PRESENT LAW AND BACKGROUND RELATING TO THE FEDERAL TAX TREATMENT OF CHARITABLE CONTRIBUTIONS

Scheduled for a Public Hearing
Before the
SENATE COMMITTEE ON FINANCE
on October 18, 2011

Prepared by the Staff
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INTRODUCTION AND SUMMARY

The Senate Committee on Finance has scheduled a public hearing on October 18, 2011, entitled "Tax Reform Options: Incentives for Charitable Giving." This document,[1] prepared by the staff of the Joint Committee on Taxation, contains an overview of the present-law rules relating to the Federal tax treatment of charitable contributions and a discussion of economic issues relating to Federal tax incentives for charitable giving.

The Federal income tax charitable deduction dates back to 1917 and has remained a feature of the income tax system throughout its history. The Internal Revenue Code (the "Code")[2] allows taxpayers to reduce their income, estate, and gift tax liability with deductions for gifts to certain organizations. These organizations include:

- Charities. Religious organizations, grantmaking foundations, educational institutions, health and human services organizations, arts and cultural organizations, international and environmental organizations, among others;
- Governmental units. Federal, State, local and Indian tribal governments; and
- Other organizations. Veterans organizations, cemetery companies, volunteer fire departments, civil defense organizations, and, in some instances, to fraternal organizations.

Charitable giving by individuals, foundations, estates, and corporations reached $290.89 billion in 2010, of which individuals gave $211.77 billion (approximately two percent of their disposable personal income),[3] foundations gave $41.00 billion,[4] estates gave $22.83 billion, and corporations gave $15.29 billion.[5] These figures represent estimates of the total amount of donations made to charity during 2010. As discussed in Part I, below, not all such donations are deductible for Federal income tax purposes. For data concerning tax-deductible charitable contributions, see Part II, below.

Figure 1, below, shows the recipients of the $290.89 billion of total 2010 charitable giving, by amount received and percentage of the total. The category receiving the largest share of donations in 2010 was religious organizations, which received more than one-third of all charitable donations. Educational institutions were the next largest category, receiving

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[1] This document may be cited as follows: Joint Committee on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions* (JCX-55-11), October 14, 2011. This document can be found on the website at www.jct.gov.

[2] Unless otherwise stated, all section references are to the Code.

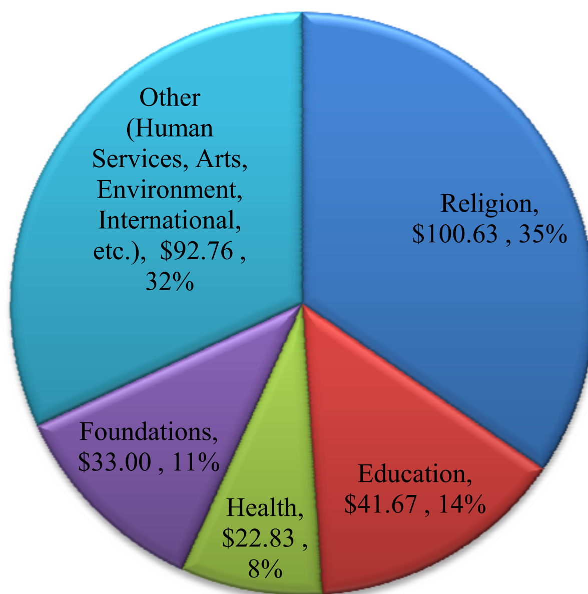
[3] Giving USA Foundation, *Giving USA 2011: The Annual Report on Philanthropy for the Year 2010* (2011).

[4] The Foundation Center, *Foundation Growth and Giving Estimates: Current Outlook* (2011).

[5] Giving USA Foundation, "Executive Summary" in *Giving USA 2011: The Annual Report on Philanthropy for the Year 2010*, p. 4 (2011).

14 percent of donations in 2010. Grantmaking foundations (including independent, community, and operating foundations) received 11 percent, while health organizations received eight percent. Other organizations, including human services organizations (e.g., the Red Cross); organizations benefiting public society (e.g., United Way, Jewish Federations, and donor-advised funds); arts, culture, and humanities organizations; international affairs organizations; environmental and animal organizations; and various other recipients together received 32 percent of contributions in 2010.[6]

Figure 1.−Total 2010 Charitable Giving by Type of Recipient Organization (Amounts in Billions)[7]



In 2009, public charities reported $2.56 trillion in total assets, over $1.41 trillion in total revenues, and $1.40 trillion in total expenses.[8] Of the revenues, 22 percent came from contributions, gifts and government grants; 76 percent came from program service revenues, which included government fees and contracts; and 11 percent came from other sources including dues, rental income, special event income, and gains or losses from goods sold.[9]

Many charitable organizations rely on charitable donations to finance their operations, and the charitable contribution deduction plays an important role in providing such support. The

[6] Ibid., p. 7.

[7] Ibid., p. 6. Chart prepared by the staff of the Joint Committee on Taxation.

[8] Urban Institute, National Center on Charitable Statistics Core Files (2009).

[9] Ibid.

deduction for charitable contributions reduces the economic cost of making a donation and thus theoretically encourages charitable giving. The after-tax cost of giving is the value of the gift net of the amount of any tax benefits received. For example, for every dollar given to charity by an itemizing taxpayer in the 28-percent marginal tax bracket, the after-tax cost of giving that dollar is 72 cents ($1 – $0.28). Empirical studies generally support the proposition that taxpayers respond to tax incentives when making giving decisions. In other words, taxpayers increase donations as the after-tax cost of giving decreases, and they decrease donations as the after-tax cost of giving increases. The strength of this price effect can have significant policy implications if, for example, the loss in Federal revenue from allowing the charitable deduction is greater than or less than the increase in charitable giving caused by the deduction. A number of economic studies have examined the strength of this price effect, with differing results, as discussed in Part II, below.

There are several economic explanations for why people give to charity that have implications for the design of charitable giving tax policy. One such explanation, for example, is that individuals give to charity not only for the benefit of others, but also partly because they receive a benefit (or "warm glow") from helping others. If this is correct, under a comprehensive income tax system, there is no rationale for allowing deduction of these contributions, because individuals have personal motivation to give. On the other hand, if donors make charitable donations purely to benefit others and are not themselves enriched by the charity, the donated income reduces the donor's ability to pay the income tax without providing the donor with any benefits. Under a comprehensive income tax, there is a rationale to allow deduction of these contributions. These and other economic rationales for the charitable deduction are discussed in Part II, below.

I. PRESENT LAW AND BACKGROUND

The Internal Revenue Code allows taxpayers to reduce their income, estate, and gift tax liabilities by taking deductions for contributions to certain organizations, including charities,[10] Federal, State, local and Indian tribal governments, and certain other organizations. The rules describing these deductions are found in sections 170 (income tax charitable deduction), 2055 (estate tax charitable deduction), and 2522 (gift tax charitable deduction).

A. History of the Charitable Contribution Deduction

The income tax charitable deduction was first introduced by the War Revenue Act of 1917,[11] and accompanied rate increases in the Federal income tax. The rate increases were enacted to help fund the United States' World War I effort, and legislators feared that the increases would reduce individuals' income "surplus" from which they supported charity. It was thought that a decrease in private support would create an increased need for public support and even higher tax rates, so the deduction was offered as a compromise. To ensure that individual taxpayers could not eliminate their tax liability through the deduction, it was capped at 15 percent of taxable income.

Supporters of the deduction also argued that the incidence of any income tax without the deduction would fall at least partially on the charities themselves, as individuals would donate only the after-tax value of their before-tax intended gifts. Additionally, the deduction was viewed as an efficient way to distribute public money to charities, as it cut out the government middlemen. Many believed charities could deliver social services better than the government and that it was appropriate for individuals rather than the government to decide which charities to support. Finally, some argued that money donated to charity should not be considered income at all, and thus should not be taxed.

The income tax charitable deduction has undergone many changes since the War Revenue Act of 1917. Significant changes include allowing an unlimited deduction to taxpayers who donated more than 90 percent of their taxable income in the current year and in each of the previous 10 years in 1924;[12] changing the measure of the deduction to adjusted gross income and the introduction of the standard deduction in 1944;[13] and removing the unlimited deduction in 1976.[14] For a brief period beginning in 1981, nonitemizers were allowed to take the deduction.[15]

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[10] This pamphlet will refer to organizations described in section 501(c)(3) of the Code as "charities" or "charitable organizations."

[11] Pub. L. No. 65-50.

[12] Pub. L. No. 68-176.

[13] Pub. L. No. 78-315.

[14] Pub. L. No. 94-455.

[15] Pub. L. No. 97-34.

The Tax Reform Act of 1986[16] ended that practice because of the increased standard deduction, the administrative burdens of substantiating nonitemizers' contributions, and the belief that the practice allowed nonitemizers a double deduction for their contributions (i.e., because the standard deduction assumes a certain amount of charitable contributions).

The Revenue Act of 1935[17] made the charitable deduction available to corporations, but the deduction was limited at that time to five percent of the corporation's net income.[18] Despite concerns in earlier debates that charitable giving by corporations would be *ultra vires* (i.e., beyond the powers of the corporation), the deduction was finally allowed as a means to reduce the level of tax increases needed to provide services to those affected by the Great Depression.

The charitable deduction for the modern estate tax was first introduced by the Revenue Act of 1918.[19] The justifications for the estate tax deduction mirror those for the income tax deduction. Supporters expressed fears that individual taxpayers would stop giving to charity because of the new income tax rates and also reasoned that, because the charities were providing public goods, donations to those charities should not be taxed. The charitable deduction for the gift tax was first introduced along with the gift tax by the Revenue Act of 1924,[20] but that gift tax was repealed in 1926.[21] However, the gift tax, along with the charitable deduction for the gift tax, was reintroduced by the Revenue Act of 1932[22] as a corollary to the estate tax, and was designed to ensure that taxpayers could not avoid the estate tax by *inter vivos* transfers (i.e., transfers during the donor's life).

[16] Pub. L. No. 99-514.

[17] Pub. L. No. 74-407.

[18] The percentage limit on corporate charitable contributions was modified to10 percent of taxable income in the Economic Recovery Tax Act of 1981, Pub. L. No. 97-34.

[19] Pub. L. No. 65-254. The War Revenue Act of 1898, 30 Stat. 448, established a short lived estate tax to raise funds for the Spanish-American War. An exemption from the tax was allowed for charitable bequests by the War Revenue Reduction Act of 1901, 31 Stat. 946, however, the tax was repealed by the War Revenue Repeal Act of 1902, 32 Stat. 96.

[20] Pub. L. No. 68-176.

[21] Pub. L. No. 69-20.

[22] Pub. L. No. 72-154.

B. Overview of the Income Tax Charitable Contribution Deduction

1. Elements of the income tax charitable contribution deduction

To be deductible, a charitable contribution generally must meet the following requirements:

- The recipient of the transfer must be eligible to receive charitable contributions (i.e., described in section 170(c), 2055(a), or 2522(a));
- The transfer must be made with gratuitous intent and without the expectation of a benefit of substantial economic value in return;
- The transfer must be complete and generally must be a transfer of a donor's entire interest in the contributed property (i.e. not a contingent or partial interest contribution);
- The transfer must be of money or property—contributions of services are not deductible;[23] and
- The transfer must be substantiated and in the proper form.

As discussed in detail below, special rules limit a taxpayer's charitable contributions in a given year to a percentage of income, and those rules, in part, turn on whether the organization receiving the contributions is a public charity or a private foundation. Other special rules determine the deductible value of contributed property for each type of property.

2. Effect of the deduction on taxable income

Because the charitable contribution deduction is an itemized deduction,[24] its value in any tax year depends on the relative amount of the taxpayer's itemized deductions compared to his or her standard deduction, and the taxpayer's marginal tax rate.[25]

An individual computes his or her taxable income by reducing gross income by the sum of (i) the deductions allowable in computing adjusted gross income ("above-the-line deductions),[26] (ii) *either* the standard deduction *or* the sum of the itemized deductions, at the

[23] For example, the value of time spent volunteering for a charitable organization is not deductible. Incidental expenses such as mileage, supplies, or other expenses incurred while volunteering for a charitable organization, however, may be deductible.

[24] Other itemized deductions include deductions for State and local income taxes (or, in lieu of income, sales taxes), real property and certain personal property taxes, home mortgage interest, certain investment interest, medical expenses (in excess of 7.5 percent of adjusted gross income ("AGI")), casualty and theft losses (in excess of 10 percent of AGI and in excess of $100 per loss), and certain miscellaneous expenses (in excess of two percent of AGI).

[25] The charitable deduction is also allowed for purposes of calculating alternative minimum taxable income.

[26] Above-the-line deductions include, among other things, trade or business expenses, losses from the sale or exchange of property, deductions attributable to rents and royalties, contributions to pensions and other retirement plans, certain moving expenses, and alimony payments.

election of the taxpayer, and (iii) the deduction for personal exemptions. Graduated tax rates are then applied to a taxpayer's taxable income to determine his or her income tax liability. A taxpayer may also reduce his or her income tax liability by certain tax credits.[27]

The standard deduction eliminates the need for many taxpayers to itemize deductions on Schedule A of Form 1040. The amount of the standard deduction is calculated in part to approximate the amount of itemized deductions—such as medical expenses, charitable contributions, and State taxes—that a taxpayer ordinarily incurs in a taxable year. The basic standard deduction varies depending upon a taxpayer's filing status. In 2011, the standard deduction is $5,800 for single individuals, $8,500 for heads of household, $11,600 for married couples filing jointly, and $5,800 for married individuals filing separately.

If a taxpayer takes the standard deduction rather than itemizing deductions in a tax year, then any charitable contributions the taxpayer makes in that year do not further reduce taxable income. A taxpayer's decision to elect to itemize deductions in lieu of taking the applicable standard deduction depends on the value of the standard deduction to that taxpayer. In general, it is beneficial to itemize deductions only if the total value of the itemized deductions is greater than the standard deduction.[28]

> **Example.**–In 2011 a single taxpayer generally would need a minimum of $5,800 of total itemized deductions, including charitable contributions, to prefer to itemize deductions rather than taking the standard deduction.

The taxpayer's marginal tax rate also affects the value of the charitable contribution deduction to a particular taxpayer. The higher the taxpayer's marginal tax rate, the greater the value of the charitable deduction to that taxpayer.

> **Example.**–The value of a $1,000 charitable contribution deduction to a single taxpayer who has $28,500 of taxable income, itemizes deductions, and is in the 15-percent tax bracket is $150 (i.e., $1,000 x 15 percent). In other words, the $1,000 charitable contribution reduces the taxpayer's tax liability by $150.

> **Example.**–The value of a $1,000 charitable contribution deduction to a single taxpayer who has $479,150 of taxable income, itemizes deductions, and is in the 35-percent tax bracket is $350 (i.e., $1,000 x 35 percent). For this taxpayer, the $1,000 charitable contribution reduces his or her tax liability by $350.

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[27] For more information regarding individual tax rates and the individual tax base, see Joint Committee on Taxation, *Federal Tax Treatment of Individuals* (JCS-43-11), September 12, 2011, and Joint Committee on Taxation, *Present Law and Historical Overview of the Federal Tax System* (JCS-1-11)), January 18, 2011.

[28] "Nearly two out of three taxpayers take the standard deduction, rather than itemizing deductions, such as mortgage interest, charitable contributions and state and local taxes." Internal Revenue Service, News Release, IR-2010-127 (December 23, 2010).

3. Organizations eligible to receive deductible charitable contributions

The following will discuss the tax-exempt sector in general and the subset of tax-exempt organizations that are eligible to receive charitable contributions that are deductible for Federal income tax purposes. Among these eligible donees are charitable organizations, which include public charities and private foundations. Public charities and private foundations are primarily distinguished from each other based on the sources of their financial support. Although contributions to both public charities and private foundations generally are deductible, the computation of the deduction may differ.

Tax-exempt organizations

The tax-exempt sector in the United States includes a wide variety of organizations, both charitable and noncharitable. Section 501(a) exempts many of these organizations from Federal income tax.[29] Section 501(c) describes the tax-exempt purposes of these organizations and the additional legal requirements they must meet to maintain tax-exempt status.

As of August 2011, there were approximately 1.5 million tax-exempt organizations.[30] Of these, there were approximately one million charitable organizations described in section 501(c)(3) and eligible to receive deductible charitable contributions under section 170, including 900,000 public charities and 100,000 private foundations. The remaining 500,000 tax-exempt organizations were other types of organizations, including chambers of commerce, fraternal organizations and civic leagues.[31] There are an estimated 276,889 religious congregations in the United States in 2011.[32]

Table A1 in the Appendix of this pamphlet lists tax-exempt organizations described under section 501(c), as recorded in the Internal Revenue Service ("IRS") Master File in April 2010 by Code section, number of organizations, and eligibility to receive deductible charitable contributions.[33]

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[29] Others may be exempt from Federal income tax by virtue of being a governmental unit or integral part thereof, or under a separate provision of the Code.

[30] Internal Revenue Service Business Master File (August 2011). This number excludes foreign and governmental organizations.

[31] Ibid. As discussed in footnote 36, below, organizations that are not required to file for recognition of tax-exempt status are not included in the IRS Business Master File.

[32] American Church Lists, *Church Demographics* (2011), available at http://americanchurchlists.com. The approximately 900,000 public charities registered with the Internal Revenue Service include religious congregations; however, this figure does not include the approximately half of all congregations that are not registered with the Internal Revenue Service.

[33] For a more detailed discussion of the tax-exempt sector in general, see Joint Committee on Taxation, *Historical Development and Present Law of the Federal Tax Exemption for Charities and Other Tax-Exempt Organizations* (JCX-29-05), April 20, 2005.

Eligible donees

By contrast, the universe of organizations eligible to receive charitable contributions that qualify as deductible for Federal income tax purposes is in some respects more limited in scope. Section 170 permits donors to deduct contributions to the following kinds of organizations:

- Governmental entities. A State (including Indian tribal governments)[34] or United States possession (or political subdivision of either), or the United States or the District of Columbia, if the contribution is made exclusively for public purposes.
- Domestic charitable organizations. Specifically, a community chest, corporation, trust, fund, or foundation, organized or created in the United States or its possessions, or under the laws of the United States, any State, the District of Columbia or any possession of the United States, and organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (by only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.
- Veterans organizations. A war veterans organization or its post, auxiliary, trust, or foundation organized in the United States or its possessions.
- Domestic fraternal societies. The society must operate under the lodge system, and the contribution must be used solely for charitable, religious, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.
- Cemetery company. A nonprofit cemetery company may receive a deductible contribution if the funds are irrevocably dedicated to the perpetual care of the cemetery as a whole and not a particular lot or mausoleum crypt.[35]

Examples of eligible donees include the following types of organizations:

- Churches, a convention or association of churches, temples, synagogues, mosques, and other religious organizations;
- Charitable organizations such as the Red Cross and the United Way;
- Nonprofit educational organizations such as schools, colleges, and universities; museums; the Boy (and Girl) Scouts of America; and certain daycare centers;

[34] Indian tribal governments are treated as States for purposes of deductibility of contributions under section 170(c) of the Code. See sec. 7871(a)(1)(A).

[35] Certain contributions to cemetery companies are deductible for income tax purposes, but not for estate or gift tax purposes. Contributions to certain foreign charities may qualify for an estate or gift tax charitable deduction. Otherwise, the categories of eligible recipients of deductible charitable contributions are largely coextensive for income, estate, and gift tax purposes. See secs. 170(c), 2055(a), and 2522(a).

- Nonprofit hospitals and medical research organizations;
- Nonprofit volunteer fire companies;
- Public parks and recreation facilities; and
- Civil defense organizations.

Donors may determine whether an organization is eligible to receive tax-deductible contributions by consulting IRS Publication 78, which lists eligible organizations by name and location.[36]

Ineligible donees

In general, no deduction is available for gifts to individuals or to organizations that are not listed under section 170(c). Contributions to the following types of organizations, for example, typically are not deductible as charitable contributions:

- Most social welfare organizations (described under section 501(c)(4));[37]
- Labor organizations (described under section 501(c)(5));
- Business leagues and chambers of commerce (described under section 501(c)(6)); and
- Homeowners associations.

Charities

As discussed above, domestic charitable organizations may be eligible donees of charitable contributions. For a charitable organization to be eligible to receive income tax deductible charitable contributions, it must meet the following basic requirements:

- Organizational form. The charity must be in the proper organizational form. Specifically, it must be a corporation, trust, community chest, fund, or foundation.[38]
- Domestic. The charity must be organized in the United States.[39] Foreign charitable organizations are not eligible to receive income tax deductible charitable

[36] IRS Publication 78 is available on the Internet at http://www.irs.gov/app/pub-78/. Publication 78 includes all organizations that have filed for recognition of tax-exempt status under a qualifying Code section and received a favorable determination from the IRS. Organizations that are not required to file for recognition of tax-exempt status are not listed in Publication 78. For example, governmental units; churches, their integrated auxiliaries, and conventions or associations of churches; subordinate organizations exempt from tax under a group exemption letter, and public charities whose annual gross receipts are normally not more than $5,000 may be treated as tax-exempt without filing an application.

[37] In a few limited situations, organizations described in section 501(c)(4) may be eligible donees described in section 170(c). This might include, for example, certain veterans organizations and certain volunteer fire companies.

[38] Sec. 170(c)(2).

contributions directly, even if they receive a favorable determination letter from the IRS that they meet the requirements of section 501(c)(3).[40]

- Charitable purpose. The charity must be organized and operated exclusively for one or more of the following tax-exempt purposes: religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster international amateur sports competition, or for the prevention of cruelty to children or animals.[41] No charitable deduction is available for gifts to organizations run for personal profit or organizations that confer substantial private benefits on some noncharitable group or class.

- No private inurement. No part of the net earnings of a charity may inure to the benefit of any private shareholder or individual (e.g., the organization may not pay dividends to organization insiders).[42]

- No excessive lobbying and no political intervention. In addition, no substantial part of the activities of a charity may consist of carrying on propaganda, or otherwise attempting to influence legislation, and such organization may not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.[43] No charitable deduction is available for gifts to groups with a substantial purpose of lobbying or which engage in political intervention.

Public charities and private foundations

An organization qualifying for tax-exempt status under section 501(c)(3) is further classified as either a public charity or a private foundation.[44] Contributions to both public charities and private foundations generally are deductible, although the computation of the deduction may differ, as discussed below.

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[39] Sec. 170(c)(2)(A).

[40] Foreign charitable organizations are, however, eligible to receive grants from domestic charities, which may serve as intermediaries of foreign charities provided that the domestic charity maintains discretion and control over its funds and does not permit earmarked grants to foreign charities. These intermediary organizations are commonly known as "friends of" organizations. Also as discussed below, the geographical restriction for the income tax charitable deduction does not apply to the gift and estate tax charitable deductions.

[41] Sec. 170(c)(2)(B).

[42] Sec. 170(c)(2)(C).

[43] Sec. 170(c)(2)(D).

[44] Sec. 509(a). Private foundations are either private operating foundations or private nonoperating foundations. In general, private operating foundations operate their own charitable programs in contrast to private nonoperating foundations, which generally are grantmaking organizations. Most private foundations are nonoperating foundations. Operating foundations are not subject to the payout requirements of private foundations and are not considered a private foundation for purposes of the charitable contribution deduction rules.

Public charities

An organization may qualify as a public charity in several ways.[45] For example:

- *Per se* public charities. It may be a specified type of organization, such as a church, educational institution, hospital and certain other medical organizations, certain organizations providing assistance to colleges and universities, or a governmental unit.[46]
- Broadly supported public charities. It may qualify as a publicly supported public charity if at least one-third of its total support is from gifts, grants or other contributions from governmental units or the general public.[47]
- Revenue generating public charities. It may qualify as a publicly supported public charity if it receives more than one-third of its total support from a combination of gifts, grants, and contributions from governmental units and the public *plus* revenue arising from activities related to its exempt purposes (e.g., fee for service income). In addition, this category of public charity must not rely excessively on endowment income as a source of support.[48]
- Supporting organizations. It may qualify as a supporting organization by providing support to another section 501(c)(3) entity that is not a private foundation.[49]
- Testing for public safety organizations. It may qualify by being organized and operated exclusively for testing for public safety.[50]

[45] The Code does not expressly define the term "public charity," but rather provides exceptions to those entities that are treated as private foundations.

[46] Sec. 509(a)(1) (referring to sections 170(b)(1)(A)(i) through (iv) for a description of these organizations).

[47] Treas. Reg. sec. 1.170A-9(f)(2). Failing this mechanical test, the organization may qualify as a public charity if it passes a "facts and circumstances" test. Treas. Reg. sec. 1.170A-9(f)(3).

[48] To meet this requirement, the organization must normally receive more than one-third of its support from a combination of (1) gifts, grants, contributions, or membership fees and (2) certain gross receipts from admissions, sales of merchandise, performance of services, and furnishing of facilities in connection with activities that are related to the organization's exempt purposes. Sec. 509(a)(2)(A). In addition, the organization must not normally receive more than one-third of its public support in each taxable year from the sum of (1) gross investment income and (2) the excess of unrelated business taxable income as determined under section 512 over the amount of unrelated business income tax imposed by section 511. Sec. 509(a)(2)(B).

[49] Sec. 509(a)(3). Supporting organizations are further classified as Type I, II, or III depending on the relationship they have with the organizations they support. Supporting organizations must support public charities listed in one of the other categories (i.e., *per se* public charities, broadly supported public charities, or revenue generating public charities), and they are not permitted to support other supporting organizations or testing for public safety organizations.

[50] Sec. 509(a)(4). Testing for public safety organizations are not eligible to receive deductible charitable contributions under section 170.

Private foundations

A section 501(c)(3) organization that does not fit within any of the above categories is a private foundation. In general, private foundations receive funding from a limited number of sources (e.g., an individual, a family, or a corporation).

Unlike public charities, private foundations are subject to tax on their net investment income at a rate of two percent (one percent in some cases).[51] Private foundations also are subject to more restrictions on their activities than are public charities. For example, private foundations are prohibited from engaging in self-dealing transactions,[52] are required to make a minimum amount of charitable distributions each year,[53] are limited in the extent to which they may control a business,[54] may not make speculative investments,[55] and may not make certain expenditures.[56] Violations of these rules result in excise taxes on the foundation and, in some cases, may result in excise taxes on the managers of the foundation.

Contributions to public charities and private foundations

As discussed below, contributions to private foundations generally do not receive as favorable treatment as do contributions to public charities for purposes of the charitable contribution deduction. Contributions to a public charity generally are deductible up to 50 percent of an individual donor's contribution base (defined below) (30 percent for capital gain property), whereas contributions to most private foundations generally are deductible up to 30 percent of an individual donor's contribution base (20 percent for capital gain property).[57] In addition, gifts of capital gain property to a public charity generally are deductible at the property's fair market value, whereas gifts of capital gain property (other than certain publicly traded stock) to most private foundations are deductible at the taxpayer's basis (cost) in the property.[58]

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[51] Sec. 4940.

[52] Sec. 4941.

[53] Sec. 4942.

[54] Sec. 4943.

[55] Sec. 4944.

[56] Such prohibited expenditures include expenditures for noncharitable purposes, lobbying, political activities, grants to individuals without prior IRS approval, grants to organizations other than public charities and certain foundations unless special procedures are followed. Sec. 4945.

[57] Sec. 170(b)(1). As discussed below, corporate donors have different contribution limits.

[58] Sec. 170(e)(1)(B)(ii) and 170(e)(5).

4. Other requirements for charitable deduction

Donative intent

The term "contribution or gift" is generally interpreted to mean a voluntary transfer of money or other property without receipt of adequate consideration and with donative intent. A payment or other transfer to a charity (regardless of whether it is called a "contribution") is not deductible if it is made in exchange or in return for an economic benefit.

To the extent a payment exceeds the fair market value of the benefit received from the charity, the excess portion may be deductible provided that the donor can demonstrate that he or she transferred the excess to charity with the intention of making a gift.[59]

> **Example.**–If a donor pays $1,000 for the privilege of attending a dinner to benefit a charitable organization, the deductible portion of the payment does not include the value of the dinner or other tangible return benefits the donor receives at the event.[60]

Other examples of payments to organizations that may qualify as eligible donees, but which are not deductible payments due to a lack of donative intent include the following:

- Tuition. If a parent pays tuition to a university for a child's education, that tuition payment is not deductible even though the university may be a charitable organization because the tuition is a fee for educational services, a substantial return benefit.
- Dues. A payment of membership dues, fees, or other bills to country clubs, lodges, fraternal orders, or similar groups generally are not deductible, even if such groups may qualify as eligible recipients of charitable contributions, because such payments typically are in exchange for services rendered.
- Lottery tickets. The cost of a raffle, bingo or lottery ticket generally is not deductible to the extent that the payment entitles the purchaser to a chance of winning a valuable prize.

Substantiation and other formal requirements

A donor who claims a deduction for a charitable contribution must maintain reliable written records regarding the contribution, regardless of the value or amount of such contribution.[61] In the case of a charitable contribution of money, regardless of the amount, applicable recordkeeping requirements are satisfied only if the donor maintains as a record of the contribution a bank record or a written communication from the donee showing the name of the

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[59] *United States v. American Bar Endowment*, 477 U.S. 105 (1986). Treas. Reg. sec. 1.170A-1(h).

[60] Intangible return benefits and certain low-cost items given in exchange for a contribution do not reduce the value of the charitable deduction.

[61] Sec. 170(f)(17).

donee organization, the date of the contribution, and the amount of the contribution. In such cases, the recordkeeping requirements may not be satisfied by maintaining other written records.

Present law provides that no charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether the charity provided any good or service (and an estimate of the value of any such good or service) to the taxpayer in consideration for the contribution.[62]

In addition, present law requires that any charity receiving a contribution exceeding $75 made partly as a gift and partly as consideration for goods or services furnished by the charity (a "quid pro quo" contribution) is required to inform the contributor in writing of an estimate of the value of the goods or services furnished by the charity and that only the portion exceeding the value of the goods or services is deductible as a charitable contribution.[63]

If the total charitable deduction claimed for noncash property is more than $500, the taxpayer must attach a completed Form 8283 (Noncash Charitable Contributions) to the taxpayer's return or the deduction is not allowed.[64] In general, taxpayers are required to obtain a qualified appraisal for donated property with a value of more than $5,000, and to attach an appraisal summary to the tax return.

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[62] Such acknowledgement must include the amount of cash and a description (but not value) of any property other than cash contributed, whether the donee provided any goods or services in consideration for the contribution, and a good faith estimate of the value of any such goods or services. Sec. 170(f)(8).

[63] Sec. 6115.

[64] Sec. 170(f)(11).

C. Determining the Amount of the Income Tax Charitable Contribution Deduction

The preceding sections generally describe charitable contributions that are deductible for Federal income tax purposes. This section discusses several mechanical rules that apply in determining the amount of a taxpayer's Federal income tax charitable deduction for such a contribution.

For Federal income tax purposes, the deductible portion of a charitable contribution generally is limited to a percentage of the taxpayer's income. Applicable percentage limits for individual and corporate taxpayers are discussed in Part I.C.1, below. In addition, in determining the deductible value of a charitable contribution for income tax purposes, the Code sometimes requires a reduction from the fair market value of appreciated property, resulting in a deductible amount (before considering percentage limits on deductibility) equal to the taxpayer's basis in the property or to some other amount that is less than the fair market value of the property. These valuation rules are discussed in Part I.C.2, below.

1. Percentage limits on charitable contributions

Individual taxpayers

Percentage limits for individual taxpayers under section 170

Charitable contributions by individual taxpayers are limited to a specified percentage of the individual's contribution base. The contribution base is the taxpayer's adjusted gross income ("AGI") for a taxable year, disregarding any net operating loss carryback to such year under section 172.[65] In general, more favorable (higher) percentage limits apply to contributions of cash and ordinary income property than to contributions of capital gain property. More favorable limits also generally apply to contributions to public charities (and certain operating foundations) than to contributions to nonoperating private foundations.

More specifically, contributions by an individual taxpayer of cash and other property (other than appreciated capital gain property) to a charitable organization described in section 170(b)(1)(A) (public charities, private foundations other than nonoperating private foundations, and certain governmental units) may not exceed 50 percent of the taxpayer's contribution base. Contributions of this type of property to nonoperating private foundations and certain other organizations generally may be deducted up to 30 percent of the taxpayer's contribution base.

Contributions of appreciated capital gain property to public charities and other organizations described in section 170(b)(1)(A) generally are deductible up to 30 percent of the taxpayer's contribution base. An individual may elect, however, to bring all these contributions of appreciated capital gain property for a taxable year within the 50-percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of appreciated capital gain property to nonoperating private foundations are deductible up to 20 percent of the taxpayer's contribution base.

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[65] Sec. 170(b)(1)(G).

Finally, more favorable percentage limits sometimes apply to contributions *to* the donee charity than to contributions that are *for the use of* the donee charity. Contributions of capital gain property *for the use of* public charities and other organizations described in section 170(b)(1)(A) also are limited to 20 percent of the taxpayer's contribution base.[66] In contrast to property contributed directly *to* a charitable organization, property contributed *for the use of* an organization generally has been interpreted to mean property contributed *in trust for* the organization.[67] Charitable contributions of income interests (where deductible) also generally are treated as contributions *for the use of* the donee organization.

Table 1.–Charitable Contribution Percentage Limits For Individual Taxpayers[68]

	Ordinary Income Property and Cash	**Capital Gain Property *to* the Recipient[69]**	**Capital Gain Property *for the use of* the Recipient**
Public Charities	50%	30%	20%
Private Operating Foundations and Private Distributing Foundations	50%	30%	20%
Other Private Foundations (Nonoperating Foundations)	30%	20%	20%

Overall limit on itemized deductions ("Pease limitation")

Prior to 2010, the total amount of otherwise allowable itemized deductions (other than medical expenses, investment interest, and casualty, theft, or wagering losses) was limited for upper-income taxpayers. In computing this reduction of total itemized deductions (including the charitable deduction), all limitations applicable to such deductions (such as the separate floors) were first applied and, then, the otherwise allowable total amount of itemized deductions was reduced by three percent of the amount by which the taxpayer's AGI exceeded a threshold

[66] Under a special, temporary provision, certain qualified conservation contributions (generally, conservation easements), qualify for more generous contribution limits and carryforward periods. These rules are discussed in detail below.

[67] *Rockefeller v. Commissioner*, 676 F.2d 35, 39 (2d Cir. 1982).

[68] Percentages shown are the percentage of an individual's contribution base.

[69] Capital gain property contributed to public charities, private operating foundations, or private distributing foundations will be subject to the 50-percent limitation if the donor elects to reduce the fair market value of the property by the amount that would have been long-term capital gain if the property had been sold.

amount which was indexed annually for inflation. The otherwise allowable itemized deductions could not be reduced by more than 80 percent.

The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA")[70] repealed this overall limitation on itemized deductions; the repeal was phased in over five years. EGTRRA provided: (1) a one-third reduction of the otherwise applicable limitation in 2006 and 2007; (2) a two-thirds reduction in 2008, and 2009; and (3) no overall limitation on itemized deductions in 2010. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010[71] extended the repeal of the Pease limitation for two additional years (through 2012). The repeal of the Pease limitation sunsets, and the limitation again becomes fully effective, in 2013.

Corporate taxpayers

Under present law, a corporation generally may deduct charitable contributions up to 10 percent of the corporation's taxable income for the year.[72] For this purpose, taxable income is determined without regard to (1) the charitable contributions deduction, (2) any net operating loss carryback to the taxable year, (3) deductions for dividends received, (4) deductions for dividends paid on certain preferred stock of public utilities, and (5) any capital loss carryback to the taxable year.[73]

A transfer of property by a corporation to a charity might qualify as either a deductible charitable contribution or a deductible business expense, but not both. For example, no deduction is allowed as a business expense under section 162 for any contribution that would be deductible as a charitable contribution but for the percentage limitations on the charitable contributions deduction (or certain other limits on deductibility under section 170).[74] In addition, a business transfer made with a reasonable expectation of a return benefit may not be deductible as a charitable contribution under section 170, because the transferor lacks donative intent. The same transfer, however, might be deductible as a business expense under section 162.

Carryforwards of excess contributions

Charitable contributions that exceed the applicable percentage limit generally may be carried forward for up to five years.[75] In general, contributions carried over from a prior year are

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[70] Pub. L. No. 107-16.

[71] Pub. L. No. 111-312.

[72] Sec. 170(b)(2)(A).

[73] Sec. 170(b)(2)(C). Under a special, temporary provision, certain qualified conservation contributions (generally, conservation easements), qualify for more generous contribution limits and carryforward periods. These rules are discussed in detail below.

[74] Sec. 162(b).

[75] Sec. 170(d).

taken into account after contributions for the current year that are subject to the same percentage limit. Excess contributions made *for the use of* (rather than *to*) an organization generally may not be carried forward.

2. Valuation of charitable contributions

In general

For purposes of the income tax charitable deduction, the value of property contributed to charity may be limited to the fair market value of the property, the donor's tax basis in the property, or some other amount.

Charitable contributions of cash are deductible in the amount contributed, subject to the percentage limits discussed above. In addition, a taxpayer generally may deduct the full fair market value of long-term capital gain property contributed to charity.[76] Contributions of tangible personal property also generally are deductible at fair market value if the use by the recipient charitable organization is related to its tax-exempt purpose.[77]

In certain other cases, however, section 170(e) limits the deductible value of the contribution of appreciated property to the donor's tax basis in the property. This limitation of the property's deductible value to basis generally applies, for example, for: (1) contributions of inventory or other ordinary income or short-term capital gain property;[78] (2) contributions of tangible personal property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose;[79] and (3) contributions to or for the use of a private foundation (other than certain private operating foundations).[80]

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[76] Capital gain property means any capital asset or property used in the taxpayer's trade or business, the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Sec. 170(e)(1)(A).

[77] A rule enacted as part of the Pension Protection Act of 2006, Pub. L. No. 109-280, provides for recovery of the excess tax benefit for charitable contributions of tangible personal property with respect to which a fair market value deduction in excess of $5,000 is claimed and which is not used for exempt purposes. Sec. 170(e)(7). Under the provision, if a donee organization disposes of applicable property within three years of the contribution of the property, the donor is subject to an adjustment of the tax benefit. If the disposition occurs in the tax year in which the contribution is made, the donor's deduction generally is basis and not fair market value. If the disposition occurs in a subsequent year, the donor must include as ordinary income for its taxable year in which the disposition occurs an amount equal to the excess (if any) of (i) the amount of the deduction previously claimed by the donor as a charitable contribution with respect to such property, over (ii) the donor's basis in such property at the time of the contribution. There is no adjustment of the tax benefit if the donee organization makes an appropriate certification to the Secretary, by written statement signed under penalties of perjury by an officer of the organization.

[78] Sec. 170(e). Special rules, discussed below, apply for certain contributions of inventory and other property.

[79] Sec. 170(e)(1)(B)(i)(I).

[80] Sec. 170(e)(1)(B)(ii). Certain contributions of patents or other intellectual property also generally are limited to the donor's basis in the property. Sec. 170(e)(1)(B)(iii). However, a special rule, described in greater detail below, permits additional charitable deductions beyond the donor's tax basis in certain situations. In addition,

For contributions of qualified appreciated stock, the above-described rule that limits the value of property contributed to or for the use of a private nonoperating foundation to the taxpayer's basis in the property does not apply; therefore, subject to certain limits, contributions of qualified appreciated stock to a nonoperating private foundation may be deducted at fair market value.[81] Qualified appreciated stock is stock that is capital gain property and for which (as of the date of the contribution) market quotations are readily available on an established securities market.[82]

Contributions of property with a fair market value that is less than the donor's tax basis generally are deductible at the fair market value of the property.

Enhanced deduction rules for certain contributions of inventory and other property

Although most charitable contributions of property are valued at fair market value or the donor's tax basis in the property, certain statutorily described contributions of appreciated inventory and other property qualify for an enhanced deduction valuation that exceeds the donor's tax basis in the property, but which is less than the fair market value of the property.

Contributions of inventory by C corporations to section 501(c)(3) organizations for the care of the ill, the needy, or infants

As discussed above, a taxpayer's deduction for charitable contributions of inventory property generally is limited to the taxpayer's basis (typically, cost) in the inventory, or if less, the fair market value of the property. For certain contributions of inventory, however, C corporations (but not other taxpayers) may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (i.e., basis plus one-half of fair market value in excess of basis) or (2) two times basis.[83] To be eligible for the enhanced deduction value, the contributed property generally must be inventory of the taxpayer, contributed to a charitable organization described in section 501(c)(3) (except for private nonoperating foundations), and the donee must (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants, (2) not transfer the property in exchange for money, other property, or services, and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements.[84] Contributions to organizations that are not

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under a special rule enacted as part of the Pension Protection Act of 2006, the deduction for a charitable contribution of taxidermy property that is contributed by the person who prepared, stuffed, or mounted the property (or by any person who paid or incurred the cost of such preparation, stuffing, or mounting) is limited to basis. Sec. 170(e)(1)(B)(iv). For purposes of determining a taxpayer's basis in such taxidermy property, only the cost of the preparing, stuffing, and mounting may be included. Sec. 170(f)(15). Indirect costs, such as transportation, may not be deducted under section 170.

[81] Sec. 170(e)(5).

[82] Sec. 170(e)(5)(B).

[83] Sec. 170(e)(3).

[84] Sec. 170(e)(3)(A)(i)-(iii). In the case of contributed property subject to the Federal Food, Drug, and Cosmetic Act, as amended, the property must satisfy the applicable requirements of such Act on the date of transfer

described in section 501(c)(3), such as governmental entities, do not qualify for this enhanced deduction.

To use the enhanced deduction provision, the taxpayer must establish that the fair market value of the donated item exceeds basis.

Temporary enhanced deduction rules

Three temporary provisions pertaining to food inventory, book inventory, and computer equipment permit donors of inventory property to use the enhanced deduction computation for contributions that do not satisfy one or more requirements of the permanent enhanced deduction provision of present law, described above, such as the requirement that the contribution be made by a C corporation or the requirement that the contribution be made to a qualified donee that is described in section 501(c)(3).

Food inventory.–Under a temporary provision for contributions made before January 1, 2012, any taxpayer, whether or not a C corporation, engaged in a trade or business is eligible to claim the enhanced deduction for donations of food inventory.[85] For taxpayers other than C corporations, the total deduction for donations of food inventory in a taxable year generally may not exceed 10 percent of the taxpayer's net income for such taxable year from all sole proprietorships, S corporations, or partnerships (or other non C corporations) from which contributions of apparently wholesome food are made. For example, if a taxpayer is a sole proprietor, a shareholder in an S corporation, and a partner in a partnership, and each business makes charitable contributions of food inventory, the taxpayer's deduction for donations of food inventory is limited to 10 percent of the taxpayer's net income from the sole proprietorship and the taxpayer's interests in the S corporation and partnership. However, if only the sole proprietorship and the S corporation made charitable contributions of food inventory, the taxpayer's deduction would be limited to 10 percent of the net income from the trade or business of the sole proprietorship and the taxpayer's interest in the S corporation, but not the taxpayer's interest in the partnership.[86]

Under the temporary provision, the enhanced deduction for food inventory is available only for food that qualifies as apparently wholesome food. Apparently wholesome food is defined as food intended for human consumption that meets all quality and labeling standards

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and for 180 days prior to the transfer. Sec. 170(e)(3)(A)(iv). A donor making a charitable contribution of inventory must make a corresponding adjustment to the cost of goods sold by decreasing the cost of goods sold by the lesser of the fair market value of the property or the donor's basis with respect to the inventory. Treas. Reg. sec. 1.170A-4A(c)(3).

[85] Sec. 170(e)(3)(C).

[86] The 10-percent limitation does not affect the application of the generally applicable percentage limitations. For example, if 10 percent of a sole proprietor's net income from the proprietor's trade or business was greater than 50 percent of the proprietor's contribution base, the available deduction for the taxable year (with respect to contributions to public charities) would be 50 percent of the proprietor's contribution base. Consistent with present law, such contributions may be carried forward because they exceed the 50-percent limitation. Contributions of food inventory by a taxpayer that is not a C corporation that exceed the 10-percent limitation but not the 50-percent limitation could not be carried forward.

imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

Book inventory.−The generally applicable enhanced deduction for C corporations is expanded and modified to include qualified book contributions made before January 1, 2012.[87] A qualified book contribution means a charitable contribution of books to a public school that provides elementary education or secondary education (kindergarten through grade 12) and that is an educational organization that 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.

The enhanced deduction for qualified book contributions is not allowed unless the donee organization certifies in writing that the contributed books are suitable, in terms of currency, content, and quantity, for use in the donee's educational programs and that the donee will use the books in such educational programs. The donee also must make the certifications required for the generally applicable enhanced deduction, i.e., the donee will (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants, (2) not transfer the property in exchange for money, other property, or services, and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements.

Computer equipment.−Under a temporary provision for contributions made before January 1, 2012, certain corporations may claim an enhanced deduction for a qualified computer contribution.[88] A qualified computer contribution is a charitable contribution of any computer technology or equipment that meets several requirements. The contribution must meet standards of functionality and suitability as established by the Secretary of the Treasury. The contribution must be to certain educational organizations or public libraries and made not later than three years after the taxpayer acquired the property (or, if the taxpayer constructed or assembled the property, the date construction or assembly of the property is substantially completed).[89] The original use of the property must be by the donor or the donee,[90] and substantially all of the donee's use of the property must be within the United States for educational purposes related to the function or purpose of the donee. The property must fit productively into the donee's education plan. The donee may not transfer the property in exchange for money, other property, or services, except for shipping, installation, and transfer costs. To determine whether property is constructed or assembled by the taxpayer, the rules applicable to qualified research

[87] Sec. 170(e)(3)(D).

[88] Sec. 170(e)(6).

[89] If the taxpayer constructed the property and reacquired such property, the contribution must be within three years of the date the original construction was substantially completed. Sec. 170(e)(6)(D)(i).

[90] This requirement does not apply if the property was reacquired by the manufacturer and contributed. Sec. 170(e)(6)(D)(ii).

contributions apply. Contributions may be made to private foundations under certain conditions.[91]

Selected statutory rules for specific types of property

Special statutory rules limit the deductible value (and impose enhanced reporting obligation on donors) of charitable contributions of certain types of property, including vehicles, intellectual property, and clothing and household items. Each of these rules was enacted in response to concerns that some taxpayers did not accurately report—and in many instances overstated—the value of the property for purposes of claiming a charitable deduction.

Vehicles

Under present law, the amount of deduction for charitable contributions of vehicles (generally including automobiles, boats, and airplanes for which the claimed value exceeds $500 and excluding inventory property) depends upon the use of the vehicle by the donee organization.[92] If the donee organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction may not exceed the gross proceeds received from the sale. In other situations, a fair market value deduction may be allowed.

The Code imposes special substantiation requirements on contributions of vehicles for which the claimed value exceeds $500 (excluding inventory). A penalty applies if a donee organization knowingly furnishes a false or fraudulent acknowledgement, or knowingly fails to furnish an acknowledgement showing the required information and meeting other statutory requirements.

Patents and other intellectual property

If a taxpayer contributes a patent or other intellectual property (other than certain copyrights or inventory)[93] to a charitable organization, the taxpayer's initial charitable deduction is limited to the lesser of the taxpayer's basis in the contributed property or the fair market value

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[91] Sec. 170(e)(6)(C).

[92] Before 2005, a taxpayer who donated a used automobile to a charitable donee generally deducted the fair market value (rather than the taxpayer's basis) of the automobile. A taxpayer who donated a used automobile generally was permitted to use an established used car pricing guide to determine the fair market value of the automobile, but only if the guide listed a sales price for an automobile of the same make, model and year, sold in the same area, and in the same condition as the donated automobile. Similar rules applied to contributions of other types of vehicles and property, such as boats. The present-law rules concerning the deductibility of charitable contributions of vehicles were enacted as part of the American Jobs Creation Act of 2004, and are effective for contributions made after December 31, 2004. For a more detailed description of these rules, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 108th Congress* (JCS-5-05), May 2005, pp. 463-466.

[93] Under present and prior law, certain copyrights are not considered capital assets, in which case the charitable deduction for such copyrights generally is limited to the taxpayer's basis. See sec. 1221(a)(3), 1231(b)(1)(C).

of the property.[94] In addition, the taxpayer is permitted to deduct, as a charitable contribution, certain additional amounts in the year of contribution or in subsequent taxable years based on a specified percentage of the qualified donee income received or accrued by the charitable donee with respect to the contributed intellectual property. For this purpose, qualified donee income includes net income received or accrued by the donee that properly is allocable to the intellectual property itself (as opposed to the activity in which the intellectual property is used).[95]

The amount of any additional charitable deduction is calculated as a sliding-scale percentage of qualified donee income received or accrued by the charitable donee that properly is allocable to the contributed property for the applicable taxable year of the donor. The percentage declines from 100 percent in the first and second years ending on or after the contribution to 10 percent in the 11th and 12th years. No deduction is permitted for later taxable years. An additional charitable deduction is allowed only to the extent that the aggregate of the amounts that are calculated pursuant to the sliding-scale exceed the amount of the deduction claimed upon the contribution of the patent or intellectual property. Special reporting and substantiation rules apply with respect to contributions of patents and other intellectual property.

Additional charitable deductions are not available for patents or other intellectual property contributed to a private foundation (other than a private operating foundation or certain other private foundations described in section 170(b)(1)(E)). No charitable deduction is permitted with respect to any revenues or income received or accrued by the charitable donee after the expiration of the legal life of the patent or intellectual property, or after the tenth anniversary of the date the contribution was made by the donor.

Clothing and household items

Charitable contributions of clothing and household items generally are subject to the charitable deduction rules applicable to tangible personal property. If such contributed property is appreciated property in the hands of the taxpayer, and is not used to further the donee's exempt purpose, the deduction is limited to basis. In most situations, however, clothing and household items have a fair market value that is less than the taxpayer's basis in the property. Because property with a fair market value less than basis generally is deductible at the property's fair market value, taxpayers generally may deduct only the fair market value of most contributions of clothing or household items, regardless of whether the property is used for exempt or unrelated purposes by the donee organization.

Furthermore, a special rule provides that no deduction is allowed for a charitable contribution of clothing or a household item unless the item is in good used condition or better. The Secretary is authorized to deny by regulation a deduction for any contribution of clothing or a household item that has minimal monetary value, such as used socks and used undergarments.

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[94] Sec. 170(e)(1)(B)(iii).

[95] The present-law rules allowing additional charitable deductions for qualified donee income were enacted as part of the American Jobs Creation Act of 2004, and are effective for contributions made after June 3, 2004. For a more detailed description of these rules, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 108th Congress* (JCS-5-05), May 2005, pp. 457-461.

A deduction may be allowed for a charitable contribution of an item of clothing or a household item not in good used condition or better if the amount claimed for the item is more than $500 and the taxpayer includes with the taxpayer's return a qualified appraisal with respect to the property.

Household items include furniture, furnishings, electronics, appliances, linens, and other similar items. Food, paintings, antiques, and other objects of art, jewelry and gems, and collections are excluded from the provision.[96]

[96] The special rules concerning the deductibility of clothing and household items were enacted as part of the Pension Protection Act of 2006, and are effective for contributions made after August 17, 2006. For a more detailed description of these rules, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 109th Congress* (JCS-1-07), Jan. 17, 2007, pp. 597-600.

D. Contributions of Partial Interests in Property

1. In general

In general, a charitable deduction is not allowed for income, estate, or gift tax purposes if the donor transfers an interest in property to a charity while retaining an interest in that property or transferring an interest in that property to a noncharity for less than full and adequate consideration.[97] This rule of nondeductibility, often referred to as the partial interest rule, generally prohibits a charitable deduction for contributions of income interests, remainder interests, or rights to use property.

A charitable contribution deduction generally is not allowable for a contribution of a future interest in tangible personal property.[98] For this purpose, a future interest is one "in which a donor purports to give tangible personal property to a charitable organization, but has an understanding, arrangement, agreement, etc., whether written or oral, with the charitable organization which has the effect of reserving to, or retaining in, such donor a right to the use, possession, or enjoyment of the property."[99]

A gift of an undivided portion of a donor's entire interest in property generally is not treated as a nondeductible gift of a partial interest in property.[100] For this purpose, an undivided portion of a donor's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the donor in such property and must extend over the entire term of the donor's interest in such property.[101] A gift generally is treated as a gift of an undivided portion of a donor's entire interest in property if the donee is given the right, as a tenant in common with the donor, to possession, dominion, and control of the property for a portion of each year appropriate to its interest in such property.[102]

Other exceptions to the partial interest rule are provided for, among other interests: (1) remainder interests in charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds; (2) present interests in the form of a guaranteed annuity or a fixed

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[97] Secs. 170(f)(3)(A) (income tax), 2055(e)(2) (estate tax), and 2522(c)(2) (gift tax).

[98] Sec. 170(a)(3).

[99] Treas. Reg. sec. 1.170A-5(a)(4). Treasury regulations provide that section 170(a)(3), which generally denies a deduction for a contribution of a future interest in tangible personal property, has "no application in respect of a transfer of an undivided present interest in property. For example, a contribution of an undivided one-quarter interest in a painting with respect to which the donee is entitled to possession during three months of each year shall be treated as made upon the receipt by the donee of a formally executed and acknowledged deed of gift. However, the period of initial possession by the donee may not be deferred in time for more than one year." Treas. Reg. sec. 1.170A-5(a)(2).

[100] Sec. 170(f)(3)(B)(ii).

[101] Treas. Reg. sec. 1.170A-7(b)(1).

[102] Treas. Reg. sec. 1.170A-7(b)(1).

percentage of the annual value of the property; (3) a remainder interest in a personal residence or farm; and (4) qualified conservation contributions, some of which are discussed below.

2. Split interest trusts

Certain split interest transfers are not subject to the partial interest rule, which generally bars deductions for contributions of partial interests in property. Split interest trust transfers generally allow a taxpayer to make a deductible charitable contribution in trust while retaining an interest in the property for some period of time.[103]

For example, provided the transaction satisfies all applicable technical requirements,[104] a donor may make a charitable contribution using a charitable remainder trust. Charitable remainder trusts generally are structured such that the donor or another individual receives an income or similar interest from the trust for some period of time, after which a qualified charitable organization receives the trust property (the remainder interest). Although the remainder interest is a partial interest in property, the donor generally qualifies for a charitable deduction at the time of the contribution to the trust equal to the present value of the charitable remainder interest.[105] As an alternative, a donor may make a charitable contribution using a charitable lead trust, another type of partial interest gift for which a charitable deduction may be allowed.[106] In a charitable lead trust structure, the charity generally receives specified payments from the trust for some period of time (the lead interest), with the remainder interest reverting to the donor or passing to other beneficiaries.

3. Qualified conservation contributions

Exception from partial interest rule

Qualified conservation contributions are not subject to the partial interest rule, which generally bars deductions for charitable contributions of partial interests in property.[107] A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. A qualified real property interest is defined as: (1) the entire interest of the donor other than a qualified mineral interest; (2) a remainder interest; or (3) a restriction (granted in perpetuity) on the use that may be made of the real property (generally, a conservation easement). Qualified organizations include certain governmental units, public charities that meet certain public support tests, and certain supporting organizations. Conservation purposes include: (1) the preservation of land areas for outdoor

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[103] Split interest trusts are subject to certain operational rules and restrictions that apply to private foundations, including rules prohibiting self dealing (section 4941) and prohibiting excess business holdings (section 4943). See sec. 4947(a)(2).

[104] See section 664.

[105] Secs. 170(f)(2)(A), 2055(e)(2)(A), 2522(c)(2)(A).

[106] Secs. 170(f)(2)(B), 2055(e)(2)(A), 2522(c)(2)(A).

[107] Secs. 170(f)(3)(B)(iii) and 170(h).

recreation by, or for the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation will yield a significant public benefit and is either for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy; and (4) the preservation of an historically important land area or a certified historic structure.

Increased percentage limits and extended carryforwards

Under a temporary provision that is effective for contributions made in taxable years beginning before January 1, 2012,[108] preferential percentage limits and carryforward rules apply for qualified conservation contributions.[109] In general, under the temporary provision, the 30-percent contribution base limitation on contributions of capital gain property by individuals does not apply to qualified conservation contributions. Instead, individuals may deduct the fair market value of any qualified conservation contribution to an organization described in section 170(b)(1)(A) (generally, public charities) to the extent of the excess of 50 percent of the contribution base over the amount of all other allowable charitable contributions. These contributions are not taken into account in determining the amount of other allowable charitable contributions. Individuals are allowed to carry forward any qualified conservation contributions that exceed the 50-percent limitation for up to 15 years. In the case of an individual who is a qualified farmer or rancher for the taxable year in which the contribution is made, a qualified conservation contribution is allowable up to 100 percent of the excess of the taxpayer's contribution base over the amount of all other allowable charitable contributions.

In the case of a corporation (other than a publicly traded corporation) that is a qualified farmer or rancher for the taxable year in which the contribution is made, any qualified conservation contribution is allowable up to 100 percent of the excess of the corporation's taxable income (as computed under section 170(b)(2)) over the amount of all other allowable charitable contributions. Any excess may be carried forward for up to 15 years as a contribution subject to the 100-percent limitation.[110]

A qualified farmer or rancher means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.

4. Fractional contributions of tangible personal property (including works of art)

As discussed above, an exception to the partial interest rule permits a charitable deduction for a contribution of an undivided portion of a donor's entire interest in property.

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[108] Sec. 170(b)(1)(E).

[109] For a more detailed description of the temporary rules providing for increased percentage limits and extended carryforward periods for qualified conservation contributions, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 111th Congress* (JCS-2-11), March 2011, pp. 589-592.

[110] Sec. 170(b)(2)(B).

Under this exception, a donor generally may take a deduction for a charitable contribution of a fractional interest in tangible personal property (such as a painting), provided the donor satisfies the requirements for deductibility (including the requirements concerning contributions of partial interests and future interests in property), and in subsequent years make additional charitable contributions of undivided, fractional interests in the same property.[111] However, special valuation and deductibility rules apply to charitable contributions of fractional interests in tangible personal property.[112]

First, the value of a donor's charitable deduction for the initial contribution of a fractional interest in an item of tangible personal property (or collection of such items) is determined under generally applicable rules (e.g., based upon the fair market value of the artwork at the time of the contribution of the fractional interest and considering whether the use of the artwork will be related to the donee's exempt purposes). For purposes of determining the deductible amount of each additional contribution of an interest (whether or not a fractional interest) in the same item of tangible personal property for income tax purposes, however, special rules apply. Specifically, the fair market value of the item is the lesser of: (1) the value used for purposes of determining the charitable deduction for the initial fractional contribution; or (2) the fair market value of the item at the time of the subsequent contribution.[113]

Second, the income tax charitable deduction and gift tax charitable deduction for a contribution of a partial interest in tangible personal property may be recaptured under certain circumstances, such as where the donor fails to contribute all of the donor's remaining interest in such property within a specified period of time, or where the donee charity fails to take substantial physical possession of the item or fails to use the item for an exempt use during such period of time, as required by the Code.[114] In any case in which there is a recapture of a deduction, the provision also imposes an additional tax in an amount equal to 10 percent of the amount recaptured.

In addition, no income or gift tax charitable deduction generally is allowed for a contribution of a fractional interest in an item of tangible personal property unless immediately before such contribution all interests in the item are owned (1) by the donor or (2) by the donor and the donee organization.[115]

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[111] See, e.g., *Winokur v. Commissioner*, 90 T.C. 733 (1988).

[112] The special rules for contributions of fractional interests in tangible personal property were enacted as part of the Pension Protection Act of 2006. For a more detailed description of the rules, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 109th Congress* (JCS-1-07), Jan. 17, 2007, pp. 601-603. The rules were amended by the Tax Technical Corrections Act of 2007, Pub. L. No. 110-172, section 1218. For a description of the amendments, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 110th Congress* (JCS-1-09), March 2009, p. 72.

[113] Sec. 170(o)(2).

[114] Sec. 170(o)(3). If, for example, an art museum described in section 501(c)(3) is the donee of a fractional interest in a painting and includes the painting in an art exhibit sponsored by the museum, such use generally satisfies the related-use requirement of the provision.

[115] Sec. 170(o)(1).

E. Overview of the Estate and Gift Tax Charitable Deductions

A charitable deduction also is available for Federal estate and gift tax purposes.[116] In determining the value of a decedent's taxable estate for Federal estate tax purposes, the value of bequests or other transfers to certain qualified public or charitable organizations is subtracted from the value of the decedent's gross estate.[117] Similarly, in computing a taxpayer's taxable gifts for a year for Federal gift tax purposes, the value of gifts made to certain qualified public and charitable organizations during the year is subtracted from the value of the taxpayer's total gifts for the year.[118] Therefore, in general, the effect of the charitable deductions for estate and gift tax purposes is to remove the value of charitable transfers from the estate or gift tax base, such that these transfers escape estate or gift taxation.

The elements of a deductible charitable contribution for estate or gift tax purposes generally are the same as the elements of a deductible charitable contribution for income tax purposes. For example, as with the income tax, to qualify for an estate or gift tax charitable deduction the contribution must be made with donative intent and must be made to an eligible donee. The lists of eligible donees for estate and gift tax purposes also largely correspond to the list of eligible donees for income tax purposes, with a few key differences.[119] Most significant, certain contributions to foreign charities may qualify for an estate or gift tax charitable deduction, whereas the income tax charitable deduction generally is available only for contributions to domestic charitable organizations.

In contrast to the income tax charitable deduction, there are no percentage limits on the deductibility of a charitable contribution for estate or gift tax purposes. The amount of the deduction also does not differ based on the type of donee organization (e.g., a public charity versus a nonoperating private foundation) or the type of property contributed (e.g., ordinary income property versus capital gain property). For estate tax purposes, however, the deduction generally is limited to the value of the property transferred to charity that is required to be included in the decedent's gross estate.[120]

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[116] Secs. 2055 (estate tax) and 2522 (gift tax).

[117] Sec. 2055(a).

[118] Sec. 2522(a).

[119] See secs. 170(c), 2055(a), and 2522(a).

[120] Sec. 2055(d).

F. Exclusion from Gross Income for Distributions from Individual Retirement Arrangements (IRAs) for Charitable Purposes

A temporary rule provides an exclusion from gross income for otherwise taxable IRA distributions from a traditional or a Roth IRA in the case of qualified charitable distributions made in taxable years beginning before January 1, 2012.[121] In the absence of the temporary rule, the IRA owner generally would be treated as having received a distribution from the IRA and subsequently having made a contribution to charity, subject to the percentage limits on charitable contributions discussed above. The exclusion from gross income may not exceed $100,000 per taxpayer per taxable year.[122]

A qualified charitable distribution is any distribution from an IRA directly by the IRA trustee to an organization described in section 170(b)(1)(A) (other than a supporting organization or a donor advised fund). Distributions are eligible for the exclusion only if made on or after the date the IRA owner attains age 70-½ and only to the extent the distribution would be includible in gross income (without regard to this provision).[123]

The exclusion applies only if a charitable contribution deduction for the entire distribution otherwise would be allowable (under present law), determined without regard to the generally applicable percentage limitations. Thus, for example, if the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, the exclusion is not available with respect to any part of the IRA distribution.

Distributions that are excluded from gross income by reason of the qualified charitable distribution provision are not taken into account in determining the deduction for charitable contributions under section 170.

[121] Sec. 408(d)(8). The exclusion does not apply to distributions from employer-sponsored retirement plans, including SIMPLE IRAs and simplified employee pensions ("SEPs").

[122] Special rules apply in determining the amount of an IRA distribution that is otherwise taxable. The otherwise applicable rules regarding taxation of IRA distributions and the deduction of charitable contributions continue to apply to distributions from an IRA that are not qualified charitable distributions. A qualified charitable distribution is taken into account for purposes of the minimum distribution rules applicable to traditional IRAs to the same extent the distribution would have been taken into account under such rules had the distribution not been directly distributed under the qualified charitable distribution provision. An IRA does not fail to qualify as an IRA as a result of qualified charitable distributions being made from the IRA.

[123] If the IRA owner has any IRA that includes nondeductible contributions, a special rule applies in determining the portion of a distribution that is includible in gross income (but for the qualified charitable distribution provision) and thus is eligible for qualified charitable distribution treatment. Under the special rule, the distribution is treated as consisting of income first, up to the aggregate amount that would be includible in gross income (but for the qualified charitable distribution provision) if the aggregate balance of all IRAs having the same owner were distributed during the same year. In determining the amount of subsequent IRA distributions includible in income, proper adjustments are to be made to reflect the amount treated as a qualified charitable distribution under the special rule.

II. ECONOMIC ISSUES RELATED TO THE CHARITABLE CONTRIBUTION DEDUCTION AND CHARITABLE GIVING

A. Economic Rationales for Tax Deduction of Charitable Contributions

In general

Tax deductibility of charitable contributions reduces the economic cost to the donor of his or her donation and, therefore, encourages charitable giving. There are a number of different economic rationales for the deductibility of contributions to charitable organizations. These rationales depend, in part, on differing views about the role of charitable organizations and the benefits they provide to society as a whole. They also depend on assumptions about individuals' motivations behind charitable giving and the appropriate base of the income tax.

If donors make contributions for purely altruistic reasons, the income given to a charity enriches the recipient charity but does not enrich the donor. In this case, the donated income reduces the taxpayer's ability to pay income tax without providing the donor with any benefits. Under a comprehensive income tax system, the contribution does not represent consumption but a decrease in wealth and therefore should not be taxed.

On the other hand, people may find charitable giving gratifying because they enjoy making someone else happy, they feel relief from the guilt of not giving, or they enjoy the recognition that accompanies donations. If people experience such a "warm-glow" from giving, then donors can be said to benefit from their gifts. In this case, the donation is, at least in part, a personal expenditure and a deduction for the full amount of the donation should not be allowed under a comprehensive income tax system.

A second, separate rationale for the deduction for charitable contributions depends on the role of charitable organizations and the type of benefits those organizations provide. Charitable organizations often provide goods and services to select classes of charitable beneficiaries rather than to the public at large. For example, donations to a college may benefit select students and faculty at a college; donations to a hospital may benefit certain patients and doctors at that hospital; and donations to a church may benefit parishioners at the church. If the larger public is unable to share in the benefit of the charity's activities, such donations are private contributions to private goods and there is no economic rationale for a charitable contribution deduction.

On the other hand, donations to a charity may be used in such a way that the larger community derives value from them. For example, a patron of the arts may derive direct satisfaction from his donation to a museum by being able to enjoy new art acquisitions. In addition, his donation also enables the larger public to view and enjoy the same new art acquisitions. Economists consider such donations to be private contributions to a public good. Generally, in the absence of subsidies, the private market provides fewer public goods than is optimal. In this case, there is an economic rationale for incentivizing such donations.

Furthermore, sometimes charitable organizations provide goods or services that the government would otherwise provide. These charitable gifts are then private contributions to create public goods that alleviate the burden on government. In the absence of charitable gifts, such goods and services would have to be provided by the government at full cost to taxpayers.

In this case, there is an economic rationale for providing a tax deduction for such contributions. In this view, the tax deduction for voluntary charitable contributions is seen as equivalent to deductions permitted for many State and local taxes. The charitable contribution deduction can be said to provide neutrality in the choice to provide certain services to the public through direct government operation and financing or through the private operation and mixed private and public financing of a charitable organization.

A third rationale for the charitable contribution deduction is that many charitable organizations provide goods and services with significant spillover benefits to the public at large.[124] For example, charitable organizations may choose to provide benefits that improve the health of individuals suffering from certain diseases, such as through the provision of vaccinations. Vaccinations provide direct benefits to private individuals, but also indirectly help others by preventing the spread of contagious diseases. Economists generally argue that, in the absence of a subsidy, the private market may provide insufficient levels of goods that create spillover benefits. Thus, it is argued that the tax deduction for charitable contributions under present law encourages donations to charities that provide goods with significant spillover benefits and, therefore, promotes the provision of such benefits.

[124] Economists usually refer to such spillover benefits as "positive externalities," which are benefits that accrue to other individuals who are "external" to the initial consumption of the good.

B. Economic Effects of Tax Deductions for Charitable Contributions

Effects on the tax price of contributions and the quantity of giving

As with any tax deduction or credit, the donor of charitable contributions faces a price of giving that is reduced by the value of the tax benefit provided. For example, for a taxpayer who itemizes deductions and is in the 28-percent tax bracket, a $100 cash gift to charity reduces the taxpayer's taxable income by $100, and thereby reduces tax liability by $28. As a consequence, the $100 cash gift to charity reduces the taxpayer's after-tax income by only $72. Economists say that the after-tax cost of giving $100 cash to charity is $72 for this taxpayer. As the preceding example shows, the after-tax cost of giving one dollar is one minus the taxpayer's marginal tax rate. Alternatively stated, the value of the tax deduction is the amount deducted multiplied by the taxpayer's marginal tax rate.

Because the deduction for charitable contributions lowers the after-tax cost of giving, theoretically, it will increase the ability and willingness of donors to increase donations. Empirical studies of the responsiveness of giving to the after-tax cost of giving generally find evidence of a response. Some earlier studies report strong evidence that donors increase giving in response to decreases in after-tax cost of giving, and decrease giving in response to increases in after-tax cost of giving.[125] These earlier studies find that when the after-tax cost of giving changes by one percent, donors respond with a greater than one percent change in donations. The policy implication of such a result is that the loss in government revenues due to a deduction for charitable contributions is less than the increase in dollar value of charitable contributions by donors.

More recent studies also find evidence of similar effects, though some studies find estimates that are weaker or mixed relative to the earlier studies.[126] Many of the recent studies also attempt to differentiate between short-run and long-run effects of changes in the after-tax cost of giving on contributions. Because of changing policies, the short-run estimates may include measured timing effects that can result from an individual taxpayer's timing of charitable contributions in anticipation of changes in tax regimes. For example, the Tax Reform Act of 1986 reduced the top marginal individual income tax rate from 50 percent to 28 percent. In anticipation of this, individuals may have shifted gifts they would have given in 1987 into 1986 because the after-tax cost of contributing a dollar in 1987 was larger than the after-tax cost in 1986. While this would produce a large effect from the change in after-tax cost of giving in the short-run, the long-run effect would be smaller if the individual returned to a normal pattern of giving thereafter. At least one study suggests that, on a permanent, long-run basis, charitable

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[125] Clotfelter, Charles T., *Federal Tax Policy and Charitable* Giving. University of Chicago Press, Chicago, IL (1985); Feenberg, Daniel, "Are Tax Price Models Really Identified: The Case of Charitable Giving." *National Tax Journal*, 40(4), 629-633 (1987).

[126] Auten, Gerald, Holger Sieg, and Charles T. Clotfelter, "The Distribution of Charitable Giving, Income and Taxes: An Analysis of Panel Data." *American Economic Review*, 92(1), 371-382 (2002); Bakija, Jon and Bradley T. Heim, "How Does Charitable Giving Respond to Incentives and Income? New Estimates from Panel Data." *National Tax Journal,* 64(2), 615-650 (2011).

contributions are much less responsive to the after-tax cost of giving than short-run estimates would imply.[127]

Distributional effects

While factors other than tax benefits also motivate charitable giving, the preponderance of evidence suggests that the charitable contribution deduction has been a stimulant to charitable giving. However, under present law, a taxpayer who does not itemize deductions receives no value from the tax deductibility of charitable contributions and the after-tax cost of giving one dollar is one dollar of foregone other expenditures. Nonitemizers do not face a reduced after-tax cost of giving. As a result, the deduction for charitable giving disproportionately provides preferences for high-income taxpayers who are more likely to itemize relative to low-income taxpayers who are more likely to take the standard deduction.

Furthermore, the charitable contribution deduction is worth more to a given taxpayer the higher his marginal tax rate. Because high-income taxpayers tend to be in higher marginal tax rate brackets, higher income taxpayers generally have a lower tax price of giving than do lower income taxpayers.[128] As a result of this differential, high-income taxpayers may face the largest tax incentives for giving, while low-income taxpayers may face relatively small tax incentives for giving even if they itemize. Additionally, some studies present evidence suggesting that high-income taxpayers are more responsive to the incentives provided by the charitable contribution deduction than are low-income taxpayers.[129]

One implication of these distributional effects is that certain types of charities may be more affected by changes in policies than others. Low-income donors often give to churches and religious organizations, while high-income donors are more likely to give to education, health care, and arts institutions. For example, the 2009 Center on Philanthropy Panel Study module of the Panel Study of Income Dynamics shows that contributions to religious organizations constituted 63.3 percent of their total contributions for families with annual incomes under $100,000, while the similar figure for families with annual incomes over $100,000 was 52.3 percent. Contributions to education, health care, and arts institutions constituted 10.3 percent of their giving for families with annual incomes under $100,000, while the similar figure for families with annual incomes over $100,000 was 13.3 percent.[130] Policy changes that affect the after-tax cost of giving for high-income donors relatively more than low-income donors may therefore have a greater impact on education, health care and arts institutions than on other types of charities.

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[127] Randolph, William C., "Dynamic Income, Progressive Taxes, and the Timing of Charitable Contributions," *Journal of Political Economy*, 103, pp. 709-738 (1995).

[128] This is generally true, though it can be complicated by interactions with other features of the Code, such as the alternative minimum tax.

[129] Bakija and Heim (2011). See also Clotfelter, Charles, "The Impact of Tax Reform on Charitable Giving: A 1989 Perspective."

[130] JCT Tabulations of 2009 Center on Philanthropy Panel Study module of the Panel Study of Income Dynamics.

Crowd-out effects and the deduction for charitable contributions

As discussed earlier in this section, a substantial literature shows that the amount of private contributions by individuals to charities is influenced by changes in the after-tax cost of giving. These contributions are made for a number of reasons, including altruism (that is, to benefit the donee) and "warm-glow" (that is, to benefit the donor). Theoretically, if contributions are made to a particular charity entirely for reasons of altruism, the donor feels no benefit to himself, and others' gifts to the same charity are a perfect substitute for his own gift. As a result, changes in private donations to charities will exactly offset changes in public donations. On the other hand, contributions may be made not only for reasons of altruism but also for other reasons, such as the "warm-glow" that results from this altruism. In this case, others' gifts or public funding is not a perfect substitute for one's own gift and changes in private donations will not exactly offset changes in public funding.

A substantial empirical literature documents the existence of "warm-glow" effects in charitable giving.[131] As a result, it may be reasonable to assume that public funding of charities through taxes is not fully offset, or crowded out, by changes in private contributions. For example, increased public funding for a museum may not result in an equivalent decline in private contributions. In this case, the increase in public funding results in an increase in overall funding for the museum. Tax policy which provides preferences for contributions may further support this increase in overall funding for the museum.

[131] Andreoni, James, "Impure Altruism and Donations to Public Goods: A Theory of Warm-Glow Giving," *Economic Journal* 100(401): 464-477 (1990); Crumpler, Heidi and Philip J. Grossman, "An Experimental Test of Warm Glow Giving," *Journal of Public Economics* 92(5): 1011-1021 (2008); Tonin, Mirco and Michael Vlassopoulos, "Disentangling the Sources of Pro-Socially Motivated Effort: A Field Experiment," *Journal of Public Economics*, 94(11): 1086-1092 (2010). Some legal scholars have also written in this area. For example, see Andrews, William, "Personal Deductions in an Ideal Income Tax," 86 *Harvard Law Review* 309, 347 (1972).

C. Data on Levels of Charitable Contributions and Charitable Contribution Deductions

The Joint Committee staff estimates that, for 2011, 45.8 million individual tax returns will claim itemized deductions of any type, and 37.2 million of those will claim the charitable contributions deduction, in amounts totaling $178.7 billion prior to application of the present-law limitations on the charitable contribution deduction (such as the percentage-of-AGI limitations). In Table 2, below, the income concept used to place tax returns into income categories is adjusted gross income ("AGI") plus: employer contributions for health plans; employer contributions for the purchase of life insurance; employer share of payroll taxes; workers compensation; tax exempt interest; excluded income of U.S. citizens living abroad; nontaxable Social Security benefits; insurance value of Medicare benefits; and alternative minimum tax preference items. The dollars claimed include those charitable contributions allowed as a deduction before the application of any present law limitations on the deductibility of charitable contributions, such as the percentage of AGI limitations or the overall limitation on itemized deductions ("Pease").

Table 2.−Tax Returns Claiming an Itemized Deduction For a Charitable Contribution, and Estimated Tax Expenditure
(2011 Projections)

Income Category	Number of tax returns (thousands)	Number of itemizers (thousands)	Number of itemizers with charitable contributions (thousands)	Amount of deductible contributions ($ millions)	Average amount of deductible conributions per return	Number of returns with a tax expenditure (thousands)	Amount of Tax Expenditure (millions)	Average tax expenditure per return
$0 to $10,000	20,429	421	216	270	1,250	1	[1]	72
$10,000 to $20,000	16,910	696	381	670	1,759	93	9	116
$20,000 to $30,000	18,400	1,226	720	1,337	1,857	363	59	192
$30,000 to $40,000	15,387	2,043	1,333	2,668	2,002	810	171	240
$40,000 to $50,000	13,602	2,923	2,103	4,338	2,063	1,602	350	287
$50,000 to $75,000	26,719	8,160	6,271	15,184	2,421	5,573	1,887	401
$75,000 to $100,000	16,955	7,606	6,283	17,971	2,860	6,016	2,640	484
$100,000 to $200,000	22,128	16,573	14,640	50,899	3,477	14,534	10,578	878
$200,000 to $500,000	4,945	4,656	4,326	26,977	6,236	4,312	8,088	2,179
$500,000 to $1,000,000	631	583	550	8,988	16,342	548	2,437	4,804
$1,000,000 and over	330	311	297	46,782	157,515	295	11,414	40,874
Total	156,436	45,198	37,120	176,084	4,744	34,147	37,634	1,102
[1] Less than $500,000								

Source: Joint Committee on Taxation.
NOTE: Excludes individuals who are dependents of other taxpayers and taxpayers with negative income. Details may not add to totals due to rounding.

A substantial amount of charitable donations made by individuals is not claimed as itemized deductions. However, there are no data that directly measure the magnitude of charitable giving by nonitemizers. Tables 3 and 4, below, offer some indirect evidence on the magnitude of such giving. Table 3 present estimates of the Giving USA Foundation of the total amount of charitable donations received by qualifying organizations from individuals. By contrast, Table 4 reports individual itemized deductions claimed for charitable contributions as reported to the Internal Revenue Service. Comparison of the two tables would suggest that, in

2008, nearly $56.4 billion in charitable contributions made by individuals were not claimed as itemized deductions.[132]

Individual charitable contributions claimed as itemized deductions on individual tax returns have generally grown in every year since 1984, except from 1986 to 1987, as a result of tax reform,[133] and from 2000 to 2001 and 2007-2009, as a result of downturns in the stock market and the economy generally. Itemized deductions and total individual charitable contributions have grown more rapidly than the rate of inflation over this period.[134] As a share of personal income, total individual donations have generally risen over this time period. In 1984, total individual donations were 1.73 percent of personal income, rising to 1.85 in 2008. Between 1984 and 1999, individual donations as a share personal income averaged 1.70 percent of personal income, and from 2000 to 2008 individual donations averaged 1.98 percent of personal income.

[132] For this to be an accurate estimate of nonitemizer giving, the numbers reported for total, giving and those for itemizers must be accurate.

[133] Most analysts attribute the high level of donations in 1986 followed by the lower level of donations in 1987 to the anticipation and enactment of the Tax Reform Act of 1986 which lowered future marginal tax rates for many taxpayers, thereby increasing the expected after-tax cost of future donations. In addition, certain other modifications to charitable tax deductions as part of the individual alternative minimum tax may have altered the timing of some donations to charities. The increase in the standard deduction provided in the Tax Reform Act of 1986 also reduced the number of taxpayers who chose to itemize deductions.

[134] The price level, as measured by changes in the consumer price index, increased by 106.4 percent over the period 1984 through 2009.

Table 3.−Total Individual Charitable Donations Estimated to Have Been Received By Charitable Organizations, 1984-2008 (Billions of Dollars)

Year	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Total Individual donations	56.46	57.39	67.09	64.53	69.98	79.45	81.04	84.27	87.7	92.0	92.52	95.36	107.56

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total Individual donations	124.20	138.35	154.63	174.51	173.35	174.44	181.96	201.36	220.75	223.88	235.58	229.28

Source: *Giving USA* 2009. Data do not include donations from trusts. Tabulations prepared by the staff of the Joint Committee on Taxation.

Table 4.−Individual Itemized Charitable Donations Claimed on Tax Returns, 1984-2009 (Billions of Dollars)

Year	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Itemized Deductions Claimed for Charitable Donations	42.12	45.96	53.82	49.62	50.95	55.46	57.24	60.58	63.84	68.35	70.54	74.99	86.16

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Itemized Deductions Claimed for Charitable Donations	99.1	109.2	125.8	140.7	139.2	140.6	145.7	165.6	183.4	186.6	193.6	172.9	158.0

Source: Individual itemized deductions taken from Internal Revenue Service Statistics of Income data. Tabulations prepared by the staff of the Joint Committee on Taxation.

D. Tax Expenditure Estimates of the Charitable Contributions Deduction

Table 2, above, shows the distribution by income class of the tax expenditure for charitable contributions. The tax expenditure is measured as the difference between tax liability under present law and the tax liability that would result from a recomputation of tax without benefit of the charitable contribution deduction. Taxpayer behavior is assumed to remain unchanged for this tax expenditure estimate purpose.[135] This approach to tax expenditure measurement is in contrast to the approach taken in revenue estimating, which accounts for anticipated taxpayer behavior. The last three columns of Table 2 show, respectively, the number of returns with a positive tax expenditure for the charitable contribution deduction, the total amount of the tax expenditure, and the average tax expenditure per return.

The data show that the tax expenditure is concentrated in the upper end of the income distribution, as would be expected for a number of reasons. First, the deduction is available only to those who itemize deductions, and itemizing is more prevalent the greater is one's income. Second, the amount of giving generally rises with income. Third, upper-income individuals have higher marginal tax rates, and the value of any deduction increases as the marginal tax rate increases. For example, $100 of giving results in a $15 tax expenditure for someone in the 15-percent tax bracket, while $100 of giving results in $35 of tax expenditures for someone in the 35-percent tax bracket.

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[135] The tax expenditure estimates account for "tax form behavior" such as, for example, allowing an itemizer to recompute liability and use the standard deduction instead of itemizing if that yields a lower tax liability when a tax expenditure for a particular deduction is estimated. For a full discussion of the distinction between tax expenditure estimates and revenue estimates, see Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2010-2014* (JCS-3-10), December 15, 2010, pp 28-29.

APPENDIX

Table A1.–Eligible Donee Status and Number of Section 501(c) Tax-Exempt Organizations in the United States, 2010

Code Sec.	Description	Contributions Deductible	Number of Organizations
501(c)(1)	Corporations originated under Act of Congress	Only if exclusively for public purposes	97
501(c)(2)	Title holding corporations	No	5,657
501(c)(3)	Public charities	Yes	1,014,816
	Private foundations	Yes	120,810
	Total for all charities		*1,135,626*
501(c)(4)	Social welfare organizations	No	112,164
501(c)(5)	Labor, agricultural, and horticultural organizations	No	56,370
501(c)(6)	Business leagues, chambers of commerce, trade associations	No	73,111
501(c)(7)	Social and recreational clubs	No	57,628
501(c)(8)	Fraternal beneficiary societies and associations with lodges, providing for payment of life insurance and other benefits	Yes, if used for charitable purposes	57,717
501(c)(9)	Voluntary employees' beneficiary assoc.	No	9,366
501(c)(10)	Domestic fraternal societies and associations- lodges devoting their net earnings to charity and not providing insurance	Yes, if used for charitable purposes	20,138
501(c)(11)	Teachers' retirement fund associations.	No	11
501(c)(12)	Cooperatives (benevolent life insurance associations, mutual ditch or irrigation companies, etc.)	No	5,893
501(c)(13)	Cemetery companies	Yes, under certain circumstances[1]	10,166
501(c)(14)	Credit unions	No	3,070
501(c)(15)	Small insurance companies or associations	No	1,297
501(c)(16)	Crop financing organizations	No	13
501(c)(17)	Supplemental unemployment benefit trusts	No	271
501(c)(18)	Employee funded pension trusts formed prior to June 25, 1959	No	2
501(c)(19)	Post or organization of war veterans	Yes, with exceptions[2]	35,057

Code Sec.	Description	Contributions Deductible	Number of Organizations
501(c)(20)	Trusts for prepaid group legal services (expired for taxable years after June 30, 1992)	No	8
501(c)(21)	Black lung benefit trusts	No	28
501(c)(22)	Multiemployer plan trusts	No	0
501(c)(23)	Veterans association formed prior to 1880	Yes, with exceptions[2]	3
501(c)(24)	Employee trusts (described in Section 4049 of ERISA)	No	1
501(c)(25)	Multi-parent title holding company	No	1,032
501(c)(26)	State-sponsored high risk health insurance organizations	No	10
501(c)(27)	State-sponsored workers compensation reinsurance organizations	No	9
501(c)(28)	The National Railroad Investment Trust	No	1
501(c)(29)	Cooperative health insurance issuers	No	n/a
	Total		1,584,746

Source: IRS Business Master File 04/2010 (with modifications by the National Center for Charitable Statistics at the Urban Institute).

Notes to table

[1] Deduction for contribution to cemetery organizations is for income tax only, no deduction for estate and gift tax purposes.

[2] Certain organizations of war veterans are eligible for income and gift tax charitable deductions, and certain organizations incorporated by Act of Congress are eligible for the estate tax charitable deduction.