The webcast will start at 1 p.m. Eastern

Please note:

- Handout – You can print or download the webcast handout at http://capincrouse.com/accepting-contributions
- CPE – CPE certificates will be emailed to you within the next few weeks. To receive CPE credit you must respond to the polling questions, which are not available on mobile devices. Therefore, in order to receive CPE credit you must log in via a computer.
- Recording– A recording of today's webcast will be available at capincrouse.com. Click **Nonprofit Resources**, and then select **Webcast: Recorded** from the list on the right.

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Accepting Contributions of Business Interests, Real Property, and Collectibles

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5.25.17

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Agenda

- Gifts of Business Interests
- Gifts of Real Property
- Gifts of Collectibles and Other Tangible Personal Property
- Deducting Contributions of Non-Cash Assets
- Tax Reporting for Contributions of Non-Cash Assets

Gifts of Business Interests

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Gifts of Business Interests

- Business interest types
  - C-Corporation
  - S-Corporation
    - UBTI considerations specific to S-Corporations
  - Limited liability company (LLC)
    - UBTI considerations
  - General partnership
    - UBTI considerations
  - Limited partnership
    - UBTI considerations

Gifts of Business Interests

- Pre-Acceptance Due Diligence
  - How does this gift fit with your gift acceptance policy?
    - Are there limits on your ability to sell the gifted interest?
  - Review organizing documents
    - Articles of Incorporation
    - Articles of Organization
    - Bylaws
    - Operating Agreement
  - Is there anything about this business that poses risk to your organization?
    - Financial risk
    - Reputational risk

Gifts of Business Interests

- Pre-Acceptance Due Diligence (continued)
  - Review any shareholder/member/partnership agreements
    - Any limits on your organization's ability to accept the interest?
    - Is the consent of others required?
    - Are there capital call provisions?
  - Review financial statements
    - Is the business on sound financial footing?
    - Is the business (or at least your expected interest) salable?
    - Will the gift produce UBTI?
  - Review planned sale agreements, if any
    - Is the purchase price acceptable? How do you know?

Gifts of Business Interests

- Pre-Acceptance Due Diligence (continued)
  - What type of evidence of ownership will you receive?
    - Share certificate
    - Assignment agreement
  - What management responsibilities, if any, will your organization assume?
  - If you don't have control, will your organization be given a seat on the board?

Gifts of Business Interests

- Post-Acceptance Considerations
  - Who in your organization will be responsible for monitoring this gift and performing any duties that come along with the gift?
  - Who is responsible for finding a buyer?
    - Is there a pre-identified pool of buyers? E.g., a family member of the donor or key employee of the business?
    - Will you engage the services of a business broker?
  - If there is unrelated business taxable income, who is responsible for computing the tax and making estimated tax payments?

Gifts of Real Property Interests

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Gifts of Real Property Interests

- Pre-Acceptance Due Diligence
  - How does this gift fit with your gift acceptance policy?
  - What type of interest is being offered?
    - Fee-simple
    - Tenancy in common
  - Is the property encumbered by a mortgage?
    - Is the mortgage more than 5 years old?
  - Is the property salable?
    - What is its value?
    - How is it zoned?
    - Is there a pre-identified pool of buyers?

Gifts of Real Property Interests

- Pre-Acceptance Due Diligence (continued)
  - If there are physical structures on the property, arrange to inspect them (or have them professionally inspected)
  - Are there environmental concerns?
    - Should you consider an environmental survey? Phase I? Phase II?
  - What type of deed will your receive?
    - General Warranty vs. Quit Claim
  - What assurance of good title will you receive?
    - Should you require a title insurance policy?
  - Are there unpaid property taxes or outstanding liens against the property?

Gifts of Real Property Interests

- Pre-Acceptance Due Diligence (continued)
  - Are you prepared to pay any carrying costs prior to sale?
    - Insurance
    - Property taxes
    - Maintenance
  - Review whether the property is the subject of any current or threatened litigation
  - Review whether the owner has any existing contractual obligations with respect to the property
    - Existing lease agreements, easements, or other commitments

Gifts of Real Property Interests

- Post-Acceptance Considerations
  - Who in your organization will be responsible for listing the property for sale?
  - Who in your organization has the authority to negotiate the sale?
  - Who in your organization has the authority to approve the sale agreement?
  - Who in your organization will be responsible for tracking property tax, insurance, maintenance, and other carrying costs?

Gifts of Collectibles and Other Tangible Personal Real Property

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Gifts of Collectibles and Other Tangible Personal Real Property

- Pre-Acceptance Due Diligence
  - How does this gift fit with your gift acceptance policy?
  - Is there anything about this gift that poses risk to your organization?
    - Artifacts
    - Ivory
    - Firearms
  - Will the gift be usable in fulfilling your charitable purpose?
  - Is the item easily transportable?
  - Will the item require special handling or storage?
  - Will the item require insurance?

Gifts of Collectibles and Other Tangible Personal Real Property

- Post-Acceptance Considerations
  - Who in your organization will take custody prior to sale (if it is to be sold)?
  - Who in your organization will handle carrying costs?
  - Who in your organization will be charged with selling the item(s)?

Deducting Charitable Contributions

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Deducting Charitable Contributions

- Two rules that impact the deductibility of a charitable contributions:
  - Reduction Rules
  - AGI Limitation Rules
- The Reduction Rules impact the amount of the charitable contribution
- The AGI Limitation Rules impact the amount of the charitable contribution that may be deducted this year

Reduction Rules

The Reduction Rules come in two flavors:

1. Rules based on the type of asset contributed
2. Rules based on the type of charity to which the contribution is made

Reduction Rules (continued)

- Asset-Based Reduction Rules
  - The deductible of amount for gifts of tangible personal property is the fair market value less the amount that would be long-term capital gain if the item were sold rather than contributed (sec. 170(e)(B)(i))
    - EXCEPTION: If the property is used in fulfilling the recipient organization’s charitable purpose, it may be deducted at fair market value
    - Requires certificate of related use issued to the donor
  - The deductible amount for gifts of ordinary income property is reduced by the amount that would not be long-term capital gain (sec. 17(e)(A)))
  - The deductible amount for gifts of taxidermy property is the fair market value less the amount that would be long-term capital gain if the item were sold rather than contributed (sec. 170(e)(1)(B)(iv))

Reduction Rules (continued)

- Entity-Type Reduction Rules
  - Non-cash contributions to a private foundation are reduced by the amount that would be long-term capital gain if sold
    - EXCEPTION: Contributions of qualified appreciated stock are not subject to this reduction rule
    - Qualified appreciated stock is stock
      - For which market quotations are readily available on an established securities market;
      - That is capital gain property; and
      - Of which the donor and members of the donor’s family have contributed, in the aggregate, less than 10% of the value of the company’s stock

AGI Limitation Rules

- Once the Reduction Rules have been applied, the AGI Limitation Rules are applied
- The first rule is that **cash** gifts ***to*** a **public charity** are deductible to the extent of **50%** of the donor's Adjusted Gross Income (AGI)
  - **Non-cash** gifts to a **public charity** are deductible to the extent of **30%** of the donor's AGI
- The second rule is that **cash** gifts ***to*** a **private foundation** are deductible to the extent of **30%** of the donor's AGI
  - **Non-cash** gifts to a **private foundation** are deductible to the extent of **20%** of the donor's AGI
- The third rule is that **cash** gifts ***for the use*** of **any charity** are deductible to the extent of **30%** of the donor's AGI
  - **Non-cash** gifts ***for the use*** of **any charity** are deductible to the extent of **20%** of the donor's AGI

Tax Reporting – The Donor's Perspective

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Tax Reporting – The Donor’s Perspective

- First Principle: The donor should obtain a contemporaneous acknowledgement of his or her gift that includes:
  - A description of the property
  - The date of receipt
  - A statement that no goods or services were provided in exchange for the gift (or if there was an exchange, a statement of the value of the property given in exchange), or a statement that only intangible religious benefits were provided

  An acknowledgement is contemporaneous if it is provided on or before the earlier of:
- The date the taxpayer files the original return for the taxable year in which the contribution was made; or
- The due date (including extensions) for filing the taxpayer's original return for that year

Tax Reporting – The Donor’s Perspective

- Second Principle: The value of contributions in excess of $5,000 must be substantiated by a **qualified appraisal** (Treas. Reg. § 1.170A-13(c)(1))
  - Applies to gifts of property other than cash and publicly traded securities
- Third Principle: A donor must attach IRS Form 8283, *Noncash Charitable Contributions*, to their return or their deduction will be denied

Qualified Appraisal Defined (Treas. Reg. § 1.170A-13(c)(3))

- An appraisal document that:
  - Is made not earlier than 60 days prior to the date of contribution of the appraised property nor later than the due date, including extensions, on which the contribution deduction is first claimed
  - Is prepared, signed, and dated by a **qualified appraiser**
  - Includes the content required by the regulations; and
  - Does not involve an appraisal fee based on a percentage of the value of the property appraised
    - For this purpose the fee cannot be based on the value that is allowed by the IRS after an examination

Qualified Appraisal: Required Content

- A **description of the property** in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;
- In the case of tangible property, the **physical condition of the property**;
- The **date (or expected date) of contribution** to the donee;

Qualified Appraisal: Required Content (continued)

- The terms of any executed or contemplated **agreement or understanding** that relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement or understanding that—
  - Temporarily or permanently **restricts a donee's right to use or dispose of** the donated property,
  - With respect to the contribution property, reserves to, or confers upon, anyone any right to (i) the **income** from, (ii) the **possession** of, (iii) **acquire**, or (iv) to designate the person having such income, possession, or right to acquire, or
  - **Earmarks** donated property for a particular use;

Qualified Appraisal: Required Content (continued)

- The **name, address, and the identifying number** of the qualified appraiser and, if applicable, the appraiser’s firm;
- The **qualifications** of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations;
- A statement that the appraisal **was prepared for income tax purposes**;
- The **date (or dates) on which the property was appraised**;

Qualified Appraisal: Required Content (continued)

- The **appraised fair market value** of the property **on the date (or expected date) of contribution**;
- The **valuation method** used; and
- The **specific basis for the valuation**, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

Qualified Appraiser Defined (Treas. Reg. § 1.170A-13(c)(5))

- An individual that:
  - Holds themselves out to the public as an appraiser or performs appraisals on a regular basis;
  - By virtue of their qualifications, is qualified to appraise the type of property being valued;

Qualified Appraiser Defined

- An individual that (continued):
  - Is not
    - The donor or the taxpayer who claims a deduction for the contribution of the property being appraised.
    - A party to the transaction in which the donor acquired the property being appraised (an exception applies to property donated within 2 months of acquisition).
    - The donee of the property.
    - Any person employed by any of the foregoing persons.
    - A brother, sister, spouse, ancestor, or lineal descendant of any of the foregoing persons.
    - An appraiser who is regularly used by any of the foregoing persons and who does not perform a majority of his or her appraisals made during his or her taxable year for other persons.

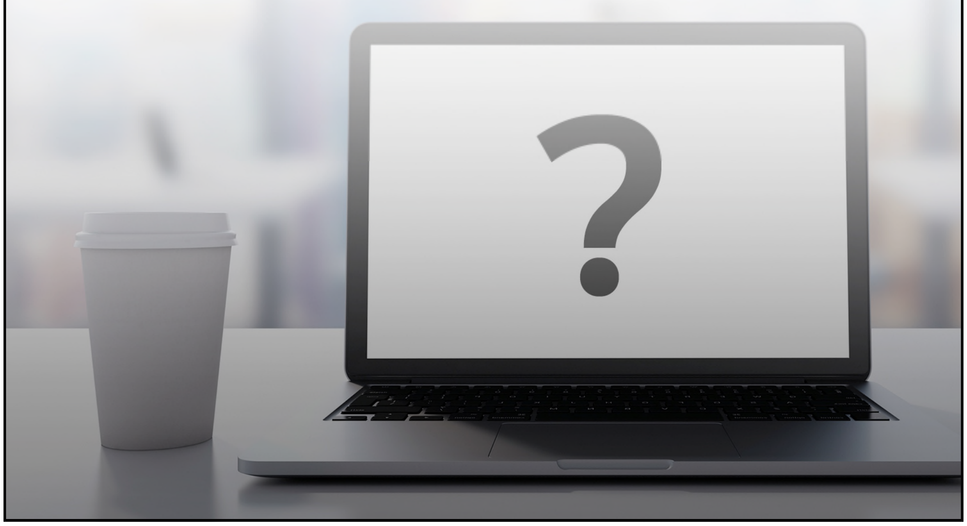
Qualified Appraiser Defined

- An individual that (continued):
  - Includes a statement in the appraisal document indicating an understanding that an intentionally false or fraudulent overstatement of the value of the property may subject the appraiser to a civil penalty for aiding and abetting an understatement of tax liability, and the appraiser may have future appraisals disregarded.

Tax Reporting: The Donee's Perspective

- If the donor provides a Form 8283, the donee must
  - Sign the donee acknowledgment on page 2 of Form 8283
  - If the contributed property is sold within three years of the date of gift, the donee organization must file IRS Form 8282, *Donee Information Return*
    - If donated property is transferred to another donee organization, the sub-donee inherits this obligation
- Form 8282 requirements:
  - Only required if the property is listed in Section B of Form 8283
  - Must be filed within 125 days of the **date of sale**
  - The form is not required if the organization consumed or distributed the property for charitable purposes

Questions?



Thank you.

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