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Subject: gift of appreciated tangible property to public charity
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EXECUTIVE SUMMARY:

A donor will receive a fair market value (FMV) deduction for a charitable gift of tangible personal property that is held long term and is appreciated in the year the gift is made, notwithstanding that the donee organization sells or disposes of the property for consideration within three years, as long as the donee organization provides to the IRS the following signed statement (Form 8282) that:

- (1) Certifies the use of the property by the donee was substantial and related to the purpose or function constituting the basis for the donee's exemption under section 501, and substantiates how the property was used and how such use furthered such purpose or function,
or
- (2) states the intended use of the property by the donee at the time of the contribution, and (II) certifies that such intended use has become impossible or infeasible to implement.

ANALYSIS:

§170(e)(1)(B) provides generally that deductions for contributions of tangible personal property ("art" or "property") are limited to the donor's basis in the property. However, a donor is allowed a deduction for the property's FMV if sale of the property would produce long term capital gain for the donor and the property is used by a public charity for a purpose related to the charity's tax exempt purposes.

Note that in order for the donor to claim a charitable deduction for the gift of property, a "qualified appraisal" of the property must be obtained if the value is greater than \$5,000. Form 8283 must be attached to the donor's tax return and be signed by "qualified appraiser" and the donee organization. The donee organization "affirms that in the event it sells, exchanges, or otherwise disposes of the property... within 3 years after the date of receipt, it will file Form 8282, Donee Information Return, with the IRS and give the donor a copy of that form." The donee also indicates on Form 8283 its intent to use or not use the property for an "unrelated use." If the charity indicates that it intends to use for "unrelated" use, it would obviate FMV deduction by the donor. The purpose of the 8283 requiring the donee to indicate the intent to use the property for related use is to follow § 1.170A-4(b)(3)(ii)(b) which provides:

"a taxpayer who makes a charitable contribution of tangible personal property to or for the use of a charitable organization or governmental unit may treat such property as not being put to an unrelated use by the donee if:

- (a) He establishes that the property is not in fact put to an unrelated use by the donee, or
- (b) At the time of the contribution or at the time the contribution is treated as made, it is reasonable to anticipate that the property will not be put to an unrelated use by the donee.

In the case of a contribution of tangible personal property to or for the use of a museum, if the object donated is of a general type normally retained by such museum or other museums for museum purposes, it will be reasonable for the donor to anticipate, unless he has actual knowledge to the contrary, that the object will not be put to an unrelated use by the donee, whether or not the object is later sold or exchanged by the donee.

Sale within three years

If the donee organization sells the donated art within 3 years of a contribution, the donee must file Form 8282 with IRS disclosing the sale, including proceeds and sale date.

Form 8282: Part III, Q. 3: asks:

Was the use related to the organization's exempt purpose or function?

If you answered "Yes" to question 3 and the property was tangible personal property, describe how the organization's use of the property furthered its exempt purpose or function. Also complete Part IV below.

If you answered "No" to question 3 and the property was tangible personal property, describe the organization's intended use (if any) at the time of the

contribution. Also complete Part IV below, if the intended use at the time of the contribution was related to the organization's exempt purpose or function and it became impossible or infeasible to implement.

Form 8282 has certification statement conforms with the certification exemption under §170(e)(7)(D):

You must sign the certification below if any property described in Part III above is tangible personal property and:

- You answered "Yes" to question 3 above, or
- You answered "No" to question 3 above and the intended use of the property became impossible or infeasible to implement.

Under penalties of perjury and the penalty under section 6720B, I certify that either:

- (1) the use of the property that meets the above requirements, and is described above in Part III, was substantial and related to the donee organization's exempt purpose or function; or
- (2) the donee organization intended to use the property for its exempt purpose or function, but the intended use has become impossible or infeasible to implement.

Failure by the donee to answer 8282 Part III and IV and sign the certification will result in the donor recognizing a recapture of a portion of prior year charitable deductions, if sold in year subsequent to donation. The donor would recognize ordinary income in the year of the sale by the donee in the amount of the unrealized gain at time donation. The donor's overall tax benefit is limited to the property's basis. If the property is sold by the donee in the same year of the donation and the donee organization fails to provide aforementioned certification, the donor's tax deduction is limited to cost.

Note that the filing of Form 8282 will alert the IRS of the original valuation and the subsequent sale proceeds which is a perceived deterrent to over-inflated valuations/appraisals.

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