

CRS Report for Congress

Received through the CRS Web

Summary of Joint Committee on Taxation's Staff Proposals Relating to Charitable Contributions

Erika Lunder
Legislative Attorney
American Law Division

Summary

This report summarizes several proposals by the staff of the Joint Committee on Taxation dealing with charitable contributions that have received significant attention. The proposals would affect the treatment of contributions of conservation and facade easements, clothing and household items, and appreciated property. Legislation that incorporates these proposals has not yet been introduced. This report will be updated.

In January 2005, the Joint Committee on Taxation released a report that addresses ways to improve compliance with the tax laws and reform certain tax expenditures.¹ The report was written at the request of Senators Grassley and Baucus, but the proposals are suggestions by the Joint Committee's staff and were not approved by the Senators or their staffs. Three of the proposals would impose additional limitations on certain types of charitable contributions. No legislation has been introduced that incorporates these proposals. They are discussed below.

Conservation Easements

One proposal would impose additional limitations on the ability to claim a deduction for charitable contributions that are in the form of conservation easements.² Under current law, donors may claim a deduction for a qualifying charitable contribution of an interest in real property that is exclusively for conservation purposes.³ Conservation purposes are:

¹ *Options to Improve Tax Compliance and Reform Tax Expenditures*, prepared by the staff of the Joint Committee on Taxation, JCS-02-05 (January 27, 2005).

² *Id.* at 277-87.

³ IRC § 170(h).

- the preservation of land for outdoor recreation by, or the education of, the general public,
- the protection of a natural habitat of fish, wildlife or plants, or similar ecosystems,
- the preservation of open space for the scenic enjoyment of the general public or pursuant to a clearly delineated governmental policy, so long as the preservation will yield a significant public benefit, and
- the preservation of an historically important land area or certified historic structure.

The contribution may be in the form of a permanent restriction on the property's use (i.e., an easement), including a facade easement relating to a certified historic structure. The value of the contribution is the value of the restriction, which is generally determined by comparing the value of the property with and without the restriction.

The proposal would limit the current deduction in four ways. First, it would eliminate the deduction for contributions that involve property used as a personal residence by the donor or a family member. Specifically, no deduction could be claimed for a facade easement relating to a structure that recently had been, is being, or could be expected to be used by the donor or family member as a personal residence. Similarly, a deduction would be denied for a contribution of a real property interest if the donor or family member had a right to use any of the property as a personal residence after the contribution.

Second, the proposal would reduce the amount that could be deducted. For contributions of facade easements, the proposal would limit the deduction to the lesser of 5% of the structure's fair market value determined without regard to the facade easement or 33% of the easement's value. For all other contributions, the proposal would limit the deduction to 33% of the fair market value of the contributed interest.

Third, the proposal would restrict some of the qualifying conservation purposes. As mentioned above, a contribution relating to the preservation of open space may be deducted if the preservation is pursuant to a clearly delineated governmental policy (i.e., a specific conservation project⁴). The proposal would require that this requirement be met for any conservation purpose except for the preservation of an historically important land area or certified historic structure.

Fourth, the proposal would impose requirements on the appraiser who determined the contribution's value. Under current law, the donor must receive an appraisal for any contribution in excess of \$5,000.⁵ The proposal would require the appraiser to affirm that the value had been determined in accordance with generally accepted appraisal standards and that he or she met specific requirements relating to his or her ability and eligibility to conduct the appraisal.

⁴ See 26 CFR § 170A-14(d)(4)(iii).

⁵ 26 CFR § 170A-13(c).

The Joint Committee staff explained the reasons for the proposal:

Charitable deductions of qualified conservation contributions, including conservation and facade easements, present serious policy and compliance issues. Valuation is especially problematic because the measure of the deduction . . . is highly speculative, considering that, in general, there is no market and thus no comparable sales data for such easements. In many instances, present law does not require that the preservation or protection of conservation be pursuant to a clearly delineated governmental conservation policy, only requiring such a policy in cases of open space preservation if the preservation is not for the scenic enjoyment of the general public. As a result, taxpayers and donee organizations have considerable flexibility to determine the conservation purpose served by an easement or other restriction, enabling taxpayers to claim substantial charitable deductions for conservation easements that arguably do not serve a significant conservation purpose.⁶

Clothing and Household Items

The Joint Committee's staff also proposed to limit the deduction that may be claimed for contributing clothing and household items.⁷ Under current law, a donor typically deducts the fair market value of these items, subject to the general restrictions on charitable deductions.⁸ The proposal would limit the deduction to \$500 per year. The cap would apply to both new and used items. Household items would not include food, objects of art, antiques, jewelry and collections.

The Joint Committee staff explained that the reason for the \$500 cap is to address the problem with donors overvaluing their contributions of these types of goods, while still allowing a "reasonable" deduction.⁹ The amount of the cap was chosen because, under current law, donors who give more than \$500 in non-cash goods must generally report the gift to the IRS. The Joint Committee staff felt that linking the cap and the reporting requirement would "minimize the filing burdens of taxpayers and donee organizations."¹⁰

Appreciated Property

The proposal would also modify the existing rules for contributions of appreciated property.¹¹ Under current law, the deduction for such a contribution is generally the fair market value of the property on the date of contribution. The deduction is reduced to the taxpayer's basis (the property's cost plus or minus certain adjustments) for contributions of ordinary income property (property that would not result in long-term capital gain if

⁶ JCS-02-05 at 282.

⁷ *Id.* at 288-92.

⁸ IRC § 170.

⁹ JCS-02-05 at 290.

¹⁰ *Id.*

¹¹ *Id.* at 293-307.

sold), tangible personal property that is used by the donee in a manner unrelated to its exempt purpose, and property for the use of a private foundation.¹²

In general, under current law, if the donor claims a deduction exceeding \$500 for non-cash contributions, he or she must report the contributions on Form 8283. The return includes such information as a description of the property, the donor's basis, and whether the property will be used for the donee organization's exempt purpose. If the donee organization sells or disposes of property with a claimed value in excess of \$5,000 within two years of the contribution, then the organization must generally file Form 8282 with the IRS and furnish a copy of the return to the donor.

The Joint Committee staff's proposal has two options. The first option would limit the deduction for any contribution of appreciated property to the lesser of the donor's basis in the property or the property's fair market value. This rule would not apply to contributions of publicly-traded securities, qualified intellectual property, qualified vehicles, or property that qualified for the enhanced deduction under IRC § 170(e).

The second option would be the same as the first option, but with an exception for contributions of "exempt use property" — property used by the donee organization to substantially further its exempt purpose. Thus, for this property, the existing rule would continue to apply so that the deduction could equal the property's fair market value. There would be rules to recapture the deduction if the donee organization disposed of the exempt use property within three years. Additionally, the second option would change the current reporting requirements. For Form 8283, the donee organization would have to explain the intended use of any property for which a deduction of more than \$500 was claimed. For Form 8282, the donee organization would have to report any disposition of this property if made within three years of the contribution.

The Joint Committee staff explained that its reasons for the proposal include addressing the fact that while error and abuse occurs with respect to the overvaluation of this property, in part because these are not arm's length transactions since the donee has no tax-related reason to question the donor's value, it is often not cost-effective for the IRS to pursue overvaluation issues.¹³ Further, the Joint Committee staff reasoned:

Apart from the issues of valuation and enforcement, the fair market value deduction for property contributions raises separate policy questions. The fair market value deduction for property generally places gifts of cash and gifts of property on an equal footing. A primary goal of the charitable deduction, however, should be to encourage gifts that are most useful to a charitable organization, and should not be to encourage gifts that entail significant diversion of resources from the charitable mission or that require a charity to incur substantial transaction costs. Cash, publicly traded securities, and arguably property that can be used directly in substantial furtherance of exempt purposes meet this standard. Other gifts of property generally do not and so need not be as favored.¹⁴

¹² IRC § 170(e).

¹³ *Id.* at 296.

¹⁴ *Id.*