

303.21 **Warning:** Ltr. Rul. 9309006 specifically states that the scope of the ruling does not apply to payments made by a corporation to Section 501(c)(7) (pleasure and recreational; e.g., garden clubs) and Section 501(c)(20) (group legal service organizations). Therefore, planners may not infer that similar payments to those types of organizations would be deductible as trade or business expenses.

303.22 The IRS pointed out that donations by businesses with promotional/advertising objectives are deductible as business expenses rather than charitable contributions (CCA 201543013).

303.23 In another ruling, the IRS held that contributions were ordinary and necessary business expenses when they were made to a special city fund dedicated to oil pollution control, beautification, and advertising to recover tourist business lost because of oil spillage on local beaches (Rev. Rul. 73-113).

303.24 Also, a trade or business deduction was allowed when a pari-mutual race track corporation donated receipts from charity day. This practice was vital to the corporation's business because, if the corporation did not conduct charity day programs, the governing state agency might select less favorable racing days or the local citizens might recall the corporation's license. These payments to charity were directly related to the taxpayer's business and were made with the reasonable expectation of a financial return commensurate with the amount of the payments. Accordingly, the contributions were deductible as ordinary and necessary business expenses (Rev. Rul. 77-124). The IRS reached an opposite conclusion, however, when another pari-mutual race track corporation contributed proceeds from a charity day to a charitable foundation. In Rev. Rul. 72-542, the IRS found that, under the specific facts set out in the ruling, there was no expectation of an economic return commensurate with the amount distributed. Therefore, the payments were charitable contributions, rather than ordinary and necessary business expenses.

Example 3-16: Advantage of treatment as an advertising expense.

Nabors Newspapers, Inc., solicited additional subscribers by telephone and promised that a portion of the price of every subscription received during the telephone campaign would go to charity. The payments to charity were made after the campaign ended.

Under similar facts, the IRS ruled that the payments were expenditures to maintain or increase the newspaper's circulation and were deductible in full as circulation expenditures, rather than charitable contributions (Rev. Rul. 54-3). Because the payments can properly be classified as ordinary and necessary business expenses, they are not subject to the 10% of taxable income limitation.

303.25 **Observation:** To substantiate the trade or business deduction, the taxpayer should maintain documentation showing how the payments keep the corporation's name before the public and verify that the corporation expects a financial return in line with the amount of the payments.

304 PLANNING FOR THE LIMITATIONS BASED ON DONOR'S INCOME

304.1 Charitable contributions made by individuals are only deductible as itemized deductions. A taxpayer's total itemized deductions must be greater than the standard deduction (\$24,400 for joint filers and \$12,200 for single filers in 2019) to generate tax savings from a gift to charity. The amount of charitable contributions an individual can deduct in any one tax year is limited depending on the types of organizations to which the contributions were made, the kinds of property contributed, and the amount or value of the donated property.

304.2 **Planning Tip:** Under the Tax Cuts and Jobs Act (TCJA), the standard deduction amounts were almost doubled. Combined with the capping of the state and local tax deduction (i.e., \$10,000), changes in the mortgage interest deduction, and eliminating miscellaneous itemized deductions, there is a likelihood that a taxpayer's total itemized deductions will not exceed the increased standard deduction amounts for tax years 2018–2025. Therefore, fewer taxpayers will benefit from their charitable contributions. For contributions to exceed the standard deduction, taxpayers may want to *bunch* or increase contributions in specific or alternating years. Combining multiple years of annual contributions in the *bunch* years and adding other itemized deductions will increase the likelihood of exceeding the standard deduction.

304.3 The maximum charitable contribution deduction allowed for any one year is determined by the taxpayer's contribution base, which is generally the taxpayer's adjusted gross income (AGI) [IRC Sec. 170(b)(1)(F)]. Taxpayers subject to AMT may want to time their charitable gifts to maximize the tax savings from the contribution.

304.4 Farm proprietors using the cash-basis method of accounting may deduct charitable contributions of raised commodities without having to itemize deductions or being subject to AGI limitations. See paragraph 204.29 for a discussion of this charitable giving strategy.

304.5 For tax years beginning prior to January 1, 2018, and after December 31, 2025, taxpayers with adjusted gross income exceeding certain threshold amounts are subject to a 3% reduction (phase-out) of itemized deductions [IRC Sec. 68(b)].

304.6 **Observation:** The TCJA suspends the overall limitation on itemized deductions (the 3% phaseout, otherwise known as the "Pease limitation") for tax years beginning after December 31, 2017, and before January 1, 2026. This could increase the value of charitable deductions for high-income large donors who were previously affected by the overall limitation on itemized deductions.

304.7 **Planning Tip:** Timing the year in which a charitable contribution will be deductible can help maximize the qualified business income deduction. Small taxpayers in a specified service business (health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, or brokerage services) are allowed the full Section 199A qualified business income deduction if their taxable income does not exceed \$160,700 (\$321,400 if MFJ; \$160,725 if MFS). The deduction is phased out so that it is fully excluded once taxable income exceeds \$210,700 (\$421,400 if MFJ; \$210,725 if MFS). Making greater charitable contributions can reduce taxable income below the maximum levels, allowing the taxpayer to qualify for the Section 199A deduction. See Key Issue 8G of *PPC's 1040 Deskbook* for more information on the Section 199A deduction.

Avoiding AGI Limitations of Individuals

304.8 Six different percentage of AGI limitations apply to regular charitable contributions of individuals: one 60% limitation, two 50% limitations, two 30% limitations, and the 20% limitation [IRC Sec. 170(b)(1)]. Special AGI limits apply to donations of qualified conservation easements. (See paragraph 1003.2.) For limits that apply to corporations, see paragraph 304.33.

304.9 **Note:** The TCJA increased the AGI limitation on cash contributions to 50% charities from 50% to 60% for tax years 2018–2025.

304.10 **The 60% Limitation.** The 60% limitation provides that the aggregate deductible cash contributions to "50% charities" cannot exceed 60% of AGI. The excess contribution can be carried forward and deducted for up to five years. The contribution retains its percentage limitation category in carryforward years and is deductible for a year in the carryover period to the extent it plus the current-year cash contributions to 50% charities do not exceed 60% of AGI [IRC Sec. 170(b)(1)(G)(ii)]. Cash contributions that are taken into account under the 60% limit are not taken into account for applying the 50% limit in IRC Sec. 170(b)(1)(A) (see paragraph 304.12), but do not reduce (not below zero) the overall 50% limit for other contribution categories (see paragraph 304.11) [IRC Sec. 170(b)(1)(G)(iii)].

Example 3-17: Cash contributions subject to 60% limit reduce overall 50% limit for other contributions (30% property).

Victoria has a contribution base of \$100,000 this year. She contributes \$45,000 to a 50% charity and a car worth \$12,000 for the use of a 50% charity. Victoria's limit for cash contributions is \$60,000 ($\$100,000 \times 60\%$). Her limit on contributions for the use of the charity (i.e., the car) is \$30,000 ($\$100,000 \times 30\%$). However, the cash contribution is taken into account for the overall 50% limitation for other contributions. Therefore, the overall 50% limitation is reduced from \$50,000 ($\$100,000 \times 50\%$) to \$5,000 ($\$50,000 - \$45,000$). Only \$5,000 ($\$30,000 - \$25,000$) of Victoria's automobile contribution can be

deducted in the current year. The remaining \$7,000 (\$12,000 – \$5,000) can be carried forward to subsequent years subject to 30% limitations.

Example 3-18: Cash contributions subject to 60% limit reduce overall 50% limit for other contributions (50% property).

Ryker has a contribution base of \$80,000 this year. He contributes inventory with a cost basis of \$15,000 and \$30,000 in cash to a 50% charity. Ryker's limit for cash contributions is \$48,000 (\$80,000 × 60%), and his limitation for ordinary income contributions is \$40,000 (\$80,000 × 50%). Ryker is able to currently deduct the entire \$30,000 cash contribution and \$10,000 (\$40,000 – \$30,000) of his inventory contribution with a \$5,000 carryforward for five years.

Example 3-19: Using the carryover of cash contributions subject to 60% limit.

Mary has a contribution base of \$120,000 in Year 1 (tax year after 2017 and before 2026) and contributes \$75,000 in cash to a 50% charity. Mary can deduct \$72,000 in Year 1 (60% of \$120,000), and carry over \$3,000. In Year 2, Mary's contribution base is \$100,000, and she contributes \$59,000 cash to a 50% charity. Mary can deduct \$60,000 (60% of \$100,000) in Year 2. Therefore, in addition to deducting the \$59,000 current-year contribution, she can deduct \$1,000 of the carryover from Year 1 and carry the remaining \$2,000 to Year 3.

304.11 The 50% Limitations. The first 50% limitation provides that total deductible contributions (including those subject to the separate 20% or 30% limitation, but not those subject to the 60% limitation) cannot exceed 50% of AGI. Excess contributions are carried over to the succeeding five tax years and are used on a first-in, first-out (FIFO) basis [IRC Sec. 170(d)(1)]. However, for any tax year, all current-year contributions are deducted first. (See the discussion of contribution carryovers at paragraph 304.28.)

304.12 The second 50% limitation refers to gifts (including cash) other than capital gain property to certain types of charitable organizations (*50% charities*) that are considered first in computing the overall 50% limit. (This ordering process applies when a taxpayer also has contributions to non-50% charities.) The most common 50% charities include churches, schools, hospitals, governmental entities, private operating foundations, and other nonprofit agencies organized for charitable, religious, educational, scientific, or literary purposes [IRC Sec. 170(b)(1)(A)]. The IRS's "Tax Exempt Organization Search" tool (see paragraph 301.5) categorizes qualified organizations as 50% or non-50% organizations.

304.13 Observation: The IRS website provides a searchable database of qualified charities. The information generally indicates if the charity is a 50% charity, 30% charity, or other organization. The information can be found using the IRS's "Tax Exempt Organization Search" (formerly EO Select Check) located at www.irs.gov/charities-non-profits/ (and click on Tax Exempt Organization Search).

304.14 The 30% Limitations. Two different 30% limitations apply to two different types of contributions. The first limitation (referred to as the *regular* 30% limitation) applies to gifts of property (including cash) other than capital gain property to charities that do not qualify as 50% charities. Common charities in this group include veterans organizations, domestic fraternal societies, nonprofit cemeteries, and certain private foundations [IRC Sec. 170(b)(1)(B)]. It also applies to gifts *for the use of* any charitable organization (e.g., income interest in trust property or amounts spent for a student living in the home) [Regs. 1.170A-8(a) and (b)].

304.15 The second 30% limitation applies to gifts of capital gain property to a 50% charity [IRC Sec. 170(b)(1)(C)]. This limitation is sometimes referred to as the *special* 30% limitation. (See Example 3-20.)

304.16 Note: For the charitable contribution limitations, the term *capital gain property* refers to capital assets (including Section 1231 trade or business assets), the sale of which would result in long-term capital gain [IRC Sec. 170(b)(1)(C)(iv)].

304.17 Normally, a contribution of capital gain property is measured by its FMV on the date of the gift. However, a taxpayer who is willing to limit the deduction to the tax basis of the property can elect to use the

50% limitation rather than the *special* 30% limitation for capital gain property contributed to a 50% charity [IRC Sec. 170(b)(1)(C)(iii)]. (See Example 3-21 and the caution at paragraph 304.22.) The election, once made, is irrevocable (*Woodbury*). It applies to all gifts that would otherwise fall under the special 30% limitation for that year, including carryovers subject to the special 30% limitation.

304.18 Both 30% limitations are made after considering the 60% cash limitation and the 50% limitation on gifts to 50% charities but before considering the 20% limitation discussed at paragraph 304.19. Unused 30% contributions are carried over to the succeeding five tax years and retain their character as *special* or *regular* 30% contributions [IRC Sec. 170(b)(1)(B)].

304.19 **The 20% Limitation.** The 20% limitation applies to gifts of capital gain property to non-50% charities (e.g., most family-funded private foundations) [IRC Sec. 170(b)(1)(D)]. This 20% limit is applied after considering the 60%, 50%, and 30% limits (if any) for the tax year. The deductible amount of 20% contributions is limited to the lesser of (a) 50% of AGI reduced by 60% cash contributions, 50% contributions, and regular 30% contributions, (b) 30% of AGI reduced by special 30% contributions, or (c) 20% of AGI. Excess 20% contributions are carried over to the succeeding five tax years and retain their 20% character [IRC Sec. 170(b)(1)(D)(ii)].

304.20 **Applying the Limitations.** Under the overall 50% limitation, the total charitable contribution deduction exclusive of cash contributions to 50% charities (these are subject to the 60% limit) cannot exceed 50% of AGI. When contributions subject to different AGI limitations are made, the limitations are applied in the following order:

- a. *60% Limitation.* Contributions of cash to 50% charities, not to exceed 60% of AGI.
- b. *50% Limitation.* Contributions of noncapital gain property (i.e., generally ordinary income property, capital gain property other than long-term gain property, and long-term capital gain property for which an election to use basis has been made) to 50% charities, not to exceed 50% of AGI less cash contributions to 50% charities.
- c. *Regular 30% Limitation.* Contributions of noncapital gain property (including cash) to non-50% charities and any contributions (other than capital gain property to 50% charities) “for the use of” any charity, are limited to the *lesser* of—
 - (1) 30% of AGI, or
 - (2) 50% of AGI reduced by *all* contributions to 50% charities (i.e., reduced by regular 50% contributions plus the *full value* of any capital gain property donated to 50% charities).
- d. *Special 30% Limitation.* Contributions of capital gain property to 50% charities, limited to the *lesser* of—
 - (1) 30% of AGI, or
 - (2) 50% of AGI less other contributions to 50% charities.
- e. *20% Limitation.* Contributions of capital gain property to non-50% charities, limited to the *lesser* of—
 - (1) 20% of AGI,
 - (2) 30% of AGI less contributions subject to the 30% limit,
 - (3) 30% of AGI less contributions of capital gain property to 50% charities, or
 - (4) 50% of AGI less the total of contributions to 50% limit organizations and contributions subject to the 30% limit.

304.21 **Note:** If the taxpayer’s total contributions for the year to qualified charitable organizations total 20% or less of AGI, the percentage limitations (i.e., 60%, 50%, 30%, and 20%) will not apply.

Example 3-20: Multiple percent limitations in one year.

Valerie's 2019 AGI is \$100,000. During 2019, she gave her church (a 50% charity) \$4,000 cash and land with an FMV of \$60,000 and a basis of \$44,000. The land was held for investment for more than 12 months (i.e., capital gain property). The donation of the land is subject to the special 30% limitation. She also gave \$10,000 of capital gain property to a private nonoperating foundation that is a non-50% charity. The \$10,000 contribution is subject to the 20% limitation.

Under the 60% limitation, she may deduct the \$4,000 cash given to her church. Under the overall 50% limitation, the total charitable contribution deduction cannot exceed \$50,000 (50% of \$100,000 AGI). The cash contribution is considered first because it was made to a 50% charity. The cash contribution limitation is 60% of her AGI. Other charitable contributions are considered in the order described in paragraph 304.20, not to exceed 50% of AGI in total (except her cash contributions to a 50% charity may not exceed 60% of AGI in the aggregate).

Valerie's donation of land is subject to the special 30% of AGI limit. It is included at FMV (\$30,000) in applying the 30% limitation. Therefore, the land donation cannot exceed the lesser of (1) \$30,000 ($\$100,000 \text{ AGI} \times 30\%$) or (2) \$46,000 [$\$50,000 (\$100,000 \text{ AGI} \times 50\% \text{ overall limit}) - \$4,000 \text{ cash contribution}$]. Therefore, Valerie can deduct \$30,000 of the land value in 2019, and the unused special 30% contribution (\$30,000) is carried over to 2020. The \$10,000 contribution to the private foundation is subject to the 20% limitation, but is nondeductible because the limitation is reduced to zero because of the full use of the special 30% limitation [$(30\% \times \$100,000 \text{ AGI}) - \$60,000 \text{ contribution of land} = 0$] and carries over to 2020.

Valerie's total 2019 deduction is limited to \$34,000 ($\$4,000 + \$30,000$). The total 50% limitation was not reached. Both carryovers will continue to be subject to the special 30% and 20% limit, respectively.

Variation: Valerie donated \$4,000 cash to her church (a 50% charity). Instead of donating the land and capital gain property, she sold them during the year and donated the land proceeds of \$60,000 to a 50% charity and \$10,000 to a private foundation (a 20% charity).

Under the 60% cash limitation, the cash deduction cannot exceed \$60,000 (60% of \$100,000). The cash contribution to the 50% charity is considered first. The cash contribution of \$64,000 is limited to \$60,000 and \$4,000 is carried forward to 2020. The \$10,000 donation to the private foundation is also carried forward to 2020 [$(20\% \times \$100,000 \text{ AGI}) - \$60,000 \text{ cash contribution} = 0$].

304.22 Gifts of capital gain property generally are limited to either 30% or 20% of AGI, depending on the donee. As discussed in paragraph 304.17, the only way to apply the 50% limitation to a gift of capital gain property is to elect to take a reduced charitable contribution (i.e., deduct the property's tax basis instead of FMV). This election may be beneficial if the special 30% limitation (see paragraph 304.15) affects the taxpayer's deduction but the capital gain property contributed has only a small amount of unrealized gain, the taxpayer would probably benefit from electing to deduct basis instead of FMV. This might allow the taxpayer to deduct the full basis in the year contributed rather than taking a slightly larger deduction in a subsequent tax year. The value of accelerating the deduction into the year of the gift (the additional deduction available under the 50% limitation) may offset the permanently forgone deduction.

304.23 **Planning Tip:** Electing to deduct basis instead of FMV may be particularly beneficial on a deceased taxpayer's final income tax return, because using the FMV of the donated property may generate a charitable contribution carryover that would otherwise be wasted.

Example 3-21: Electing to reduce the value of appreciated property to basis to avoid limitation.

Assume the same facts as in Example 3-20 except the FMV of the land is \$48,000. Valerie makes the election to reduce the deduction for the land (which is *special* 30% capital gain property) to its tax basis rather than FMV. By making this election, the land is treated as noncapital gain property and is therefore

subject to the 50% limitation (i.e., the special 30% limitation no longer applies). The overall 50% limitation (\$50,000) must be reduced by the \$4,000 cash contribution allowed under the 60% rule.

Valerie's deduction for the land is its basis of \$44,000. Valerie may now deduct \$2,000 of the \$10,000 donated to the private foundation because the 20% limitation has not been exceeded and the amount contributed that is subject to the 50% limitation (\$44,000) is less than the reduced 50% limitation of \$46,000 ($\$100,000 \times 50\% - \$4,000$ cash contribution).

Valerie's total deduction for 2019 is \$50,000: \$4,000 cash, \$44,000 for land, and \$2,000 of capital gain property. The excess 20% contribution (\$8,000) to the private foundation is carried over and will be subject to the 20% limitation in future years.

304.24 Caution: Unless the capital gain property has had only minimal appreciation and the election allows the taxpayer to deduct the full basis in the year of the contribution, or it can reasonably be anticipated that the carryforward cannot be deducted in full (e.g., a carryforward stemming from the decedent's final return), the election is generally not advantageous. (See the discussion of contribution carryovers at paragraph 304.28.)

304.25 A worksheet for computing a client's charitable contribution deduction is at Appendix 3D.

304.26 Observation: The percentage limitations are more likely to apply when property other than cash is donated, because in that case, either the 30% or 20% of AGI limitation applies. Also, the interaction of the 30% and 20% limitations, as illustrated in Example 3-20, may limit contributions that would otherwise appear to be below the thresholds for current deduction.

304.27 Note: The Bipartisan Budget Act of 2018 (2018 Budget Act) temporarily suspends the charitable contribution deduction AGI percentage limitations for certain qualified contributions made by individuals for California wildfire victims [Sec. 20104(a) of the 2018 Budget Act]. An individual can elect to deduct qualified contributions up to the amount by which his or her contribution base exceeds total allowable deductions for other charitable contributions. Qualified contributions in excess of the amount that can be currently deducted are carried forward for five years and are treated as contributions subject to the percentage limitation for the year contributed [Sec. 20104(a)(2)(A)(ii) of 2018 Budget Act]. For California wildfire victims, a qualified contribution is generally defined as a cash charitable donation (property contributions do not qualify) made during the period beginning on October 8, 2017, and ending on December 31, 2018, to a 50% charity (excluding supporting organizations and donor-advised funds). The charitable organization must use the donation for relief efforts in a California wildfire disaster area [Sec. 20104(a)(4) of the 2018 Budget Act]. Qualified donations must be substantiated with a written contemporaneous acknowledgment that the contribution was or will be used for relief efforts in a California wildfire disaster area, and the taxpayer must make an election on his or her tax return for the applicable year (2017 or 2018) to apply the increased AGI percentage limitation.

Using Contribution Carryovers by Individuals

304.28 Charitable contributions in excess of the annual AGI charitable contribution limitations discussed beginning at paragraph 304.8 can be carried forward for a period of five years [IRC Sec. 170(d)]. However, all current year contributions are deducted first. Then taxpayers deduct carryover contributions subject to the ordering rules and limitations discussed in paragraph 304.20. Therefore, carryover contributions are subject to the same limits that applied (60%, 50%, 30%, special 30%, or 20%) in the year from which they are carried. A schedule for tracking contribution carryovers is included at Appendix 3E.

304.29 Planning is often required when a taxpayer either has or is generating charitable contribution carryovers. For example, the contribution carryover may be used when the taxpayer anticipates the same taxable income without the same charitable commitments, or a higher level of income. If income will decline, care should be taken to use the carryovers before they expire.

Example 3-22: Carryover of 50% contributions.

Tim's AGI for this year is \$60,000. During the year, he made 50% eligible contributions of \$31,000 to his church. He can deduct \$30,000 this year (50% of \$60,000) and carry over \$1,000. Next year, if he has AGI of \$60,000 and contributes \$29,000 or less in that year, he can deduct the entire \$1,000 carryover.

However, if Tim contributes \$29,500 next year, he can deduct only \$500 of his carryover. The \$500 balance is carried over and retains its 50% character.

304.30 Taxpayers can deduct contribution carryovers of appreciated long-term capital gain property to 30% charities for the amount remaining under the *overall* 50% limit after considering all current-year contributions and 50% carryover contributions.

Example 3-23: Carryover of 30% contributions.

This year, Rob had AGI of \$75,000 and made 50% eligible contributions of \$9,000 and 30% capital gain property contributions of \$11,000. In addition, he had a 50% contribution carryover of \$12,000, a 30% contribution carryover of \$5,000, and a special 30% carryover of \$6,000 for a total amount available of \$43,000. Rob's deduction is limited to \$37,500 (50% of \$75,000) computed as follows:

	<u>Deductible</u>	<u>Not Deductible</u>
50% contribution	\$ 9,000	
30% contribution (all current-year contributions considered before any carryovers)	11,000	
50% carryover from prior years	12,000	
Regular 30% carryover (limited because the \$6,000 special 30% carryover must be included as a 50% carryover in calculating the 30% limit)	—	\$ 5,000
Special 30% carryover (limited by the overall 50% limitation)	<u>5,500</u>	<u>500</u>
Total deductible in current year	<u>\$ 37,500</u>	
Total carried over		<u>\$ 5,500</u>

304.31 If the taxpayer does not itemize in a year to which contributions are carried, the carryovers must still be reduced by the amount that would have been deductible (without considering the standard deduction) in the carryover year if deductions had been itemized [Reg. 1.170A-10(b)(2)].

Example 3-24: Use of carryover in standard deduction year.

Harry has a \$500 (50%) contribution carryover to this year and makes no contributions this year. His AGI is \$100,000, and he uses the \$12,200 standard deduction (for 2019) for single taxpayers.

Because Harry's AGI would permit him to deduct his \$500 carryover (i.e., no percentage limitations apply), it is deemed used (i.e., it cannot be carried over to subsequent years) even though he receives no current year tax benefit.

Example 3-25: Multiple current-year contributions and carryovers.

Jim's AGI is \$100,000 in 2019. His current-year contributions and carryovers from prior years are—

	<u>Current year Contributions</u>	<u>Carryovers into 2019</u>
60%	\$ 3,000	\$ -0-
50%	10,000	3,000
30%	6,000	2,000
Special 30%	4,000	1,000
20%	<u>9,000</u>	<u>16,000</u>
Totals	<u>\$ 32,000</u>	<u>\$ 22,000</u>

Jim's overall 50% limitation is \$50,000. He can deduct the amounts shown in the following order:

60% contribution for 2019	\$ 3,000	
50% contribution for 2019	10,000	
50% carryover	3,000	(50% carryovers used first)
30% contribution for 2019	6,000	
		(amount still available under overall 50% limitation and 30% limitation)
30% carryover	2,000	
Special 30% contribution for 2019	4,000	
		(amount still available under overall 50% limitation and special 30% limitation)
Special 30% carryover	1,000	
20% contribution for 2019	9,000	
		[limited by 20% limitation on <i>combined</i> current-year and carryover 20% contributions, i.e., (\$100,000 × 20%) – \$9,000]
20% carryover	<u>11,000</u>	
Total deductible in 2019	<u>\$ 49,000</u>	

The 20% limitation applied even though the overall 50% limitation had not been reached. Jim has a 20% contribution carryover to 2020 of \$5,000 (\$16,000 carried into 2019 less \$11,000 used).

304.32 Planning Tip: When an individual has charitable contribution carryovers, it may be advisable to defer making any more contributions until the carryover amounts have been deducted. Otherwise, they may expire without obtaining any tax benefits. However, considering the current size of the standard deduction, it will be important to address additional contributions possibly needed to exceed the standard deduction to use the carryovers. For instance, in Example 3-25, Jim might want to avoid making any more 20% contributions until he has deducted all of his carryover 20% contributions. The contribution carryover is deemed deducted if Jim uses the standard deduction rather than itemizing.

Limits Applicable to C Corporations

304.33 A C corporation's annual charitable contribution deduction cannot exceed 10% of its taxable income [IRC Sec. 170(b)(2)]. The corporation's taxable income is computed *before* any carryback of net operating losses (NOLs) or capital losses, the dividends received deduction, or the charitable contribution deduction itself.

Example 3-26: Computing the annual limitation.

K Corporation's taxable income (before deducting any charitable contributions) is \$80,000, including a dividends received deduction of \$25,000. The corporation contributed \$20,000 cash to qualifying recipients in the same year.

K Corporation's charitable contributions limitation is computed as follows:

Unadjusted taxable income	\$ 80,000
Dividends received deduction	<u>25,000</u>
Adjusted taxable income	<u>\$ 105,000</u>

The charitable deduction limit is \$10,500 ($\$105,000 \times 10\%$). Only \$10,500 can be deducted in the current year. The \$9,500 ($\$20,000 - \$10,500$) excess may be deductible in later years under the carryforward rules discussed beginning at paragraph 304.36.

304.34 Observation: Taxable income for the corporate limit on deductible contributions is taxable income computed under IRC Sec. 63 (gross income minus the deductions allowed) adjusted for the items described in paragraph 304.33. Therefore, taxable income determined under another code section (e.g., Section 860E excess exclusion income from a REMIC) is not taxable income for the percentage of taxable income limit (CCA 201143018).

304.35 Although charitable contributions are generally deductible only in the year of payment, a special rule allows accrual basis C corporations to elect to treat contributions made in the current tax year as if paid in the prior tax year. See paragraph 205.16 for a discussion of the requirements for making this election and Appendix 2C for a sample election.

Using Contribution Carryforwards by C Corporations

304.36 Contributions exceeding the annual 10% limit can be carried forward to the next five tax years; no carryback is permitted [IRC Sec. 170(d)(2)]. However, current year contributions are considered before carryforwards when computing each year's deduction [IRC Sec. 170(d)(2)(A)]. Any carryforward not fully used by the end of the five-year period expires with no benefit to the taxpayer. A worksheet for tracking contribution carryovers for corporations is at Appendix 3F.

Example 3-27: Use of the carryforward.

This year Fritzcorp has an \$8,000 charitable contribution carryover from last year and makes cash contributions of \$10,000 to qualifying recipients. Its taxable income recomputed for applying the limitation on charitable contributions is \$130,000. The corporation's deduction for charitable contributions is limited to \$13,000 (10% of \$130,000).

The \$10,000 current year contribution is applied first against the \$13,000 limitation, leaving \$3,000 against which the carryforward can be applied. \$3,000 of the carryforward is used, leaving a \$5,000 carryforward to next year. To the extent the remaining \$5,000 of carryforward from last year is not used in the next four tax years, it expires unused.

304.37 A special rule prevents corporations from obtaining a double tax benefit that would otherwise result because of the interaction of NOLs and charitable contribution carryovers. Charitable contribution carryovers are reduced to the extent they decrease taxable income and increase an NOL carryover to a succeeding year [IRC Sec. 170(d)(2)(B); Rev. Rul. 76-145].

304.38 This rule effectively converts a charitable contribution carryforward into an NOL carryforward in years the charitable deduction would not have been limited if not for the NOL carryforward (i.e., taxable income before NOL deduction is sufficient to absorb the charitable contribution). Any portion of a charitable

contribution carryforward that is so converted is carried forward for 20 years for tax years beginning after August 5, 1997, rather than five years, and is not subject to the 10% of taxable income limitation.

Example 3-28: Converting a contribution carryforward into an NOL carryforward.

Generous Corporation's (Generous) taxable income (before charitable contributions and NOL carryforwards) is \$130,000. Generous made charitable contributions of \$15,000 during the year. In addition, Generous has an NOL carryforward from last year of \$130,000.

Generous uses all of its NOL carryforward to offset its income. Its contribution deduction for the year is zero because of the 10% of taxable income limitation. However, the rules for determining how much of the NOL carryforward was used (to determine the NOL carryforward to next year) reduce taxable income by the amount of the charitable contribution that would have been used if there had not been an NOL carryforward, \$13,000 ($10\% \times \$130,000$). Therefore, its NOL carryforward absorbed in the current year is only \$117,000 ($\$130,000 - \$13,000$). Its charitable contribution carryforward to next year is reduced to \$2,000 ($\$15,000 - \$13,000$), while its NOL carryforward to next year is \$13,000 ($\$130,000 - \$117,000$).

Without the \$13,000 adjustment to the charitable contribution carryover required by IRC Sec. 170(d)(2)(B), Generous would have a \$15,000 charitable contribution carryforward to next year.

305 DOCUMENTATION REQUIRED TO SUSTAIN A DEDUCTION

305.1 IRC Sec. 170 generally allows a deduction for charitable contributions made during the year. The recordkeeping and filing requirements for charitable contribution deductions vary, according to the type and amount of the contribution.

305.2 Publication 1771, "Charitable Contributions—Substantiation and Disclosure Requirements," is available to help taxpayers and charities understand the rules for documenting charitable deductions on federal tax returns. A copy of the publication is available on the IRS website at www.irs.gov.

305.3 Appendix 3B summarizes the substantiation requirements for cash and property (noncash) contributions. Appendix 3K includes a list of the IRS's "Five Tips for Deducting Charitable Contributions," which could be helpful for the donor.

305.4 An interactive decision tool on *Determining What Substantiation is Required for Charitable Contributions* is available and can be used to guide the user through this topic.

Cash Contributions

305.5 To substantiate a charitable contribution deduction, a donor must obtain one type of documentation for a donation of less than \$250 and a different type (a written contemporaneous acknowledgment) for a donation of \$250 or more.

305.6 **Donations of Less than \$250.** No deduction is allowed for *any* contributions of cash, checks, or other monetary gifts (in any amount), unless the taxpayer maintains a bank record (typically a cancelled check, wire transfer acknowledgment, or credit card record) or a written communication from the charity substantiating the date and amount of the transaction [IRC Sec. 170(f)(17)]. Credit card statements should show the name of the charity, the date, and the transaction posting date (Internal News Release IR 2014-110). (See paragraph 205.9 for discussion of the IRS's position on charitable contributions made by credit card.)

305.7 **Note:** A bank record includes a scanned image of both sides of a canceled check obtained from a bank. Written communication also includes electronic mail correspondence (Reg. 1.170A-15).

305.8 The \$250 threshold is applied to each contribution separately [Reg. 1.170A-13(f)(1)]. Therefore, if a donor makes multiple contributions to the same organization totaling \$250 or more in a single year, but each

gift is less than \$250, written acknowledgment is not required unless the smaller gifts are parts of a series of related contributions made to avoid the substantiation requirements.

305.9 Observation: All contributions of money, regardless of amount, require either a cancelled check (or other bank record) or written communication from the charity showing the name of the charity organization, the date of the contribution, and the amount of the contribution.

305.10 Donations of \$250 or More. No deduction is allowed for a contribution of \$250 or more unless the taxpayer receives written contemporaneous acknowledgment from the charity [IRC Sec. 170(f)(8)]. The acknowledgment must indicate—

- a. the name and address of the charity;
- b. the date of the contribution;
- c. the amount of cash contributed;
- d. a reasonably detailed description (but *not* an estimate of value) of any property contributed;
- e. whether the charity provided the donor any goods or services in exchange for the contribution; and, if so,
- f. a description, and a good faith estimate of the value, of the goods or services provided or, if the only goods or services provided were intangible religious benefits, a statement to that effect.

305.11 Observation: The IRS has successfully disallowed contributions over \$250 when the taxpayer failed to timely obtain the required written acknowledgment from the charity or when the acknowledgment did not contain all the required information. The written acknowledgment must contain a statement as to whether the donor received any goods or services in exchange for the contribution, even if no goods or services were provided. A cancelled check, without a statement of whether the donor received goods or services, does not meet the contemporaneous written acknowledgment requirement (*Hollingsworth, Friedman, Linzy, Quinn, Durden, Beaubrun*).

305.12 This written acknowledgment rule applies to both individuals and corporations. Trusts, however, are apparently not subject to this rule because their charitable contribution deductions are governed by IRC Sec. 642(c), rather than Section 170.

305.13 The written acknowledgment rule does not apply if the net value of the actual donation is less than \$250 [Reg. 1.170A-13(f)(1)]. Therefore, a written contemporaneous acknowledgment is not required if, for example, a cash contribution of \$300 is made and the donor receives a \$60 gift in return (*quid pro quo*), but only if the taxpayer has a valid bank record such as a cancelled check for substantiation. See paragraph 305.23 for the \$75 threshold for required substantiation for *quid pro quo* contributions.

305.14 Planning Tip: For a sizeable donation to a foundation in which the taxpayer/donor is an officer (e.g., a family foundation), the planner may consider recommending that the officer issue a written acknowledgment to the donor, even though the officer and the donor are physically one and the same.

305.15 Note: IRS Pub. 1771 explains that an organization can provide either a paper copy of the acknowledgment to the donor or it can provide the acknowledgment electronically, such as in an email addressed to the donor. Because there is no prescribed format for these acknowledgments, letters, postcards, and computer-generated forms are also acceptable.

305.16 The IRS's definition of contemporaneous is that the acknowledgment must be obtained by the taxpayer on or before the *earlier* of (a) the date the donor files the original return for the year the donation was made, or (b) the return's extended due date [IRC Sec. 170(f)(8)(C)]. The taxpayer must have acknowledgments for all contributions of \$250 (or for less than \$250 without a valid bank record) or more when the return is filed, even if this is before the extended due date. It is not possible to amend a return to include contributions for which an acknowledgment is obtained after the original return was filed.

305.17 The responsibility for obtaining this documentation lies with the donor, who must request it from the charity. The charity is not required to record or report this information to the IRS on behalf of the donor. An example of a letter to charity requesting written acknowledgment is included at Appendix 3G.

305.18 Caution: Failure to timely obtain a written acknowledgment from the charity will prevent the donor from deducting the charitable contribution. In *Gomez*, the IRS disallowed a charitable deduction for cash contributions to the taxpayers' church (even though the taxpayers retained copies of canceled checks) because the written acknowledgment was not obtained by the taxpayers prior to filing their return.

305.19 In *Weyts* a taxpayer asserted that he should be allowed to deduct a charitable contribution deduction for an amount paid to attend a dinner to raise money for student scholarships. He claimed that he was entitled to a charitable contribution deduction of \$620 (\$700 donation – \$80 value of the dinner), however, he lacked a written receipt for the contribution and failed to deduct the contribution on his tax return. He argued that the Tax Court should apply the *Cohan* rule that allows taxpayers to estimate business expenses where a reasonable approximation can be made, but an exact amount is not determinable (*Cohan*). The Tax Court refused to apply the *Cohan* rule, reasoning that it did not apply because the requirement of a written substantiation of a charitable contribution of \$250 or more is mandated by statute [IRC Sec. 170(f)(8)]. The court noted that the written receipt must be obtained by the taxpayer by the time the tax return for the year in which the contribution was made is filed. Failure to meet the receipt rule causes loss of the tax deduction.

305.20 Planning Tip: If the taxpayer has contributed \$250 or more (or less than \$250, without a bank record) to an organization and has not received an acknowledgment from the charity, the taxpayer should consider waiting to file the return and requesting an extension until all acknowledgments with the required information are received.

305.21 Section 170(f)(8)(D) Exception from Contemporaneous Written Acknowledgments Repealed. Under pre-Tax Cuts and Jobs Act (TCJA) law, an exception from the contemporaneous written acknowledgment substantiation requirements was available if the donee organization filed a return that included the required information, as prescribed by regulations.

305.22 Caution: The TCJA repealed the donee-reporting exception from the contemporaneous written acknowledgment for charitable contribution substantiation [IRC Sec. 170(f)(8)(D)]. Donors can no longer use the filed return of the donee organization for substantiation effective for tax years beginning after December 31, 2016.

Quid Pro Quo Contributions

305.23 As discussed in paragraph 303.1, a *quid pro quo contribution* is a payment made partly as a contribution and partly for goods or services provided to the donor by the charity. Charitable organizations must provide a written disclosure statement to donors who make a *quid pro quo* contribution in excess of \$75 (Reg. 1.6115-1). The written disclosure should inform the donor that the charitable deduction is limited to the excess of the contribution over the value of the goods or services provided by the charity (with a good faith estimate of the value of the goods or services provided). Assigning a value to intangible religious benefits is not necessary. Penalties apply to the donee organization for failure to provide the necessary written disclosure. This requirement is separate from the contemporaneous written substantiation required for deductibility purposes as discussed in paragraph 305.10 [IRC Sec. 170(f)(8)(B)].

Example 3-29: Substantiation requirements for *quid pro quo* contributions.

Connie paid \$100 to St. George's School (a qualified charity) in exchange for a concert ticket valued at \$40. Because the payment was partly a contribution and partly for goods or services, it is a *quid pro quo* contribution. Connie can deduct \$60 (\$100 payment – \$40 value received) on her income tax return, provided that she meets the AGI limitations. Because Connie's *quid pro quo* payment exceeds \$75, St. George's School must furnish her with a disclosure statement, even though the deductible amount is less than \$75.

Separate payments of \$75 or less made at different times of the year for separate fund-raising events will not be combined for determining the \$75 threshold.

305.24 See paragraph 303.16 for a discussion of intangible religious benefits provided to a taxpayer. See also paragraph 305.13 for the effect of *quid pro quo* contributions on the \$250 cash contribution threshold. See Appendix 10B for information on charitable conservation easements that were disallowed for failing to meet the substantiation requirements.

Payroll Deduction

305.25 To satisfy the recordkeeping requirements for donations made via payroll, donors should keep documents from employers (paystub, W-2 wage statement, or other employer furnished document) showing the amount donated in addition to an official pledge card from the charity. These records will satisfy the requirement that the taxpayer receive a written communication from the donee organization [Reg. 1.170A-15(d)(1)].

305.26 No deduction for a contribution of \$250 or more made by payroll deduction is allowed unless the taxpayer meets substantiation rules under both IRC Sec. 170(f)(8) and (17). To substantiate a contribution of \$250 or more made by payroll deduction, the pledge card (or other receipt prepared by the charity) must state that the exempt group does not provide goods and services in whole or partial consideration for any contributions made by payroll deduction. The \$250 threshold is applied by treating each payroll deduction as a separate contribution [Reg. 1.170A-13(f)(11)]. Therefore, written acknowledgment must be obtained only if \$250 or more is withheld from each paycheck.

305.27 **Matching Contributions.** Employers often sponsor a matching program for charitable contributions made by their employees to certain charities. If an employee's contribution to a charity is matched (in whole or in part), and the employee receives goods or services in return for the donation, they are treated as provided solely in consideration for the employee's portion of the total contribution [Reg. 1.170A-13(f)(17)].

Out-of-pocket Expenses

305.28 Volunteers who incur out-of-pocket expenses must keep detailed records of those expenditures. If a donor makes a single contribution of \$250 or more in the form of unreimbursed expenses (e.g., out-of-pocket transportation expenses incurred to perform donated services), the volunteer must have a written acknowledgment from the charity describing the volunteer services provided and whether he or she received any goods or services (including value) from the charity in consideration [Reg. 1.170A-13(f)(10)]. The amount of out-of-pocket expenses does not need to be shown on the acknowledgment.

305.29 Travel expenses incurred while away from home, such as meals and lodging, are deductible only if (a) there is no significant personal pleasure, recreation, or vacation in the travel [IRC Sec. 170(j)], and (b) the performance of services is substantial. In *Field*, deductions were denied for travel expenses incurred as a volunteer to a symphony orchestra on an overseas tour. The court held that the expenditures were primarily personal (e.g., sightseeing). See section 204 for additional discussion of unreimbursed volunteer expenses.

Example 3-30: Substantiation requirements for out-of-pocket expenses.

Jeff is the chosen representative to an annual convention of his church. He buys an airline ticket to travel to the convention. The church does not reimburse him for the \$500 ticket. Assume his expenditure otherwise qualifies as a charitable deduction (e.g., the church is a qualifying organization, there was no significant element of personal pleasure involved in the travel). To substantiate his charitable deduction for out-of-pocket costs, Jeff should keep a record of the expenditure, such as a copy of the ticket. He should also obtain from the church a description of the services that he provided and a statement that he received no goods or services from the organization.

305.30 Neither the Code nor regulations specify the requirements for substantiating out-of-pocket expenses incurred by volunteers. The Tax Court concluded that the rules for substantiating cash donations described in

Reg. 1.170A-13(a) should apply (*Van Dusen*). The court also said that the \$250 threshold (for determining whether a written acknowledgment from the charitable organization is required) applies on a per-expenditure basis. In *Van Dusen*, the taxpayer had records documenting the amount of various expenditures she made while performing volunteer work for a qualified charity, but did not obtain any acknowledgment from the organization. The Tax Court said she could claim a charitable deduction for her expenditures that were under \$250, but not those of \$250 or more.

305.31 Planning Tip: The taxpayer should be advised to *request* the written acknowledgment from the charity. Because the charity does not receive a check, there is nothing to trigger the charity to send a written acknowledgment. An example of a letter to a charity requesting written acknowledgment is included at Appendix 3G, and a sample acknowledgment of a volunteer's efforts is at Appendix 3H.

Property Contributions

305.32 Generally, property contributions must be substantiated with a receipt from the donee showing the donee's name, the date and place of the contribution, and a description of the property [Reg. 1.170A-13(b)]. The IRS indicates the donor must also keep reliable written records for each item of donated property that includes the following information (IRS Pub. 526, "Charitable Contributions"):

- a. The recipient organization's name and address.
- b. The date and location of the contribution.
- c. A description of the property in detail reasonable under the circumstances. For a security, the records should show the issuer's name, type of security, and whether it is regularly traded on a stock exchange or an over-the-counter market.
- d. The property's FMV at the time of the contribution and how the FMV was determined.
- e. For property that is not long-term capital gain property, the property's cost, or other basis.
- f. If less than the taxpayer's entire interest is contributed, the records must show the amount claimed as a deduction for the year as a result of the contribution, as well as the amount claimed as a deduction in any prior years for contributions of other interests in the same property. The records must also include the name and address of each organization to which the donor contributed the other interests, the place where the tangible property is located or kept, and the name of any person in possession of the property, other than the organization to which the donor contributed.
- g. The terms of any conditions attached to the gift of property.

305.33 However, according to Reg. 1.170A-13(b)(1), donors are only required to maintain written records (when the claimed value of the donated property is \$500 or less) if a receipt is not obtained because it is impractical to do so (e.g., items are delivered to an unattended drop site). In other words, if donors obtain the receipt described in paragraph 305.32, they do not need to keep the written records described in that paragraph.

305.34 Caution: Even though Reg. 1.170A-13(b)(1) indicates that donors do not have to obtain a receipt for property contributions under \$500 if it is impractical to do so, Section 170(f)(8) disallows deductions for any contribution of \$250 or more unless the taxpayer receives a written acknowledgment from the charity containing specific information (see paragraph 305.10). The information in the acknowledgment required by Section 170(f)(8) includes the information that would be included in the receipt required by Reg. 1.170A-13(b), so, using written records instead of a receipt to substantiate a noncash contribution will only work for donations of less than \$250.

305.35 Determining if records are reliable depends on the particular circumstances, but factors to consider include whether the records were made at or near the time of the contribution, the frequency of the taxpayer's recordkeeping procedures, and whether all required information was stated in the income tax return.

305.36 For gifts under \$250, if it is impractical for the donor to obtain a receipt (e.g., goods are delivered to an unattended drop site), a receipt is not required, but the donor still must keep the written records described in paragraph 305.32.

305.37 **Planning Tip:** The use of drop-off sites should be reserved for items of minimal value. It may be difficult to substantiate the contribution without a receipt. In addition, it would be good practice to maintain detailed descriptions and photographs of contributed property.

305.38 **Used Clothing and Household Items.** Deductions for used clothing and household items are not allowed unless the items are in “good used condition or better” (not yet defined) [IRC Sec. 170(f)(16)]. Household items include furniture, furnishings, electronics, appliances, linens, and other similar items. In addition, the IRS may deny a deduction for any contribution of clothing or household goods with minimal monetary value, such as used socks or undergarments. A deduction may be allowed for a 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 his or her return a qualified appraisal with respect to the property.

305.39 **Note:** Contributions of food, paintings, antiques, and other objects of art, jewelry, gems, or collections are excluded from these rules and have separate restrictions.

305.40 The rule requiring written acknowledgment by the charity for gifts of \$250 or more also applies to property contributions. For those contributions, an acknowledgment containing the information described in paragraph 305.10 must be obtained. The charity must provide a description of the donated property but is *not* required to estimate its value. See section 202 for discussion of valuing property (noncash) contributions.

305.41 **Caution:** Charities often provide pre-signed receipts with no description of the donated property, which will not be sufficient to satisfy the written acknowledgment requirements. In *Smith*, the Tax Court disallowed a taxpayer’s \$27,767 charitable deduction for three contributions of personal property because the written acknowledgments received from the charity were blank receipts that did not list the contributed property.

305.42 **Planning Tip:** The donor should provide a detailed listing of the items given to the charity and request a signature to verify that the items listed were received.

305.43 **Bulk Contributions.** In CCA 201443019, the IRS provides informal legal guidance on determining the allowable charitable contribution deduction when a taxpayer donates many items of property, such as books, sheet music, or works of art, after acquiring them in bulk. Under IRC Sec. 170(e)(1), charitable contributions must be reduced by gain that would be ordinary income if the property were sold at its FMV. (See paragraph 202.11.) Although Rev. Rul. 79-256 and Rev. Rul. 79-419 (both over 30 years old) treated donors who purchased and later donated items in bulk as dealers for characterizing the contributed property as ordinary income property, the CCA points out that the Tax Court has not been following these rulings. Instead, a facts-and-circumstances analysis may be more appropriate. Furthermore, an appropriate discount of the items should be considered for bulk donations.

305.44 **Caution:** CCA 201443019 should serve as an important reminder that donors who frequently acquire and contribute similar items of property may be treated as if they are dealers selling inventory or other property to customers in the ordinary course of a business. In that case, the charitable income tax deduction must be reduced by the gain that would otherwise be ordinary income if the property had been sold at its FMV.

305.45 **Property Contributions over \$500.** When a taxpayer donates property valued at more than \$500 (and up to \$5,000), Part A of a properly completed Form 8283 (Noncash Charitable Contributions) must be attached to the return. The taxpayer must also keep written records that include [Reg. 1.170A-13(b)(3)]—

- a. the name and address of the donee;
- b. the date and location of the contribution;

- c. a description of the property;
- d. the property's FMV on the contribution date, including the method used to value the property, and if used, a signed appraisal;
- e. how the property was acquired (e.g., purchase, gift, bequest); and
- f. the property's cost or other adjusted tax basis.

305.46 Caution: Failing to file Form 8283 will generally result in the deduction being disallowed unless the failure was due to reasonable cause, and not willful neglect, or was due to a good-faith omission. If the IRS requests Form 8283, a taxpayer will normally have 90 days to submit a completed form before the deduction will be disallowed. In addition, strict penalties are imposed on both the taxpayer and the appraiser when charitable donation deductions are taken based on substantial or gross valuation misstatements. See the discussion beginning at paragraph 305.79.

305.47 If securities are donated, a description must include the issuer's name, the type of security, and whether they are regularly traded on an exchange or in an over-the-counter market.

305.48 A taxpayer is not denied a deduction for failing to provide cost basis or acquisition date if he has reasonable cause and attaches an explanatory statement to his return [Reg. 1.170A-13(b)(3)(ii)].

305.49 Note: A donee organization must file Form 8282 (Donee Information Return) whenever it disposes of property valued at more than \$500 within three years of the contribution. However, the filing is not required if the organization consumes or distributes (rather than sells or exchanges) the property in fulfilling its tax-exempt purpose. The IRS often compares the donee information submitted on Form 8282 with the information available on the donor's Form 8283. A significant difference between the value of the property donated and the value of the property subsequently sold by the donee could create a matching issue and increased scrutiny by the IRS. An organization that fails to correctly and/or timely file Form 8282 normally is subject to a \$50 penalty, which is reduced to \$15 if the failure is corrected within 30 days after the filing deadline. The IRS can abate the penalty if reasonable cause is shown. If the failure is due to an intentional disregard of the filing requirement, the penalty is the greater of \$100 or 5% of the value of the donated property for which its disposition was not properly reported (IRC Sec. 6721).

305.50 The charity must also provide information including (a) a description of its use of the property, (b) whether the use of the property was related to the organization's charitable purpose (the basis for its tax exemption), and (c) if applicable, the certification of any such use that it provided (under the exception to the recapture rules).

305.51 Specific written certification from the charitable organization is required to avoid the recapture rules targeted at *applicable property* contributions [IRC Sec. 170(e)(7)(D)]. *Applicable property* is tangible personal property (other than publicly traded securities) for which the donor claimed a deduction of more than \$5,000 for use in the recipient's exempt purpose. The certification must confirm to the IRS (and to the donor) that the use of the property was related to its exempt function (and that this use was substantial), or that there was intended use at the time of the contribution which has become impossible or infeasible to implement. The certification must be signed under penalty of perjury by an officer of the organization. The charity must furnish a copy of the certification to the donor (for example, as part of the Form 8282).

305.52 Observation: Obtaining written certification protects a donation from the reduction and/or recapture rules discussed in paragraphs 302.33 and 302.35 if an officer of the donee organization certifies on disposition of the donated property that (a) the use of the property was related to the organization's exempt purpose and (b) the donee's use of the property was substantial. (No definition of *substantial* has been provided.) For details of the recapture rules on subsequent dispositions of related use property, see paragraph 302.35.

305.53 Caution: The IRS is authorized to impose a \$10,000 penalty for falsely identifying property as having related use (IRC Sec. 6720B).

305.54 *Vehicles, Boats and Airplanes.* Deductions for charitable contributions of vehicles, boats, and airplanes that have a claimed value exceeding \$500 depend on how the donated asset is used by the recipient charity. If the charity sells the asset without any significant use or material improvement, the donor's deduction is limited to the amount of the donee's gross sales price. If the charity uses the asset to substantially further its regular activities or if it materially improves the asset, the donor is entitled to deduct the asset at FMV subject to the AGI limitations [IRC Sec. 170(f)(12)]. See the discussion on determining the value of vehicles, boats, and airplanes beginning at paragraph 302.43.

305.55 Strict substantiation requirements apply for contributions of vehicles, boats, and airplanes when the claimed value exceeds \$500. The donor cannot claim the deduction unless he or she receives a contemporaneous written acknowledgment from the charity and attaches it to his or her tax return. [The donee organization may (but is not required to) use Form 1098-C as contemporaneous written acknowledgment to the donor. However, the donee organization is *required* to use Form 1098-C to report to the IRS the receipt of vehicle donations in excess of \$500. (See paragraph 305.59.)] The acknowledgment must identify the following [IRC Sec. 170(f)(12)(B), IRS Notice 2005-44, and IRS News Release 2005-149]:

- a. The donor's name and taxpayer identification number.
- b. The vehicle identification number.
- c. The date of the contribution.
- d. If the organization intends a significant intervening use or material improvement, the acknowledgment must contain a certification stating—
 - (1) the intended significant use by the donee organization and the intended duration of the use, or
 - (2) the intended material improvement by the donee organization, and
 - (3) that the qualified vehicle will not be sold before the completion of the use or improvement.
- e. If the organization has sold the asset, the acknowledgment must contain a certification stating—
 - (1) the date the qualified vehicle was sold,
 - (2) that the vehicle was sold in an arms length transaction between unrelated parties,
 - (3) the gross proceeds of the sale, and
 - (4) that the deductible amount may not exceed the amount of the gross proceeds.
- f. If the organization intends to sell the vehicle at a price significantly below FMV or gratuitously transfer the vehicle to a needy individual in direct furtherance of its charitable purpose, the acknowledgment should state this fact.
- g. If the donee organization provided any goods or services in consideration for the vehicle, a description and good faith estimate of the value of any goods or services should be provided.

305.56 This acknowledgment is in lieu of the documentation required under IRC Sec. 170(f)(8), which is discussed in paragraph 305.10.

305.57 To be considered contemporaneous, the acknowledgment must be provided to the donor within 30 days of the sale of the asset. If the charity intends to use or materially improve the asset (item d. in paragraph 305.55) or sells the asset to a needy individual significantly below FMV (item f. in paragraph 305.55), the acknowledgment must be within 30 days of the date of contribution (IRS Notice 2005-44). Failure to provide the acknowledgment or providing false or fraudulent acknowledgments may subject the charity to penalties as

high as the greater of (a) 35% times the claimed value of the vehicle or (b) \$5,000 (IRC Sec. 6720). For a more detailed discussion of donating vehicles, boats and airplanes, see paragraph 302.43.

305.58 The acknowledgment is necessary even if the charity and donor are related parties. In *Villareale*, the donor, who was president and founder of the charitable organization to which she made a contribution, was not entitled to a charitable deduction because the donations were not substantiated by a contemporaneous written acknowledgment. Although the donor argued that it would have been futile to issue a statement to herself, the Tax Court found it immaterial that the donor was on both sides of the transaction. According to the Court, although the donor may not need the contemporaneous acknowledgment, the IRS needs it to determine whether the donor is entitled to the charitable deduction (*Villareale*).

305.59 **Form 1098-C.** Donee organizations report information regarding the contribution of qualified vehicles, boats, and airplanes on Form 1098-C (Contributions of Motor Vehicles, Boats and Airplanes). The form may, but is not required to, provide the donor with a contemporaneous written acknowledgment of the contribution if the value of the contribution is \$500 or less. Form 1098-C is *required* to report claimed contributions over \$500 to the IRS (IRS Notice 2006-1). If the Form 1098-C is supplied to the donor, he or she should attach Copy B to Form 1040 and keep Copy C for state income tax filing or record keeping purposes. See Appendix 3J for Form 1098-C and 3I for a sample client letter explaining the documentation needed to claim a charitable contribution deduction for vehicles, boats, and airplanes.

305.60 **Practice Tip:** Tax advisors should be prepared to file individual extensions for donors making charitable donations close to year-end, because the charity may not have sufficient time to provide the required acknowledgment on sales proceeds from the donated assets until after the tax filing deadline.

305.61 **Property Contributions over \$5,000.** Property contributions over \$5,000, with certain exceptions, have strict reporting rules. Taxpayers, C corporations included, must complete Part B of Form 8283, which *requires* the taxpayer to obtain a qualified appraisal by a qualified appraiser to document the donated property's value. This is true regardless of whether the taxpayer's deduction is limited to the property's tax basis, rather than being fully deductible at FMV.

305.62 However, appraisals are *not* required for the following types of property (Instructions for Form 8283):

- a. Nonpublicly traded stock valued at \$10,000 or less.
- b. A vehicle, if the deduction for the vehicle is limited to the gross proceeds from its sale.
- c. Intellectual property (i.e., a patent, copyright, trademark, or trade name as discussed at paragraphs 302.53 and 305.87).
- d. Certain securities considered to have market quotations readily available.
- e. *Qualified contributions* of inventory donated by a corporation for the care of the ill, needy, or infants (see paragraph 302.14).
- f. Stock in trade, inventory, or property held primarily for sale to customers in the ordinary course of business.

305.63 **Note:** Although a written appraisal is not required for the items listed, certain information (including a detailed description of the property, the fair market value, date acquired, how acquired, cost or adjusted basis) must be provided on Form 8283, Section B, Part 1. In addition, the donee organization must complete Part IV.

Example 3-31: Donations of tangible personal property and appraisal requirements.

Ruth Stevens donated several rooms of furniture to a local organization that provides transitional housing to women and children in need. While Ruth's tax basis in the furniture was \$4,500, the furniture had actually appreciated in value to \$7,000. Because the furniture was used in the organization's

exempt purpose (see the discussion beginning at paragraph 302.33), Ruth's claimed charitable deduction (before any limitations that might apply) was \$7,000. A qualified appraisal was required in order to substantiate the deduction.

Variation 1: Instead of furniture, Ruth donated a painting valued at \$8,000, with a tax basis of \$4,000. The painting was sold by the organization and the proceeds were used for the organization's exempt purpose. Because the painting was not used for the organization's exempt purpose, Ruth's charitable contribution deduction was limited to \$4,000. An appraisal was not required to substantiate the deduction.

Variation 2: Assume the same facts as Variation 1 except that Ruth's basis in the painting was \$6,000. A qualified appraisal was required to substantiate the deduction because the deduction exceeded \$5,000.

305.64 Qualified Appraisal. Unless one of the exceptions listed at paragraph 305.62 applies, a qualified appraisal must be obtained for charitable gifts over \$5,000 [IRC Sec. 170(f)(11)(C)]. A qualified appraisal is an appraisal prepared by a qualified appraiser (see paragraph 305.75) in accordance with generally accepted appraisal standards [IRC Sec. 170(f)(11)(E)].

305.65 In 2018, the IRS issued final regulations providing guidance on substantiation and reporting requirements for cash and noncash charitable contributions, including provisions related to qualified appraisals and appraisers [Reg. 1.170A-17(a) and (b)]. Under the final regulations, the required information includes—

- a. a description of the property,
- b. if tangible property, the physical condition of the item,
- c. the date (or expected date) of the contribution,
- d. the terms of any agreement or understanding between the donor and the charity regarding restrictions on use (or sale) or the retention of a right to income by the donor or other third party,
- e. a statement that the appraisal was prepared for income tax purposes,
- f. the date the property was appraised,
- g. the appraised fair market value (FMV) of the property on the date of contribution,
- h. the method of valuation used to determine FMV and the specific basis for valuation,
- i. identifying information of the appraiser and his or her employer, partnership, or contractor (i.e., name, address, and EIN) and qualifications of the appraiser, and
- j. the signature of the appraiser and the date signed.

305.66 The appraiser must also complete Form 8283, Section B, Part III. See paragraph 305.75 for more on qualified appraisers.

305.67 Note: Reg. 1.170A-17 contains the requirements for qualified appraisals and qualified appraisers. Additional requirements for a qualified appraisal and qualified appraiser are found in Reg. 1.170A-13(c). See Appendix 3C for a summary of the requirements in Reg. 1.170A-13(c).

305.68 The appraisal must be performed no earlier than 60 days before the contribution date and no later than the extended due date for the return claiming the deduction. If the deduction is claimed on an amended return, the appraisal must be received by the day the return is filed [Reg. 1.170A-13(c)(3)(iv)(B)]. However, the written acknowledgment from the charity must have been received by the original due date of the return.

305.69 The written appraisal must be attached to the return for (a) art valued at \$20,000 or more, (b) a single item of clothing or household item (that is not in at least good used condition) for which the taxpayer deducts

more than \$500, (c) a qualified conservation easement on the exterior of a building in a registered historic district (see paragraph 1006.11), or (d) an item (or group of items) for which a deduction of more than \$500,000 is claimed [IRC Sec. 170(f)(11)(D)].

305.70 Failure to strictly comply with the requirements listed in paragraph 305.65 will result in loss of the charitable deduction. In *Friedman*, the taxpayers failed to obtain a timely appraisal and receipt from the charity for some of the items donated. They were held liable for both the additional tax and the taxpayer penalties for valuation misstatements (see paragraph 305.80). In *Hendrix*, the taxpayers' appraisal was ruled to lack the necessary attributes to be a *qualified appraisal*.

305.71 **Caution:** Donors should carefully comply with the appraisal requirements or risk the loss of the entire charitable contribution deduction. The IRS has been aggressive in its arguments that the appraisal is defective. (See, for example, *Cave Buttes*.) This may be overcome if there is substantial compliance by the taxpayer.

305.72 In *Kunkel*, a taxpayer claimed a charitable contribution deduction of \$37,315 for donations of household goods to four charities. Items given to Goodwill were taken in batches at various times and placed in large bins for after-hours drop-offs or outside the warehouse door. Other items were scheduled for pickup and left outside the donor's house, with a receipt from the charities thanking him for his contribution. However, he did not provide evidence to show the condition of the donated items or obtain an appraisal for the property valued at more than \$5,000. Although the Tax Court believed the taxpayer donated property to the charities, it disallowed the deduction because the substantiation requirements of IRC Sec. 170(f)(8) and (f)(11) were not satisfied. In addition, the taxpayer was subject to a Section 6662 accuracy-related penalty of approximately \$2,500. (See paragraph 305.37 for a planning tip on using unattended drop-off sites only for donations of minimal value (i.e., less than \$250 total value).)

305.73 A couple was denied a charitable deduction for contributions of real estate worth millions of dollars to a charitable remainder unitrust because they did not follow IRS directions on how to document their donations (*Mohamed*). The husband, a certified real estate appraiser, prepared the tax return, including Form 8283, based on his own appraisals. According to Form 8283 and its corresponding instructions, the donor, the donee, or party to the transaction in which the donor acquired the property being appraised cannot be a qualified appraiser for that property. (See paragraph 305.76.) Although the Tax Court acknowledged that the couple did not overvalue the property (and speculated that the self-appraisals actually undervalued the real estate), the Tax Court did not allow any deduction for the properties because (a) the husband was not a qualified appraiser under Reg. 1.170A-13(c) because he was the donor taking the deduction and the trustee of the CRUT receiving the property, and (b) the taxpayer's attached statements did not qualify as an appraisal summary.

305.74 In *Costello*, a couple was denied a charitable deduction of \$5.54 million for a contribution of a conservation easement to a qualified charity. Although the taxpayers filed Form 8283 to report the noncash charitable contribution, the attached appraisal report was not considered a qualified appraisal because it did not provide an accurate description of the property contributed, failed to specify the date of the contribution, and did not include the important terms of the agreements between the donors, charity, and the portion sold to a third party. Furthermore, the appraisal summary was not signed by the charity (donee). (For a discussion of the IRS's challenges of taxpayers' charitable contribution deductions for conservation easements, see Appendix 10B.)

305.75 **Qualified Appraiser.** A charitable contribution appraisal is required to be performed by a qualified appraiser, defined as an individual who [IRC Sec. 170(f)(11)(E)]—

- a. has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements,
- b. regularly performs appraisals for compensation,

- c. can demonstrate verifiable education and experience in valuing the type of property subject to the appraisal,
- d. has not been prohibited from practicing before the IRS at any time during the three years preceding the appraisal, and
- e. meets other requirements as may be prescribed by the IRS in the regulations or other guidance.

305.76 As discussed in paragraph 305.67, requirements for qualified appraisals and qualified appraisers are found in Reg. 1.170A-17. Additional requirements for a qualified appraiser are found in Reg. 1.170A-13(c). With regard to the property being appraised, a qualified appraiser does not include Reg. 1.170A-13(c)(5)(iv)—

- a. the donor,
- b. the donee,
- c. a party to the transaction in which the donor acquired the property,
- d. a person who is employed by or related to any of the persons indicated in items a–c, and
- e. someone who does not perform most of his or her appraisals for persons other than the donor during the tax year.

305.77 With regard to these requirements, Reg. 1.170A-17 provides the following:

- *Appraisal designation.* An appraiser will be treated as having earned an appraisal designation from a recognized professional appraiser organization if the appraisal designation is awarded on the basis of demonstrated competency in valuing the type of property for which the appraisal is performed. [Reg. 1.170A-17(b)(2)(i)(B)]
- *Verifiable education and experience in valuing the type of property.* An appraiser will be treated as having demonstrated verifiable education and experience in valuing the type of property subject to the appraisal if the appraiser makes a declaration in the appraisal that, because of the appraiser's background, experience, education, and membership in professional associations, the appraiser is qualified to make appraisals of the type of property being valued [Reg. 1.170A-17(b)(4)].

305.78 For appraisals of contributions other than those of real property, e.g., artwork or other tangible personal property, the appraiser will be deemed to meet the minimum education and experience requirements as a qualified appraiser if he or she has [Reg. 1.170A-17(b)(2)(i)(A)]—

- a. successfully completed college or professional-level coursework relevant to the appraised property,
- b. obtained at least two years of experience in the trade or business of buying, selling, or valuing the type of property under appraisal, and
- c. includes in the appraisal a full description of the education and experience that qualifies him or her to value the type of property being appraised.

305.79 **Appraiser Penalties.** Appraisers are subject to penalties for substantial or gross valuation misstatements on appraisals used in connection with a return or a claim for refund for income, estate, or gift tax purposes. The civil penalty is the greater of \$1,000 or 10% of the tax understatement, limited to 125% of the gross income received as appraisal fees [IRC Sec. 6695A(a)].

305.80 **Taxpayer Penalties for Valuation Misstatements.** The Code imposes accuracy-related penalties on taxpayers who substantially misstate the value of donated property. The threat of these penalties should be additional incentive for taxpayers to fully comply with the property appraisal requirements and recognize the importance of getting appraisals done by qualified appraisers.

305.81 A 20% penalty is assessed on any tax deficiency in excess of \$5,000 that is attributable to a substantial valuation misstatement [IRC Sec. 6662(b)(3)]. A substantial valuation misstatement occurs when the claimed charitable deduction is 150% or more of the amount determined to be the correct valuation [IRC Sec. 6662(e)(1)]. If the claimed amount is more than 200% of the correct amount, a gross valuation misstatement occurs, in which case the penalty is 40% of the tax underpayment attributable to the excess valuation [IRC Sec. 6662(h)].

305.82 Although reasonable cause is allowed as an exception to the Section 6662 accuracy-related penalties, a special rule applies when the penalty relates to charitable donations of property (other than publicly-traded securities). Here, a taxpayer can use reasonable cause to avoid an understatement penalty for a substantial valuation overstatement only if the amount the taxpayer claimed for the charitable donation was based on a qualified appraisal done by a qualified appraiser and, in addition to obtaining the appraisal, the taxpayer made a good faith investigation of the value of the donated property [IRC Sec. 6664(c)(3)]. Gross valuation overstatements are not eligible for this special exception.

305.83 **Planning Tip:** As a practical matter, the appraiser must sign a copy of Form 8283, which indicates the appraised value and is a part of the tax return, even though the regulations indicate the appraisal may occur as late as the tax return's extended due date. Therefore, the appraisal must be received by the date the return is filed. Also, the charitable organization must complete and sign a portion of the Form 8283. Arrangements to have these third parties complete their portions of the Form 8283 should be made as soon as possible to avoid missing the filing deadline.

305.84 **Note:** The appraiser's fee is not deductible as a charitable contribution.

305.85 **Artwork Valued at \$50,000 or More.** Taxpayers can request an IRS Statement of Value (which can be relied on when preparing returns) for contributions of art with an appraised value of \$50,000 or more. (Under limited circumstances, the IRS may issue a statement for items appraised for less than \$50,000.) The request must be made before the return first claiming the contribution deduction is filed. Rev. Proc. 96-15 [modified by IRS Ann. 2001-22 and Rev. Proc. 2019-1 (Appendix A)] provides a detailed list of what must be included with the request, including a user fee of \$6,500 for up to three items, plus \$300 for each additional item.

305.86 **Caution:** The IRS Statement of Value must be attached to the taxpayer's return regardless of whether he or she agrees with it. If a different value is used, information substantiating that value must be attached to the return.

305.87 **Patents or Other Intellectual Property.** To substantiate deductions for contributions of patents or other intellectual property, the taxpayer should have a receipt from the charity acknowledging the donation and maintain records as discussed earlier in this section.

305.88 If the donor intends to claim additional charitable deductions over the next 10 years for the portion of the net income earned by the charity from the property (i.e., the portion that exceeds the initial deduction), additional substantiation is necessary. (See paragraph 302.53 for more on the additional contribution deduction.) At the time of the contribution, the donor must inform the donee that he or she intends to treat the contribution as a qualified intellectual property contribution [IRC Sec. 170(m)(8)]. To satisfy this requirement, the donor must deliver or mail to the donee a written statement containing the following information (IRS Notice 2005-41):

- a. The name, address, and taxpayer identification number of the donor.
- b. A detailed description of the qualified intellectual property.
- c. The date of the contribution to the donee.
- d. A statement that the donor intends to treat the contribution as a qualified intellectual property donation.

305.89 Donees of patents or other intellectual property are required to file an annual information report, Form 8899 (Notice of Income from Donated Intellectual Property), with the IRS that identifies items a., b., and c. of paragraph 305.88, as well as the amount of the net income allocable to the donated property [IRC Sec. 6050L(b)(1) and Reg. 1.6050L-2].

305.90 The donee must annually furnish a copy of the report to the donor, which the donor can use to substantiate an additional charitable deduction for the amount of income earned for the 10 years following the initial donation (but only for the amount of income exceeding the initial charitable deduction) [IRC Sec. 6050L(c), IRC Sec. 170(e)(B)(iii)].

Special Rules for Donated Securities

305.91 The substantiation rules for donated securities are generally more relaxed than for other types of property donations. Gifts of publicly traded securities do not require an appraisal to document value. They are valued based on the arithmetic mean of the highest and lowest selling prices on the date of the gift [Reg. 25.2512-2(b)]. Also, only Section A of Form 8283, which does not require the donee's signature, must be completed. However, see paragraph 305.95 for reporting requirements of *deemed* publicly traded stock.

305.92 Securities are publicly traded if they are [Reg. 1.170A-13(c)(7)(xi)(A)]—

- a. traded on an exchange for which quotations are published daily (e.g., the NYSE Amex Equities),
- b. regularly traded on an over-the-counter market for which published quotations are available, or
- c. a share in a mutual fund for which quotations are published daily in a U.S. newspaper of general circulation (e.g., *The Wall Street Journal*).

305.93 Other securities are treated as having market quotations readily available if [Reg. 1.170A-13(c)(7)(xi)(B)]—

- a. they are reflected on an interdealer quotation system;
- b. the issuer (or the issuer's agent) computes the average trading price for the securities;
- c. the average trading price and total volume of the issue are published in a U.S. newspaper of general circulation;
- d. the issuer (or the issuer's agent) keeps books and records that list, for each transaction, the settlement date, the name and address of the broker making the market in which the transaction occurred, and the trading price and volume; and
- e. the issuer (or the issuer's agent) allows the IRS to review these records on reasonable notice.

305.94 See Reg. 1.170A-13(c)(7)(xi)(B)(2) for definitions of interdealer quotation system and average trading price.

305.95 If a security is deemed to have market quotations available by meeting these criteria, an appraisal is never required. The security is valued based on the rules of Reg. 25.2512-2(b). However, if the donation is more than \$5,000, Part B of Form 8283 must be completed (including the donee's signature).

305.96 **Note:** In Ltr. Rul. 200702031, the IRS ruled that the over-the-counter bulletin board (an electronic system reporting trades in domestic over-the-counter equity securities) is an established securities market with readily available market quotations. Therefore, a stock regularly traded on the board generally will qualify as a publicly-traded security.

305.97 Stock that is not described in paragraph 305.92 or 305.93 is nonpublicly traded stock. Contributions of nonpublicly traded stock over \$5,000 must be reported on Form 8283, Section B, which must be signed by the donee. Furthermore, if a deduction of more than \$10,000 is claimed for nonpublicly traded stock, it must

be substantiated by a qualified appraisal. (See the note at paragraph 305.99.) Nonpublicly traded debt instruments are subject to all of the substantiation requirements of any donated property. Therefore, if the donation is more than \$5,000, an appraisal must be performed, and Part B of Form 8283 (including the donee's signature) must be completed.

305.98 Caution: Even if there are bona-fide, arm's length transactions in a nonpublicly-traded stock that occur around the time a taxpayer donates the stock, the taxpayer is required to obtain a qualified appraisal before a deduction of more than \$10,000 is allowed (*Hewitt*). There is no relief from the qualified appraisal requirement when a deduction of more than \$10,000 is claimed for a donation of nonpublicly-traded stock.

305.99 Note: As a practical matter, many small businesses that are not publicly held may be reluctant to incur the expenses of a qualified appraisal, and their owners may be reluctant to sign off on assumptions made in the appraisal because of the liability they incur by doing so.

305.100 Appendix 3B summarizes the substantiation requirements for cash and property contributions.