CHARITABLE CONTRIBUTIONS – MAXIMIZING DEDUCTIONS IN 2026 AND BEYOND

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I. ITEMIZED INCOME TAX DEDUCTION FOR CHARITABLE CONTRIBUTIONS

A. The itemized income tax deduction for charitable contributions is allowed by IRC § 170

B. For requirements included in a statute, courts usually require strict compliance

C. For requirements included in regulations but not in the statute, courts sometimes allow substantial compliance

D. If the requirements of IRC § 170 are not met, the charitable contribution deduction is disallowed

E. For all monetary charitable contributions, IRC § 170(f)(17) requires that the taxpayer have either:

1. A bank record (such as a cancelled check or bank statement). or

2. A written communication from the charity with the name of the charity, the date of the contribution, and the amount of the contribution

F. See IRS Publication 526 Charitable Contributions for a general summary of the rules and IRS Publication 1771 Charitable Contributions – Substantiation and Disclosure Requirements for some specifics

II. CONTEMPORANEOUS WRITTEN ACKNOWLEDGEMENT TRAP

A. For all charitable contributions, both monetary and property, of $250 or more, IRC § 170(f)(8)(A) requires that the taxpayer have a contemporaneous written acknowledgement from the charity

B. Under IRC § 170(f)(8)(B), the written acknowledgement must include:

1. The amount of cash and a description (but not the value) of any property other than cash contributed

2. Whether the donee organization provided any goods or services in consideration, in whole or in part, for the contribution

-- "Whether" means that if no goods or services are provided, that must be stated

3. A description and good faith estimate of the value of any goods or services so provided or, if such goods or services consist solely of intangible religious benefits, a statement to that effect

-- The term "intangible religious benefits" means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context

4. NOTE that for monetary contributions, the written acknowledgement should also include the name of the charity and the date of the contribution to meet the requirements of IRC § 170(f)(17) unless a bank record is being relied upon to satisfy (f)(17)

5. TRAP – unintended mistakes by the charity in the goods or services statement or the unintended omission by the charity of the goods or services statement are traps for the unwary which cause the taxpayer to lose the charitable deduction

6. SOLUTION – taxpayers and tax return preparers should carefully review the written acknowledgement and have the charity promptly fix any error in the contemporaneous written acknowledgement

before the tax return claiming the charitable deduction is filed or due, whichever is earlier

C. Under IRC § 170(f)(8)(C), the written acknowledgement is "contemporaneous" if the taxpayer obtains it on or before the earlier of:

1. The date on which the taxpayer files a return for the taxable year in which the contribution was made, or

2. The due date (including extensions) for filing such return

3. TRAP – this deadline for the taxpayer to obtain the contemporaneous written acknowledgement is a trap for the unwary because any error by the charity in the contemporaneous written acknowledgement cannot be fixed after the deadline, whether it is found by the taxpayer or the IRS

4. SAME SOLUTION – taxpayers and tax return preparers should carefully review the written acknowledgement and have the charity promptly fix any error in the contemporaneous written acknowledgement before the tax return claiming the charitable deduction is filed or due, whichever is earlier

D. Under IRC § 170(f)(18)(B), if the contribution is to a donor advised fund, the contemporaneous written acknowledgement must be from the sponsoring organization and must include a statement that such organization has exclusive legal control over the assets contributed to the donor advised fund

1. TRAP – the unintended omission by the sponsoring organization of this control statement for gifts to a donor advised fund is a trap for the unwary which causes the taxpayer to lose the charitable deduction

2. SAME SOLUTION – taxpayers and tax return preparers should carefully review the written acknowledgement and have the charity promptly fix any error in the contemporaneous written acknowledgement before the tax return claiming the charitable deduction is filed or due, whichever is earlier

III. QUALIFIED APPRAISAL TRAP

A. Charitable contributions of property of more than $500

1. Under IRC § 170(f)(11)(B), the taxpayer must include a description of the contributed property and other information required by the IRS with the tax return for the year in which the contribution is made

2. These requirements are satisfied by the taxpayer completing IRS Form 8283 and filing that with the tax return for the year in which the contribution is made

3. This is in addition to the contemporaneous written acknowledgement required by IRC § 170(f)(8)

B. Charitable contributions of property of more than $5,000

1. Under IRC § 170(f)(11)(C), the taxpayer must obtain a qualified appraisal of the contributed property and include it and other information required by the IRS with the tax return for the year in which the contribution is made

2. Exceptions – charitable contributions of publicly traded securities, certain vehicles, certain intellectual property, and certain inventory do not need a qualified appraisal

3. This is in addition to the contemporaneous written acknowledgement required by IRC § 170(f)(8)

4. Pursuant to IRC § 170(f)(11)(E), the qualified appraisal is conducted by a qualified appraiser and both of those terms are further defined by Treas. Reg. § 1.170A-17

5. There are many traps for the unwary in the requirements of the qualified appraisal under those regulations

6. See Appendix 1 for a checklist of the requirements in Treas. Reg. § 1.170A-17 for a qualified appraisal and a qualified appraiser

    a. When hiring a qualified appraiser to do a qualified appraisal, I give them a copy of this checklist to follow

    b. When I review the draft appraisal, I use this checklist and make sure the appraisal meets all of these requirements

IV. USING DONOR ADVISED FUNDS

A. A taxpayer sets up a donor advised fund with a sponsoring organization, such as the Greater Milwaukee Foundation or Fidelity Charitable

1. The taxpayer makes contributions of cash or property to their donor advised fund

2. The taxpayer makes non-binding recommendations to the sponsoring organization about amounts to be given from their donor advised fund to specific charities and when; the sponsoring organization usually follows those recommendations

3. The taxpayer may name successor advisors, such as their children, to make recommendations for the funds in the donor advised fund at their death

4. Because the assets in the donor advised fund belong to the sponsoring organization, the taxpayer has no reporting requirements with respect to the operations of the donor advised fund like they would have with a private foundation

B. If a taxpayer itemizes deductions for income tax purposes, a contribution to the donor advised fund qualify for an income charitable deduction

1. For a cash contribution to public charities, up to 60% of their adjusted gross income

2. For a contribution of long-term capital gain property to public charities, up to 30% of adjusted gross income (and when the donor advised fund sells that property any capital gain is tax free because it is in the donor advised fund)

3. Excess deductions may be carried forward for five years

C. Use the donor advised fund for the bunching of itemized deductions in the current year and then taking the standard deduction in subsequent years

1. For example, if the taxpayer makes charitable gifts of $10,000 per year and with their other itemized deductions they are better off using the standard deduction, they could instead:

a. Give $50,000 to their donor advised fund this year

b. Take the itemized deductions this year

c. Take the standard deduction during the next four years

d. This year and each of the next four years, make recommendations to the donor advised fund to give $10,000 to the charities that they would have given it to

2. After the initial gift to the donor advised fund is used up, repeat the cycle with a new large gift

V. THE 2025 TAX BILL HAIRCUTS

A. The .5% haircut for charitable deductions

1. That is 1/2 of 1% or .005

2. For those who itemize deductions, there is a new .5% floor for charitable deductions beginning in 2026

3. For most taxpayers, they will lose the deduction of their charitable contributions up to .5% of their contribution base (generally adjusted gross income)

4. Those large givers with excess contribution carryovers will be allowed to carryover these contributions below the .5% floor

B. The 2/37 haircut for all itemized deductions

1. That is about 5.4% or .054

2. For those who itemize deductions, there is a new reduction of total itemized deductions beginning in 2026 of 2/37 times the lesser of total itemized deductions or the excess of taxable income over the beginning income amount of the 37% bracket

3. Note – that applies to total itemized deductions, which have already been reduced by the .5% haircut for charitable deductions

4. WARNING – As of the writing of these materials, there is significant concern that the IRS may take the position that this 2/37 reduction applies to the distribution deduction on a trust's or estate's fiduciary income tax return which could cause the trust or estate to owe income tax even when it has distributed all of its taxable income

VI. QUALIFIED CHARITABLE DISTRIBUTIONS (QCDs) FROM IRAs

A. A distribution directly from an IRA to a public charity or a private operating foundation

1. Must be a direct transfer from IRA to charity

2. Must be from an IRA, not a 401(k) or 403(b)

3. Must be to a public charity or a private operating foundation, not a donor advised fund, a private foundation, or a supporting organization

4. IRA owner must be at least 70 1/2; includes beneficiary of inherited IRA who is at least 70 1/2

5. Maximum is $111,000 per person in 2026 ($100,000 per year indexed for inflation)

6. Must qualify for full charitable deduction with no reduction for goods or services

7. IRA owner must get a contemporaneous written acknowledgement from the charity which states that they received no goods or services

B. For IRA owner who is 73 or older, the QCD counts against their required minimum distribution (RMD)

-- TRAP – Because of the ordering rules, be sure to make all desired QCDs before taking the remaining RMD

C. QCD is not included in adjusted gross income (AGI) which will be beneficial wherever AGI is used to impose extra taxes or reduce a deduction, including for example the Medicare Parts B and D premium surcharge referred to as IRMAA (Income-Related Monthly Adjustment Amount) and the 3.8% surtax on net investment income (NIIT)

D. QCD is not a charitable deduction, so it benefits all taxpayers who qualify, including those who do not itemize deductions

E. Because the QCD is not an itemized deduction, the .5% haircut and the 2/37 haircut do not apply to QCDs

F. Many IRAs will give the account owner check writing authority as a method for making QCDs in addition to the IRA sending a QCD check directly to the charity

G. For most taxpayers age 73 or older, making QCDs from their IRA is better than taking their RMD and contributing to a donor advised fund

APPENDIX 1

CHECKLIST FOR QUALIFIED APPRAISAL AND QUALIFIED APPRAISER UNDER TREAS. REG. § 1.170A-17

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I. QUALIFIED APPRAISAL

A. An appraisal document that is prepared by a qualified appraiser (as defined below) in accordance with the substance and principles of the Uniform Standards of Professional Appraisal Practice, as developed by the Appraisal Standards Board of the Appraisal Foundation

B. Must include:

1. The following information about the contributed property:

a. A description in sufficient detail under the circumstances, taking into account the value of the property, for a person who is not generally familiar with the type of property to ascertain that the appraised property is the contributed property

b. In the case of real property or tangible personal property, the condition of the property

c. The valuation effective date, i.e., the date of the transfer to which the value opinion applies

d. The fair market value of the contributed property on the valuation effective date – 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 sell and both having reasonable knowledge of relevant facts. If the contribution is made in property 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 customarily 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 sells only at retail the usual market consists of his retail customers

2. The terms of any agreement or understanding by or on behalf of the donor and donee that relates to the use, sale, or other disposition of the contributed property, including, for example, the terms of any agreement or understanding that:

   a. Restricts temporarily or permanently a donee's right to use or dispose of the contributed property;

   b. Reserves to, or confers upon, anyone, other than a donee or an organization participating with a donee in cooperative fundraising, any right to the income from the contributed property or to the possession of the property, including the right to vote contributed securities, to acquire the property by purchase or otherwise, or to designate the person having income, possession, or right to acquire; or

   c. Earmarks contributed property for a particular use

3. The date, or expected date, of the contribution to the donee

4. The following information about the appraiser:

   a. Name, address, and taxpayer identification number

   b. Qualifications to value the type of property being valued, including the appraiser's education and experience

   c. If the appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person, whether an individual, corporation, or partnership, or an independent contractor engaged by a person other than the donor, the name, address,

and taxpayer identification number of the partnership or the person who employs or engages the qualified appraiser

5. The signature of the appraiser and the date signed by the appraiser (appraisal report date)

6. The following declaration by the appraiser: "I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under § 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c)."

7. A statement that the appraisal was prepared for income tax purposes

8. The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, or the replacement-cost-less-depreciation approach

9. The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed

C. Timely appraisal report – a qualified appraisal must be signed and dated by the qualified appraiser no earlier than 60 days before the date of the contribution and no later than:

1. The due date, including extensions, of the return on which the deduction for the contribution is first claimed;

2. In the case of a donor that is a partnership or S corporation, the due date, including extensions, of the return on which the deduction for the contribution is first reported; or

3. In the case of a deduction first claimed on an amended return, the date on which the amended return is filed

4. NOTE: Time of making contribution – Ordinarily, a contribution is made at the time delivery is effective. The unconditional delivery or mailing of a check which subsequently clears in due course will constitute an effective contribution on the date of delivery or mailing. If a taxpayer unconditionally delivers or mails a properly endorsed stock certificate to a charitable donee or the donee's agent, the gift is completed on the date of delivery or, if such certificate is received in the ordinary course of the mails, on the date of mailing. If the donor delivers the stock certificate to his bank or broker as the donor's agent, or to the issuing corporation or its agent, for transfer into the name of the donee, the gift is completed on the date the stock is transferred on the books of the corporation. For rules relating to the date of payment of a contribution consisting of a future interest in tangible personal property, see § 170(a)(3) and § 1.170A-5

D. Valuation effective date

1. The date to which the value opinion applies

2. For an appraisal report dated before the date of the contribution, the valuation effective date must be no earlier than 60 days before the date of the contribution and no later than the date of the contribution

3. For an appraisal report dated on or after the date of the contribution, the valuation effective date must be the date of the contribution

E. Exclusion for donor knowledge of falsity - an appraisal is not a qualified appraisal for a particular contribution, even if the requirements of this section are met, if the donor either failed to disclose or misrepresented facts, and a reasonable person would expect that this failure or misrepresentation would cause the appraiser to misstate the value of the contributed property

F. Number of appraisals required – a donor must obtain a separate qualified appraisal for each item of property for which an appraisal is required under § 170(f)(11)(C) and (D) and paragraph (d) or (e) of § 1.170A-16 and that is not included in a group of similar items of property, as defined in § 1.170A-13(c)(7)(iii). For rules regarding the number of appraisals required if similar items of property are contributed, see § 170(f)(11)(F) and § 1.170A-13(c)(3)(iv)(A)

G. Time of receipt of qualified appraisal – the qualified appraisal must be received by the donor before the due date, including extensions, of the return

on which a deduction is first claimed, or reported in the case of a donor that is a partnership or S corporation, with respect to the donated property, or, in the case of a deduction first claimed, or reported, on an amended return, the date on which the return is filed

H. Prohibited appraisal fees – the fee for a qualified appraisal cannot be based to any extent on the appraised value of the property. For example, a fee for an appraisal will be treated as based on the appraised value of the property if any part of the fee depends on the amount of the appraised value that is allowed by the Internal Revenue Service after an examination

I. Retention of qualified appraisal – the donor must retain the qualified appraisal for so long as it may be relevant in the administration of any internal revenue law

J. Effect of appraisal disregarded pursuant to 31 U.S.C. 330(c) – if an appraiser has been prohibited from practicing before the Internal Revenue Service by the Secretary under 31 U.S.C. 330(c) at any time during the three-year period ending on the date the appraisal is signed by the appraiser, any appraisal prepared by the appraiser will be disregarded as to value, but could constitute a qualified appraisal if the requirements of this section are otherwise satisfied, and the donor had no knowledge that the signature, date, or declaration was false when the appraisal and Form 8283 (Section B) were signed by the appraiser

K. Partial interest – if the contributed property is a partial interest, the appraisal must be of the partial interest

II. QUALIFIED APPRAISER

A. An individual with verifiable education and experience in valuing the type of property for which the appraisal is performed, as described in paragraph B below

B. Education and experience in valuing the type of property

1. An individual is treated as having education and experience in valuing the type of property of this section if, as of the date the individual signs the appraisal, the individual has:

a. Successfully completed (for example, received a passing grade on a final examination) professional or college-level

coursework, as described in paragraph B.2 below, in valuing the type of property being appraised and has two or more years of experience in valuing the type of property being appraised; or

b. Earned a recognized appraiser designation, as described in paragraph B.3 below, for the type of property, as described in paragraph C below

2. Coursework must be obtained from an educational organization, generally recognized professional trade or appraiser organization, or employer educational program. For purposes of paragraph B.1.a above of this section, the coursework must be obtained from:

a. A professional or college-level educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on;

b. A generally recognized professional trade or appraiser organization that regularly offers educational programs in valuing the type of property; or

c. An employer as part of an employee apprenticeship or educational program substantially similar to the educational programs described in paragraphs B.2.a and b above

3. A "recognized appraiser designation" means a designation awarded by a generally recognized professional appraiser organization on the basis of demonstrated competency

C. Type of property defined – the type of property means the category of property customary in the appraisal field for an appraiser to value

D. Verifiable – for purposes of paragraph II.A above, education and experience in valuing the type of property are verifiable if the appraiser specifies in the appraisal the appraiser's education and experience in valuing this type of property, and the appraiser makes a declaration in the appraisal that, because of the appraiser's education and experience, the appraiser is qualified to make appraisals of the type of property being valued

E. The following individuals are not qualified appraisers for the appraised property:

1. An individual who receives a fee prohibited by paragraph H above for the appraisal of the appraised property

2. The donor of the property

3. A party to the transaction in which the donor acquired the property (for example, the individual who sold, exchanged, or gave the property to the donor, or any individual who acted as an agent for the transferor or for the donor for the sale, exchange, or gift), unless the property is contributed within 2 months of the date of acquisition and its appraised value does not exceed its acquisition price

4. The donee of the property

5. Any individual who is either:

   a. Related, within the meaning of § 267(b) described in paragraph 7 below, to, or an employee of, an individual described in paragraphs E.2, 3, or 4 above;

   b. Married to an individual described in paragraph E.5.a above; or

   c. An independent contractor who is regularly used as an appraiser by any of the individuals described in paragraphs E.2, 3, or 4 above, and who does not perform a majority of his or her appraisals for others during the taxable year

6. An individual who is prohibited from practicing before the Internal Revenue Service by the Secretary under 31 U.S.C. 330(c) at any time during the three-year period ending on the date the appraisal is signed by the individual

7. Related individuals under § 267(b) are:

   a. Members of a family, as defined in subsection (c)(4);

b. An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

c. Two corporations which are members of the same controlled group;

d. A grantor and a fiduciary of any trust;

e. A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

f. A fiduciary of a trust and a beneficiary of such trust;

g. A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

h. A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

i. A person and an organization to which § 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such person or (if such person is an individual) by members of the family of such individual;

j. A corporation and a partnership if the same persons own:

(1) more than 50 percent in value of the outstanding stock of the corporation, and

(2) more than 50 percent of the capital interest, or the profits interest, in the partnership;

k. An S corporation and another S corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation;

l. An S corporation and a C corporation, if the same persons own more than 50 percent in value of the outstanding stock of each corporation; or

m. Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

n. Constructive ownership of stock – for purposes of determining, the ownership of stock:

(1) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(2) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;

(3) An individual owning (otherwise than by the application of paragraph (2)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;

(4) The family of an individual shall include only his brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants; and

(5) Stock constructively owned by a person by reason of the application of paragraph (1) shall, for the purpose of applying paragraph (1), (2), or (3), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of paragraph (2) or (3) shall not be treated as owned by him for the purpose of again applying either of such paragraphs in order to make another the constructive owner of such stock.

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Professional Biography

Randy S. Nelson is a Shareholder in the Milwaukee office of von Briesen & Roper, s.c. focusing his practice on estate planning, advising family businesses, tax planning, trust administration and probate. He is a Certified Public Accountant and was an Adjunct Professor at Marquette University Law School where he taught estate planning for over 30 years. He is a frequent speaker at continuing education courses for lawyers and CPAs on the subjects of estate planning and tax planning. He was the original author of the chapter "Estate Planning for Owners of Closely Held Businesses" in *Eckhardt's Workbook for Wisconsin Estate Planners* published by the State Bar of Wisconsin.

Randy is currently the chair of the State Bar of Wisconsin (SBW) Drafting Committee which is working on the Wisconsin Uniform Fiduciary Income and Principal Act. He chaired the SBW/WBA Drafting Committee responsible for the Wisconsin Uniform Principal and Income Act which was passed in 2005 and was a member of the SBW/WBA Drafting Committees responsible for the Wisconsin Trust Code which was passed in 2013, the trailer bill to modify the Wisconsin Trust Code which was passed in 2024, and the Wisconsin Uniform Power of Appointment Act which was also passed in 2024.

Randy is listed in both The Best Lawyers in America and Wisconsin Super Lawyers. He is a past Chairperson of the Real Property, Probate and Trust Law Section of the State Bar of Wisconsin. He is also a Fellow of the American College of Trust and Estate Counsel and a member of the State Bar of Wisconsin, the Milwaukee and American Bar Associations, the Wisconsin and American Institutes of Certified Public Accountants, and the Milwaukee Estate Planning Forum. He holds the Accredited Estate Planner® designation from the National Association of Estate Planners & Councils.