
GENERAL COUNSEL NOTE

October 2008

Charitable contributions to Vanderbilt University are, as a general rule, deductible from a donor's federal income tax. Whether the donation is outright or in trust, or in cash or property, a tax-deductible charitable contribution has three essential elements: donative intent, delivery, and acceptance by the University.

Donative intent is viewed from both an objective and subjective perspective. Objectively, the charitable contribution must be a voluntary transfer made without payment or other consideration from Vanderbilt. From a subjective perspective, the contribution must come from a donor who possesses a detached and disinterested generosity in making the gift. To have donative intent, there should not be any substantial benefit transferred to the donor in return (typically referred to as a "quid pro quo") for the gift. The gift must be complete, voluntary, and unconditional or subject to reasonable restrictions set forth by the donor, but that the gift will still permit Vanderbilt to carry out its charitable purpose.

A quid pro quo contribution is one made partly as a charitable gift and partly in consideration for some goods or services provided to the donor by Vanderbilt. For example, if a donor made a cash contribution to Vanderbilt with the understanding or expectation that the tuition charged to the donor's child is reduced or eliminated, this would be a quid pro quo arrangement and, to the extent the donor receives such a tangible benefit, the amount of the available charitable contribution deduction would be reduced. Incidental benefits, such as the naming of a professorship or a building after the contributor, do not constitute a quid pro quo contribution. Another example of a quid pro quo gift is a donation whereby the donor is provided the right to purchase seating at an athletic event in a Vanderbilt facility. The federal Tax Code allows a deduction with such a quid pro quo for only 80% of the gift deeming the remaining 20% as a quid pro quo for which no deduction is available. And, for clarification, the purchase price for the tickets themselves never constitutes a charitable contribution available for deduction.

The remaining two conditions for a bona fide charitable contribution (delivery and acceptance) require that the donor relinquish control over the gift in order for Vanderbilt to fulfill its charitable purpose through the use, dissemination, or other disposal of the gift. In other words, Vanderbilt must have full control over the contributed cash or property in order for the donor to recognize and claim a charitable deduction from federal income tax. Accordingly, when a contribution is pledged, a recognized charitable contribution will not occur until the pledge is completed (the payment actually made or the property actually delivered to Vanderbilt).

If a gift is made subject to the occurrence of some event, a federal tax deduction is not allowed for a charitable contribution unless the possibility of the occurrence of the event is so remote as to be negligible. For example, if a donor gave real property to Vanderbilt with the condition that the property be used for some recognized exempt purpose, such as the construction and operation of an educational facility, and it is the intent of Vanderbilt to use the property in this way, but the gift carries the additional restriction that if it should not be used for this purpose, then the gift would revert back to the donor or the donor's estate, then the possibility that the property is not used for

Vanderbilt's educational mission may be regarded as so remote and unlikely as to be negligible thereby allowing the donor to claim a charitable contribution deduction at the time of the gift. However, if the donor imposes substantial restrictions on a donated item, such a restriction could defeat the requirement that true donative intent exists in order for the charitable deduction to be valid. In most circumstances, the substance or degree of the restriction must be based on the surrounding facts and circumstances of the particular donation, but the more restriction, the riskier the charitable deduction will be when claimed by a donor.

There could be many types or forms of contributions, including cash, real or personal property, stock in either publicly traded or non-publicly traded entities. A cash gift is the simplest of contributions and easiest to value and track for recordkeeping purposes. Cash gifts include gifts made by check, credit card, or promissory notes. As stated above, a pledge for the gift will not be deductible by the donor until the pledge is settled by a delivery of cash to Vanderbilt. A check delivered to Vanderbilt or placed in the mail before the end of the tax year (December 31) will be considered on the day of delivery or mailing even though payment on the check may theoretically be stopped or it may not be received through the mail and deposited by Vanderbilt until the next calendar year. A gift made by credit card is deductible and is recognized as received in the year in which the charge occurs, not the later date when the donor pays the amount owed to the credit card issuer.

Contributions of stocks and bonds are considered completed when they are delivered to Vanderbilt or Vanderbilt's agent (such as a stock broker). While cash is valued at its face value for purposes of a charitable contribution deduction, the amount of the deduction available for the contribution of stocks and bonds is equal to the fair market value of those securities on the date of contribution. If a stock is actively traded on a public market, the average price between the highest and lowest quote on the date of contribution is deemed the fair value for purposes of the charitable contribution deduction.

If there are no sales on the contribution day, but sales within a reasonable period before and after that date, the fair market value is the average price between the highest and lowest sales prices on the nearest day before and on the nearest day after the valuation date. Stocks or bonds donated to Vanderbilt which are not publicly traded may require the donor obtain an appraisal to support a charitable contribution deduction.

A donation of real estate to Vanderbilt is recognized when the title to the property is transferred from the donor's name to Vanderbilt. To support any claimed charitable contribution, the donor must obtain an appraisal of the property to calculate the amount to be claimed as the deduction.

Tangible personal property is any property, other than land or buildings, which can be seen or touched. For example, jewelry, art, household items, and automobiles are all tangible personal property. Such gifts will qualify for a deduction as a charitable contribution, however, the type of property donated may trigger certain limitations on the amount of the deductible contribution. For example, the law was recently changed to restrict the amount of deduction available for the contribution of a vehicle (such as an automobile, boat, or airplane) to a charitable organization. The amount of the tax deduction for the donor will depend upon the use of the vehicle by Vanderbilt. For example, if Vanderbilt sells a donated vehicle, it must provide a written statement to the donor within 30 days of the sale stating the amount of the sale. If the claimed value of the vehicle exceeds \$500 from the amount the donor reported as a deduction, then the donor will be limited to the

amount of the sale proceeds as the available charitable deduction.

Alternatively, if Vanderbilt uses the vehicle, Vanderbilt must certify its intended use and provide a written acknowledgement to the donor within 30 days of the contribution stating the name and taxpayer identification number (generally a Social Security number) of the donor, the vehicle's identification number, and a certification of Vanderbilt's intended use of the vehicle and a certification that the vehicle will not be transferred in exchange for money, other property, or services. If Vanderbilt intends to use the vehicle, the donor may deduct the vehicle's fair market value as a charitable contribution.

As a general rule, a gift of tangible personal property other than vehicles will be limited to the donor's cost of the property (also referred as the donor's "adjusted basis"). One broad general exception to this rule is the gift of tangible personal property that constitutes "capital gain property" (such as property held for business or investment purposes) such as art, memorabilia, or other forms of collectible items. Various issues arise depending upon the type of property given to Vanderbilt, including the determination of the property's fair market value by the donor, whether the property will be used to further Vanderbilt's exempt purpose, if the property will merely be re-sold, or, if the property has been used in a trade or business, whether it is subject to depreciation recapture because of its business use.

If the item was created by the donor, such as a work of art, it is considered an ordinary income asset in the hands of the donor/artist; therefore, the deduction is limited to the donor's costs in creating the item. However, if the item was not created by the donor (such as a gift of a painting by an artist other than the donor), the painting may qualify for a fair market value deduction. Again, a determination must be made on the type and use of property donated to Vanderbilt in determining the donor's available charitable contribution deduction. The IRS maintains a website (www.irs.gov) containing detailed instructions and advice for donors to consult and determine the available charitable contribution deductions for various types of property.

Another form of donation frequently seen at Vanderbilt is that of a patent, copyright, or other intellectual property. The available deduction depends upon whether the donor is the inventor or creator of the donated property. As a general rule, a patent is a capital asset in the hands of the inventor and a gift of the full interest in the patent would provide a deduction for the fair market value of it. However, by special statute, a copyright held by the creator is deemed an "ordinary income" asset and, therefore, any available deduction would be limited to the donor's cost in it.

Until June 2004, the law allowed donors who were not creators of intellectual property the ability to deduct the fair market value of the donation. However, the law was changed to limit the deduction to the lesser of the donor's cost or its fair market value for contributions of patents, copyrights, trademarks, trade names, trade secrets, know-how, certain software, and similar intellectual property.

Frequently, individuals wish to know if they may donate the fair value of services performed for Vanderbilt as a charitable contribution. The law is quite clear that no charitable contribution deduction is allowed for any services provided to a charity such as Vanderbilt. However, unreimbursed out-of-pocket expenses incurred by a donor performing services for or on behalf of Vanderbilt are deductible as a charitable contribution. The most common expenses incurred involve transportation costs while performing services on behalf of Vanderbilt. In addition to such items as

parking or tolls, individuals performing charitable services may deduct \$0.14 per mile for automobile usage.

Vanderbilt must comply with certain reporting and documentation requirements for charitable contributions. If a donor makes a contribution of \$250 or more, Vanderbilt must issue a contemporaneous written acknowledgement of that donation containing the donor's name, the amount of cash (if any) and a description of any property (but not the value) contributed, along with a statement that no goods or services were provided to the donor in exchange for the gift or a description and a good faith estimate of the value of any goods or services provided to the donor in exchange for the gift, along with a statement (if appropriate) that the value of the goods or services is not "substantial" and does not reduce the amount of the available charitable deduction for the donor's contribution. If Vanderbilt receives a "quid pro quo" contribution valued at more than \$75, Vanderbilt must satisfy certain disclosure requirements aimed at identifying the non-deductible portion of the gift. For example, if the donor contributes \$100 to Vanderbilt and receives in exchange a \$30 ticket to, say, a concert or ticketed event, the \$100 is the "quid pro quo" contribution, not the corresponding \$75 charitable deduction. In such an instance, Vanderbilt is required to provide the donor with a written disclosure statement that the amount deductible in the excess of the gift (\$100) over Vanderbilt's good faith estimate of the fair market value of the ticket it is providing (\$30) is allowed for a charitable contribution deduction (the remaining difference of \$70). Vanderbilt must provide the disclosure statement either at the time of the solicitation of the gift or at the time of the contribution.

Vanderbilt must also provide a description of all non-cash charitable contributions on IRS Form 8283 if a donor is claiming a total deduction in excess of \$500 for such non-cash property. Further, if Vanderbilt disposes of donated property within 3 years of the donation, Vanderbilt must provide IRS Form 8282 to the donor within 125 days of the date of the disposition of the property. This form must be certified by Vanderbilt and a penalty of \$10,000 is imposed on a charity for false certifications.

The foregoing review contains a high level summary of the charitable contribution rules and deduction regulations. There are many special rules and unique situations that may require close examination and different treatment from these stated general observations. Please contact this office if you require clarification or assistance on the proper handling of charitable contributions to Vanderbilt.

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