

Used Car Donations -- New Guidance from the IRS

By Conrad Teitell, LL.B., LL.M.

In a published revenue ruling (Rev. Rul. 2002-67), the Internal Revenue Service tells when a donor's transfer of a car to a charity's authorized agent may be treated as a transfer to the charity. Guidance on determining fair market value and satisfying the §250-and-over substantiation requirements is also given.

Here are the facts on which the IRS ruled: A written agreement between Charity and For-Profit Entity (FPE) establishes an agency relationship that is valid under state law. For a fee, FPE—acting as Charity's authorized agent—will administer a fundraising program for Charity. FPE's activities are subject to Charity's review and approval.

FPE, acting on Charity's behalf will: (1) solicit donations of used cars; (2) accept, process, and sell the cars; (3) transfer the sale proceeds to Charity, less FPE's fee; and (4) provide each donor with substantiation of his or her contribution, including an acknowledgment containing the information required by IRC §10(f)(8)(B). (More about that Code section soon.)

To benefit Charity, Donor transfers a used car to FPE as Charity's authorized agent. Donor doesn't receive anything of value in exchange for the car. Donor consults an established used car pricing guide that lists \$4,500 as the current sales price for a car of the same make, model, and year as Donor's car and sold in Donor's area for a car in excellent condition. The guide lists \$3,000 as the current sales price for a car in average condition. (The guide doesn't provide a sales price for a car in poor condition.)

According to the guide, a car is in excellent condition if it has no defects; in average condition if it has some defects but is safe to drive; and in poor condition if it needs substantial mechanical or body repairs, or is unsafe to drive. Donor's car, according to the ruling, is in average condition.

IRS rules—deductibility. It is well established that a charity may receive contributions through an authorized agent. Because Charity and FPE have established a valid agency relationship under state law, FPE has the authority to act on Charity's behalf. Thus for IRC §170 purposes, Donor's transfer of the car to FPE as Charity's authorized agent is treated as a transfer to Charity. The determination of whether an agency relationship

exists is based on state law requirements. Not all contractual relationships, IRS notes, result in an agency relationship under state law.

IRS rules —250-and-over substantiation. IRC §170(f)(8)(A) disallows an income tax charitable deduction for any contribution of \$250 or more unless the taxpayer substantiates the contribution by a written acknowledgment from the donee organization (meeting the IRC §170(f)(8)(B) requirements). Because FPE is authorized as Charity's agent in administering its fundraising program, a written acknowledgment provided to Donor by FPE will satisfy the IRC §170(f)(8)(A) requirements that the acknowledgment be made by the charity.

IRS rules—valuation. If a contribution is made in property other than money, the amount of the gift is the fair market value of the property at the time of the contribution. Reg. §1.170A-1(c)(1).

The fair market value of a car is the price at which the car would change hands between a willing buyer and a willing seller. But there is no single correct way to determine fair market value of a car, so any reasonable method may be used.

One method for determining fair market value of a single donated car is by reference to an established used car pricing guide. However, a guide establishes fair market value only if it lists the sales price for a car that is the same make, model, and year, sold in the same area, and in the same condition, as the donated car.

Getting back to the facts spelled out earlier: The established used car pricing guide lists \$3,000 as the current sales price for a car in average condition that is the same make, etc. as Donor's car. So the amount treated as a charitable contribution under IRC §170 is \$3,000. Donor, IRS states, also could have determined the car's value by any other reasonable method.

IRS adds that because the guide doesn't value cars that are in poor condition, a donor who contributes a clunker (not IRS's term!) must establish fair market value "using some other method that is reasonable under the circumstances."

The principal author of this ruling is Patricia Zweibel of the Office of the Associate Chief Counsel (Income Tax & Accounting).

Commentary: Ordinarily, IRS won't rule in advance on an asset's fair market value for income, gift or estate tax purposes. Its usual position is: "Make the transfer -- and then let's talk about it."

In this ruling, however, IRS appears to say in advance that an established used car pricing guide may be used to determine the value of a car that is in excellent or average condition. When it comes to cars, not only "may your mileage differ," but opinions can differ as to whether a car is in excellent or average condition. So we still have that fact question.

Chances are that a donor's used car won't be worth much and its current value is way below the purchase price. But if a donor happens to donate an appreciated jalopy (an antique), he or she may deduct the full fair market value (instead of the lower cost) if: (1) the car was held for more than one year, and (2) the public charity's use of the car will be related to its exempt purposes.

Warning: Although IRS's ruling tells about the \$250-and-over-receipt requirement, it neglects to say that additional substantiation is required if a claimed deduction exceeds \$5,000. In that case, the car has to be appraised. (A guide book, no matter how well established, won't do the trick.) The appraiser's findings are reported in Section B of Form 8283, called the "appraisal summary."

If an appraisal is required, the gift must be made within 60 days after the date of the appraisal. The car may be appraised after the date of the gift (the appraisal to state the car's value on the date of the gift). The donor must receive the appraisal by the due date (including extensions) of the return on which the deduction is first claimed.

The summary goes on Section B of Form 8283. It must be signed by the appraiser and by the charity (or, presumably, by the charity's authorized agent). It's essential to complete the appraisal summary on Form 8283 and for the form to be attached to the donor's tax return.

The definition of "qualified appraiser" is critically important: no qualified appraiser, no deduction for property gifts valued over \$5,000 (over \$10,000 for closely held stock), says the IRS. To be a qualified appraiser, an individual must: (1) hold himself or herself out to the public as an appraiser; and (2) state credentials showing that he or she is qualified to appraise the type of property being valued. A qualified appraiser may not be related to nor regularly employed by the donor or the charitable donee and may not be a

party to the transaction by which the donor acquired the appraised property, unless the property is donated within two months of the date of acquisition and its appraised value doesn't exceed the purchase price.

Generally, the appraisal fee can't be based on a percentage of the property's appraised value. (That rule doesn't apply in some cases to appraisal fees paid to a tax-exempt association that regulates appraisers.)

An appraisal fee isn't a charitable gift (see IRC §67(a)). A donor who itemizes deductions may be able to count it as a miscellaneous deduction to the extent that it—together with other miscellaneous deductions -- exceeds two percent of his or her adjusted gross income. And then it's subject to the three-percent reduction rule of IRC §68.

Generally, if the charity receives a gift that is subject to the appraisal rules (and it signed Form 8283), the charity must report on Form 8282 (what I call the "Tattletale Form") to both the IRS and the donor if it disposes of the gift within two years. However, the IRS and the donor don't have to be notified if the charity disposes of a gift that didn't require an appraisal.

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