> </ul> </li> <li>• Cost of raffle, bingo, or lottery tickets.</li> <li>• Dues, fees, or bills paid to country clubs, lodges, fraternal orders, or similar groups.</li> <li>• Tuition.</li> <li>• Value of time or services.</li> <li>• Value of donated blood.</li> </ul>

### Determining the Deductible Amount

The deduction available for charitable contributions is generally dependent on (1) the type of property donated, (2) the type of charitable organization receiving the donation, (3) the fair market value (FMV) of the property donated, (4) the value of any goods or services received from the charity, and (5) the donor's income. No deduction is available if the donor retains a substantial right or interest in the donated property unless an exception applies. Furthermore, the deduction may be reduced, deferred or disallowed if the donor places restrictions on a charity's use of the donated property.



**Determining FMV.** FMV is the price that property would sell for on the open market between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge of the relevant facts. Determining value is not a simple matter. All facts and circumstances connected with the property, such as desirability, use and scarcity, should be considered. In making and supporting the valuation of property, all factors affecting

value are relevant and must be considered. These include the following (IRS Pub. 561):

- The cost or selling price of the item,
- Sales of comparable properties,
- Replacement cost, and
- Opinions of experts.

**Court Case:** The taxpayer, an avid big-game hunter, donated 177 hunting specimens (animal hides and skulls) to an ecological foundation. On his federal income tax return, the taxpayer claimed a charitable contribution deduction of approximately \$1.4 million. This was based on an appraisal based on the replacement cost method (that is, the current cost to replace each specimen factoring in the costs to travel, hunt, and kill the animal, ship it to the U.S. and taxidermy costs necessary to display the animal). The IRS challenged the amount, arguing that the hunting specimens were valued at \$163,000 under the comparable sales method. The Tax Court sided with the IRS, concluding that the comparable sales method was more appropriate under the circumstances. The Court noted the replacement cost method is relevant when the property is unique, the market is limited and there is no evidence of comparable sales. The hunting specimens in this case were merely commodities for which an active market existed. Therefore, the taxpayer's charitable contribution deduction was limited to \$163,000 (*Gardner*, TC Memo 2017-165).

**Eligible recipient.** A contribution is deductible for income tax if it is made to a qualified charity under IRC Sec. 170(c). Information about eligible exempt organizations can be found using the IRS's "Tax Exempt Organization Search" located on the IRS website at [www.irs.gov/charities-non-profits/](http://www.irs.gov/charities-non-profits/). No deduction is allowed for contributions or expenses if earmarked for a specific individual, even if made through a qualified organization. The donor's intent in making the contribution must have been to benefit the charity rather than the individual recipient (Rev. Rul. 68-484). Often, an individual (or group) raises funds that are personal gifts and do not qualify as charitable contributions, even when charitable intent is there. Examples include funds given online (such as via GoFundMe), funds deposited into a specific bank account established for a sick or injured individual, or an event held to raise money for victims of a tragedy (or their families). Many of these efforts are not held by a qualified charity and therefore are not eligible for a charitable contribution deduction.



### AGI Limits on Charitable Contributions

**COVID-19 Tax Alert:** The Coronavirus Aid, Relief, and Economic Security Act (CARES Act, Sec. 2204)

generally provides a \$300 above-the-line deduction for cash contributions to public charities for tax years beginning in 2020. This deduction applies only when a taxpayer does not itemize deductions.



The deduction for charitable contributions cannot exceed 50% of the taxpayer's adjusted gross income (AGI). A reduced limit of 30% or 20% applies for certain contributions. See the table *Charitable Deduction Amounts and Limits (2020)* on Page 11-2.

**Note:** The Tax Cuts and Jobs Act of 2017 (TCJA) increased the limitation under IRC Sec. 170(b) for cash contributions to public charities and certain private foundations from 50% to 60% of AGI for 2018–2025. Contributions exceeding the limitation are generally allowed to be carried forward and deducted for up to five years, subject to the later year's ceiling [IRC Sec. 170(b)(1)(G)]. See *Five-Year Contribution Carryover* on Page 11-2.

## Charitable Deduction Amounts and Limits (2020)

Property Donated ↓	50% Charities and Private Operating Foundations <sup>1</sup>		Private Nonoperating Foundations <sup>2</sup>		Other Charities	
	Deductible Amount	AGI % Limit	Deductible Amount	AGI % Limit	Deductible Amount	AGI % Limit
Cash	Amount given	100% <sup>3</sup>	Amount given	30%	Amount given	30%
Short-term capital asset:						
Appreciated (FMV > Basis)	Basis	50%	Basis	30%	Basis	30%
Depreciated (FMV < Basis)	FMV	50%	FMV	30%	FMV	30%
Long-term capital asset (other than tangible personal property):						
Appreciated (FMV > Basis)	FMV	30%	Basis <sup>4</sup>	20%	FMV	20%
Depreciated (FMV < Basis)	FMV	30%	FMV	20%	FMV	20%
Election to claim basis <sup>5</sup>	Basis	50%	N/A	N/A	N/A	N/A
Tangible personal property (long-term):						
Unrelated use <sup>6</sup>	Basis <sup>7</sup>	50%	Basis <sup>7</sup>	30%	Basis <sup>7</sup>	30%
Related use	FMV	30%	Basis <sup>7</sup>	20%	FMV	20%
Ordinary-income property	Basis <sup>7</sup>	50%	Basis <sup>7</sup>	30%	Basis <sup>7</sup>	30%
Qualified conservation contributions <sup>1</sup>	FMV	30%	N/A	N/A	N/A	N/A

<sup>1</sup> Private operating foundations are not qualified organizations for deducting conservation contributions. See *Special rules for qualified conservation contributions* on Page 11-7.

<sup>2</sup> Other than those that qualify as 50% charities. Private nonoperating foundations that make qualifying distributions of 100% of contributions within 2½ months following the year they receive the contribution are treated as 50% charities.

<sup>3</sup> The TCJA changed this to 60% for years 2018 through 2025. The CARES Act changed this to 100% for 2020.

<sup>4</sup> FMV, if qualified appreciated stock. See *Qualified Appreciated Stock* on Page 11-6.

<sup>5</sup> See Pub. 526 for more on the election.

<sup>6</sup> Use that is unrelated to the charitable organization's exempt purpose or function.


<sup>7</sup> FMV, if less than basis.


**50% charities:** Include churches, religious organizations, educational organizations, hospitals, medical research organizations, publicly supported organizations, governmental units and certain private nonoperating foundations.

**Private operating foundations** carry out their own charitable activities (for example, non-publicly supported museums, libraries, etc).


**Private nonoperating foundations** are grant-making entities that support other charities.

**Other charities:** Include veterans' organizations, fraternal societies and nonprofit cemeteries.

 **Disaster Relief Alert:** The 2019 Disaster Act [Section 204(a)] suspended the AGI limit for qualified contributions made from January 2, 2018 through February 18, 2020 for relief efforts in one or more qualified disaster areas for which the taxpayer receives contemporaneous written acknowledgment from the charity stating that the contribution was (or is to be) used for such efforts. This temporary suspension is available to all taxpayers regardless of their location.

 **COVID-19 Tax Alert:** The CARES Act generally suspends (if elected) the AGI limit for cash contributions to public charities in 2020. Qualified contributions in excess of the amount currently deductible are carried forward for five years and are treated as contributions subject to the percentage limitations for the year contributed (Sec. 2205 of the CARES Act).



 **Opportunity:** Careful planning of 2020 charitable contributions could zero out the taxpayer's 2020 tax liability.

### Five-Year Contribution Carryover

Contributions that exceed the AGI limit in the current year can be carried over to each of the five succeeding years [IRC Sec. 170(b)(1) and (d)(1)]. Carryover contributions are subject to the original percentage limits in the carryover years and are deducted after deducting allowable contributions for the current year. If there are carryovers from two or more years, use the earlier year carryover first.

Cash contributions that are taken into account under the 100% (for 2020) limit are not taken into account for purposes of applying the 50% limit. But the 30% and 50% limits are applied for a tax year

by reducing the aggregate contribution limit allowed for that year by the aggregate cash contributions allowed under the 100% limit for the year [IRC Sec. 170(b)(1)(G)(iii)].

**Example:** Jennifer has AGI of \$180,000. In 2020, she contributes \$50,000 to a 50% charity and an automobile worth \$10,000 for the use of a 50% charity (see *Autos, Boats, and Planes* on Page 11-4). Jennifer's limit for cash contributions is \$180,000 (\$180,000 × 100%). Her limit on contributions for the use of a charity is \$54,000 (\$180,000 × 30%), but this amount must be reduced by the \$50,000 cash contribution, to yield a contribution limit of \$4,000. Jennifer may deduct \$4,000 of the automobile's value in the current tax year but must carry the remaining \$6,000 (\$10,000 – \$4,000) forward to subsequent tax years.

**Standard deduction claimed.** Excess contributions can be carried forward even if the standard deduction is used in the contribution year. If the taxpayer claims the standard deduction in any of the carryover years, the carryover amount is reduced by the amount that would have been deductible if itemizing (Reg. 1.170A-10).



**Example:** Susan's 2020 AGI is \$6,000. She donates \$6,100 to a 50% charity. Susan claims the standard deduction in 2020. If she had itemized deductions, she would have been allowed to deduct \$6,000 of her contribution (\$6,000 × 100%) and would have carried over the excess \$100. Susan carries forward the \$100 excess contribution to 2021 even though she claimed the standard deduction in 2020.

Variation: Susan could also take a \$300 above-the-line deduction and claim the standard deduction in 2020 (see *AGI Limits on Charitable Contributions* on Page 11-1).

When to Deduct Donations	
Donation made by or using . . .	When donation is made for tax purposes
Check	Date mailed.
Text message	When message is sent if donation charged to telephone or wireless account.
Credit card	When charge is made (not when credit card charge is paid).
Pay-by-phone account	Date paid by the financial institution.
Stock certificate	<i>Endorsed certificate</i> : Date of mailing or other delivery. <i>Transferred certificate</i> : Date the stock is transferred on the books of the corporation.
Promissory note	When note payments are made.
Option granted to buy property at bargain price	When charity exercises the option.
Borrowed funds	When donation is made (not when borrowed funds are repaid).
Conditional gift	No deduction unless there is only a negligible chance that the condition won't happen.

## Property Donations

Special rules may apply, depending on the type of property:

- **Tangible personal property.** Property, other than land or buildings, that can be seen or touched. For example, furniture, books, jewelry, paintings, and cars. See *Tangible Personal Property* on Page 11-4.
- **Intangible personal property.** Personal property such as stocks, bonds, patents, copyrights, and other intellectual property. See *Other Property* on Page 11-7.
- **Real property.** Land and generally anything that is built on, growing on or attached to land. See *Real Property* on Page 11-6.

## MAXIMIZING CHARITABLE DEDUCTIONS

### Cash

Transferring cash is the simplest way to make a tax-deductible donation because:

- Cash does not need to be valued.

- Costs associated with transferring title to property are avoided.
- The percentage-of-AGI limits on cash donations are generally higher than the limits on non-cash donations.

The cost of simplicity is giving up cash, which some donors find unappealing. These individuals may prefer to donate non-income-producing or illiquid property, or long-term capital gain property with a low tax basis.

### Credit Card Charges

Charitable contributions made by credit card may be useful for taxpayers who want to deduct the contribution in the current year, but defer payment until the next year.

- Credit card contributions are deductible in the year the charge is incurred, even though paid in a later year (Rev. Rul. 78-38).
- Interest paid on the credit card balance is not considered a charitable contribution.

### Ordinary Income and Short-Term Capital Gain Property

Ordinary income property is property that, if sold, would result in ordinary income or short-term capital gain. Ordinary income property includes:

- Capital assets held for 12 months or less.
- Property created by the donor (such as works of art, literary compositions, letters, etc.).
- Inventory.
- Property used in a trade or business to the extent of depreciation recapture (ordinary income) had the property been sold at FMV.

The charitable contribution deduction for ordinary income property is limited to its FMV less the amount that would be ordinary income. This generates a charitable contribution deduction essentially equal to the taxpayer's basis [IRC Sec. 170(e)(1)(A)].



✦ **Strategy:** Taxpayers who wish to donate appreciated short-term capital gain property should delay the contribution until the long-term holding period is met.

## Charitable Contribution Strategies

Type of Property	Amount Deductible (Subject to AGI Limitations)	Strategy to Maximize Charitable Contribution Deduction
Cash	Amount given	Ensure cash contributions are made in a year when the taxpayer can itemize deductions. Consider charging donation to credit card to accelerate deduction and defer payment. Consider lump-sum contribution to exceed standard deduction amount.
<b>Appreciated Property—Fair market value (FMV) &gt; adjusted basis:</b>		
Short-term capital gain property, inventory or property created by donor.	Adjusted basis	Donation avoids inclusion of gain in gross income if the property would otherwise be sold. To maximize benefits: (1) limit donations to property for which FMV approximates cost or (2) delay contribution until property has been held over one year so that FMV can then be deducted.
Long-term capital gain property, other than tangible personal property donated for use unrelated to charity's exempt function.	FMV	Donate long-term capital gain property instead of cash and avoid tax on the unrealized gain.
Tangible personal property for charity's unrelated use.	Adjusted basis	Donate property with FMV that approximates cost. If LTCG property, sell at FMV (gain taxed at lower LTCG rates) and donate the proceeds (yielding a tax deduction at the ordinary income tax rate).
Gifts to private nonoperating foundations.	Adjusted basis; FMV for qualified appreciated stock.	Donate property with FMV that approximates cost or donate qualified appreciated stock eligible for FMV deduction. If long-term capital gain property (other than qualified appreciated stock), it might be beneficial to sell the property and donate the proceeds because of the tax rate differentials.
<b>Depreciated Property—FMV &lt; adjusted basis:</b>		
Property used in a trade or business or for the production of income.	FMV	Sell the property, recognize the tax loss and donate the proceeds, thus generating combined deductions equal to entire tax basis.
Personal use property.	FMV	Loss on the sale cannot be recognized for tax. Donating the property or selling the property and donating the sales proceeds yield the same tax deduction.

## TANGIBLE PERSONAL PROPERTY

**Example:** Al bought stock for \$4,000 and contributed it to charity 10 months later when it was worth \$6,000. Because the \$2,000 of appreciation is short-term gain, Al's charitable deduction is limited to \$4,000 (his basis).

If Al had waited at least two more months (so the stock had been held for more than 12 months), he would have been entitled to a \$6,000 contribution deduction (assuming the stock holds its value) and the \$2,000 of appreciation would not be taxable.

### Used Clothing and Household Goods

No deduction is allowed for contributions of used clothing and household items that are not in "good used condition or better" [IRC Sec. 170(f)(16)]. Household items include furniture, furnishings, electronics, appliances, linens and similar items (but not food, paintings, other art objects, antiques, jewelry, gems, or collections). See the *Donated Goods Valuation Guide* on Page 11-15 for value ranges for specific items.

**Exception:** A deduction for a donation of a used household item or single item of clothing that is not in good used condition or better is allowed if the item is valued at more than \$500 by a qualified appraisal (along with a Form 8283) that is filed with the return. See *Qualified Written Appraisal* on Page 11-13.



The term *good used condition or better* is not defined in the Code or IRS guidance. However, the preamble to Prop. Reg. 1.170A-18 states that the purpose of the "good used condition or better" requirement is to ensure that donated clothing and household items are of meaningful use to charities. A number of charities publish donation guidelines listing items they will and will not accept. The IRS may disallow deductions for items that charities have stated they will not accept.

### Autos, Boats, and Planes

**Deduction limit.** Charitable contributions of vehicles (generally autos, boats and planes but excluding inventory) valued at more than \$500 may be deducted, but the amount of the deduction depends on the use of the vehicle by the charitable organization. If the donee charity sells the vehicle without significantly using it in the intervening period before the sale, the deduction is limited to the proceeds that the charity receives from the sale [IRC Sec. 170(f)(12)]. The actual FMV of the donated asset is irrelevant. No appraisal is required even if the vehicle is sold for more than \$5,000.

**Observation:** Charities often sell vehicles at auction (and often in bulk) at prices significantly below car pricing guide values. This sales price limit will likely significantly limit the available deduction for vehicle donations.

**Strategy:** Taxpayers may be better off selling the vehicle (especially where a better-than-auction price is achievable) and donating the cash to the charity. Rarely will a taxpayer have a gain on the sale of a personal vehicle, so no taxable income will result from the sale, but (assuming a higher sales price) selling the vehicle will increase the charitable deduction (to the amount of proceeds contributed), and the taxpayer will know the amount of the deduction immediately.



**Exceptions to the deduction limitation.** The donor may deduct the lesser of the basis or FMV of the vehicle in the following circumstances (IRS Notice 2005-44):

- The donee charity significantly uses the vehicle in the intervening period before its sale or makes material improvements to it.
- The donee charity gives or sells the vehicle to a needy individual at a price significantly below FMV in direct furtherance of the donee organization's charitable purpose of helping the underprivileged.

However, a qualified appraisal is required in these situations if the vehicle's FMV exceeds \$5,000.

**Note:** The Form 1098-C (Contributions of Motor Vehicles, Boats, and Airplanes) that the charity issues to the donor includes information regarding the sales proceeds if the vehicle is sold or the donee's certification is one of the exceptions described above.

### Long-Term Capital Gain Property

Long-term capital gain (LTCG) property is property that would generate LTCG (including any Section 1231 gain on assets used in a trade or business) if it were sold it at FMV on the contribution date. The deduction for contributions of long-term capital gain property is summarized in the table *Deduction for Contributing LTCG Property* on Page 11-4.

Deduction for Contributing LTCG Property		
Type of Property	Use By Donee	Contribution Deduction
Tangible personal property	Related use	FMV. <i>Exception:</i> If Section 1231 property, FMV less ordinary income that would have been recaptured if sold for FMV
	Unrelated use	Basis
Other long-term capital gain property (for example, stock or real estate)	Any	FMV. <i>Exception:</i> If Section 1231 property, FMV less ordinary income that would have been recaptured if sold for FMV

**Note:** This table does not apply to contributions to private nonoperating foundations.

**Strategy:** Because it is generally deductible at FMV, donating long-term capital gain property is a tax-efficient way to fund charitable gifts. The donor avoids paying tax on the appreciation while deducting the property's full FMV.

**Example:** Harry and Sally would like to make an \$8,000 charitable contribution. They can either (1) donate stock worth \$8,000 or (2) sell the stock and donate the proceeds. The stock was purchased several years ago for \$5,000. Harry and Sally itemize deductions. The effect on their income under the two scenarios is as follows:

	Gift Stock	Sell Stock, Gift Cash
Long-term gain on stock sale .....	\$ 0	\$3,000
Charitable contribution deduction .....	( 8,000)	( 8,000)
Net effect on taxable income .....	(\$8,000)	(\$5,000)

Harry and Sally would be better off donating the stock to charity because they will never be taxed on the \$3,000 of appreciation. In addition, they avoid a \$3,000 increase in AGI, which would have resulted from the stock sale and may have affected their AGI-sensitive items (such as medical expense deductions and certain credits).

### Depreciated Property

Donating property with a FMV that is less than the taxpayer's basis should be avoided because:

- The deduction is limited to FMV.
- The donor cannot claim a tax loss for the decline in value.

It is almost always more beneficial to sell the property, deduct the loss and donate the sales proceeds.

**Exception:** If the donated property is not used in a trade or business or held for investment, a loss on its sale is generally not deductible, so donating the property would produce the same tax result as selling it and donating the resulting cash (for example, personal use items such as clothing and household goods).

