



## New IRS Rules for Gifts of Tangible Personal Property Pension Protection Act of 2006

The Pension Protection Act of 2006 contains new rules that affect gifts of tangible personal property to qualified charities. Specifically, the new legislation affects gifts of appreciated tangible personal property such as art, jewelry, antiques and other collectibles for which a fair market value deduction of more than \$5,000 is claimed. The following changes should be noted.

### 1. Deductibility and Related Use

For gifts claiming a fair market value deduction of more than \$5,000, donor must complete IRS Form 8283 and donee organization is required to complete Part IV of the form. In Part IV, the donee organization is now required to state if the property will be used for an unrelated use. As long as donee indicates “no” to this question, donor is allowed to use the higher of the fair market value or cost basis for the charitable deduction. The new rules also require that, if donee organization disposes of the property within **three** years of the date of gift (previously two years), then donor is subject to an adjustment of the tax benefit to the extent that the charitable deduction exceeds donor’s cost basis. Donee organization is required to file IRS Form 8282 at time of disposal or sale, and donee organization must provide a description of its use of the property, a statement of whether the use of the property was related to donee’s exempt purpose, and a certification that donee either used the property for such purpose or had intended to use the property for such purpose at the time of the gift, but that such use became impossible or infeasible to implement. If IRS does not accept donee’s certification, donor becomes subject to recapture. A \$10,000 penalty applies to a person who identifies applicable property as having a use that is related to the donee’s charitable purpose knowing that it is not intended for such use. Form 8282 must be signed by someone authorized to sign a tax return on behalf of donee organization.

Here’s an example of how this new rule might work. In September, 2006, a donor gives donee an antique with a cost basis of \$1,000 and a fair market value of \$5,500 at the time of gift. Donee puts the antique to related use for 35 months until selling it in August of 2009 for \$6,000. Because donee sold the antique within three years of the date of gift, donee must file Form 8282 along with a certification about how the gift was used. Donor is also subject to

a recapture of \$4,500 as ordinary income in 2009. This is the amount that the fair market value deduction of \$5,500 in 2006 exceeded the \$1,000 cost basis at the time of the gift. The \$4,500 recapture can be avoided if the IRS accepts donee's certified statement that the antique was used for exempt purposes and why donee disposed of it.

## 2. Gifts of Fractional Interests

In general, a gift of an undivided portion or fractional interest in property is deductible only if it consists of a fraction or percentage of each and every substantial interest or right owned by donor in such property and extends over the entire term of donor's interest in such property. Gifts of partial (vs. fractional or percentage) interests are generally nondeductible. Donor may take a deduction for a charitable contribution of a fractional interest in tangible personal property (such as artwork), provided donor satisfies the usual requirements for deductibility, and in subsequent years makes additional charitable contributions of interests in the same property. The value of donor's charitable deduction for the initial contribution of a fractional interest in an item of tangible personal property is based upon the fair market value of the artwork at the time of gift and considering whether the use of artwork will be related to donee's exempt purpose.

For gifts of tangible personal property made after August 17, 2006 (the date of enactment of the Pension Protection Act), the Act provides for recapture of the income tax charitable deduction and gift tax charitable deduction under certain circumstances. First, if donor makes an initial fractional contribution, then fails to contribute all of donor's remaining interest in such property to the same donee before the earlier of 10 years from the initial fractional contribution or donor's death, then donor's charitable income and gift tax deductions for all previous contributions of interests in the item shall be recaptured, plus interest. Second, if donee of a fractional interest fails to take substantial physical possession of the item during the period described above (the possession requirement) or fails to use the property for an exempt use during the period (the related use requirement), then donee's charitable income and gift tax deductions for all previous contributions of interests in the item shall be recaptured (plus interest). In any case in which there is a recapture of a deduction as described above, the provision also imposes an additional tax in an amount equal to 10 percent of the amount recaptured.

For purposes of the Act, the first fractional contribution by donor after the date of enactment would be considered the initial fractional contribution, regardless of whether donor had made a previous contribution of a fractional interest in the same item.