IRS Finally Issues New Regs for Charitable Gift Appraisals

An overview of the new requirements.

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The Internal Revenue Service recently issued final regulations (the proposed regulations were issued only 10 years ago) that make changes in the substantiation and reporting rules governing cash and noncash gifts made by individuals, partnerships and corporations. Most of the changes in the final regs are relatively minor, but nevertheless important. But some of the final regs governing qualification of appraisers and the contents of their appraisals differ significantly from the proposed regs. These final rules apply to contributions made on or after Jan. 1, 2019. Taxpayers may rely on these rules for appraisals prepared for returns or submissions filed after Aug. 17, 2006. (TD 9836.)

Lawyers and accountants who advise on tax consequences, draft gift agreements and prepare income tax returns should be fully familiar with the appraisal rules: a nodding acquaintance won't do.

Why are the rules you're about to read so detailed and complicated? They result from numerous overvaluations of claimed charitable deductions. Here's a summary of the final regs provisions regarding appraisals.

Definitions

Qualified appraisal. An appraisal document prepared by a qualified appraiser in accordance with generally accepted appraisal standards.

Qualified appraiser. An individual with verifiable education and experience in valuing the type of property for which the appraisal is performed.

Education and experience. An individual is treated as having education and experience in valuing the type of property if, as of the date the individual signs the appraisal, the individual has:

- successfully completed (e.g., received a passing grade on a final examination) coursework from a professional or college level, in valuing the type of property and has 2 or more years of experience in valuing the type of property; or
- earned a recognized appraiser designation for the type of property.

The individual must obtain coursework from an educational organization, generally recognized professional trade or appraiser organization or employer educational program. The coursework must be obtained from: a professional or college-level educational organization described in Internal Revenue Code Section 170(b)(1)(A)(ii); a generally recognized professional trade or appraiser organization that regularly offers educational programs in valuing the type of property; or an employer as part of an employee apprenticeship or educational program.

Recognized appraiser designation. A designation awarded by a generally recognized professional appraiser organization on the basis of demonstrated competency.

Individuals who aren't qualified appraisers.

- An individual who receives a prohibited fee for the appraisal of the property.
- The donor of the property.
- A party to the transaction in which the donor acquired the property (e.g., the individual who sold, exchanged or gave the property to the donor, or any individual who acted as an agent for the transferor or for the donor for the sale, exchange, or gift), unless the property is contributed within two months of the date of acquisition and its appraised value doesn't exceed its acquisition price.
- The donee of the property.
- Any individual who's either:

  Related, within the meaning of IRC Section 267(b), or an employee of, an individual described in Treasury Regulations Section 170A-17(b)(5)(ii), (iii), or (iv); or

  Married to an individual described in Treas. Regs. Section 170A-17(b)(5)(v)(A); or

  An independent contractor who is regularly used as an appraiser by any of the individuals described in Treas. Regs. Section 170A-17(b)(5)(ii), (iii) or (iv) and who doesn't perform a majority of his appraisals for others during the taxable year; or

  An individual who is prohibited from practicing before the IRS under 31 U.S.C. Section 330(c) at any time during the 3-year period ending on the date the appraisal is signed by the individual.

Generally accepted appraisal standards. The substance and principles of the Uniform Standards of Professional Appraisal Practice, as developed by the Appraisal Standards Board of the Appraisal Foundation.

Contents of the qualified appraisal. The qualified appraisal must include this information about the contributed property:

- A description in sufficient detail under the circumstances, taking into account the value of the property, for a person who's not generally familiar with the type of property to ascertain that the appraised property is the contributed property.
- For real property or tangible personal property, the condition of the property.
- The valuation effective date.
- The fair market value, within the meaning of Treas. Regs. Section 1.170A-1(c)(2), of the contributed property on the valuation effective date.
- The terms of any agreement or understanding by or on behalf of the donor and donee that relates to the use, sale or other disposition of the contributed property, including the terms of any agreement or understanding that: restricts temporarily or permanently

a donee's right to use or dispose of the contributed property; reserves to, or confers on anyone other than a donee or an organization participating with donee in cooperative fundraising, any right to the income from the contributed property or to the possession of the property, including the right to vote contributed securities, to acquire the property by purchase or otherwise or to designate the person having income, possession or right to acquire; or earmarks contributed property for a particular use:

- The date, or expected date, of the contribution to the donee.
- The following information about the appraiser:

Name, address and taxpayer identification number.

Qualifications to value the type of property being valued, including the appraiser's education and experience.

If the appraiser is acting in his capacity as a partner in a partnership, an employee of any person, whether an individual, corporation or partnership, or an independent contractor engaged by a person other than the donor, the name, address and taxpayer identification number of the partnership or the person who employs or engages the qualified appraiser.

The signature of the appraiser and the date signed (appraisal report date).

A statement that the appraisal was prepared for income tax purposes.

The method of valuation used to determine the FMV, such as the income approach, the market data approach or the replacement-cost-less- depreciation approach.

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.

Timely appraisal report. A qualified appraisal must be signed and dated by the qualified appraiser no earlier than 60 days before the date of the contribution and no later than due date, including extensions, of the return on which the deduction for the contribution is first claimed.

For a donor that's a partnership or S corporation, the 60 days are measured by the due date, including extensions, of the return on which the deduction for the contribution is first reported; or in the case of a deduction first claimed on an amended return, the date on which the amended return is filed.

Timely valuation effective date. The valuation effective date is the date to which the value opinion applies. For an appraisal report dated before the date of the contribution, the valuation effective date must be no earlier than 60 days before the date of the contribution and no later than the date of the contribution. For an appraisal report dated on or after the date of the contribution, the valuation effective date must be the date of the contribution.

Exclusion for donor knowledge of falsity. An appraisal isn't a qualified appraisal for a particular contribution, even if all the other requirements are met, if the donor either failed to disclose or misrepresented facts, and a reasonable person would expect that this failure or misrepresentation would cause the appraiser to misstate the value of the contributed property.

Number of appraisals required. A donor must obtain a separate qualified appraisal for each item of property for which an appraisal is required under IRC Section 170(f)(11)(C) and (D) and paragraph (d) or (e) of Treas. Regs. Section 1.170A-16 and that isn't included in a group of similar items of property, as defined in Treas. Regs. Section 1.170A-13(c)(7)(iii). For rules regarding the number of appraisals required if similar items of property are contributed, see IRC Section 170(f)(11)(F) and Treas. Regs. Section 1.170A-13(c)(3) (iv)(A).

Time of receipt of qualified appraisal. The qualified appraisal must be received by the donor before the due date, including extensions, of the return on which a deduction is first claimed, or reported in the case of a donor that's a partnership or S corp under IRC Section 170 with respect to the donated property, or, in the case of a deduction first claimed or reported on an amended return, the date on which the return is filed.

Prohibited appraisal fees. The fee for a qualified appraisal can't be based to any extent on the appraised value of the property. For example, a fee for an appraisal will be treated as based on the appraised value of the property if any part of the fee depends on the amount of the appraised value that's allowed by the IRS after an examination.

Retention of qualified appraisal. The donor must retain the qualified appraisal for so long as it may be relevant in the administration of any internal revenue law.

Effect of disregarded appraisal. If an appraiser has been prohibited from practicing before the IRS by the Treasury under 31 U.S.C. Section 330(c) at any time during the 3-year period ending on the date the appraisal is signed by the appraiser, any appraisal prepared by the appraiser will be disregarded as to value, but could constitute a qualified appraisal if the requirements of Treas. Regs. Section 1.170A-17 are otherwise satisfied, and the donor had no knowledge that the signature, date or declaration was false when the appraiser signed the appraisal and Form 8283 (Section B).

Partial interest. If the contributed property is a partial interest, the appraisal must be of the partial interest.

"Type of property." This means the category of property customary in the appraisal field for an appraiser to value.

1. Coursework in valuing type of property. There are very few professional-level courses offered in widget appraising, and it's customary in the appraisal field for personal property appraisers to appraise widgets. Appraiser A has successfully completed professional-level coursework in valuing personal property generally but has completed no coursework in valuing widgets. The coursework completed by Appraiser A is for the type of property.
2. Experience in valuing type of property. It's customary for professional antique appraisers to appraise antique widgets. Appraiser B has two years of experience in valuing antiques generally and is asked to appraise an antique widget. Appraiser B has obtained experience in valuing the type of property.
3. No experience in valuing type of property. It isn't customary for professional antique appraisers to appraise new widgets. Appraiser C has experience in appraising antiques generally but no experience in appraising new widgets. Appraiser C is asked to appraise a new widget. Appraiser C doesn't have experience in valuing the type of property.

Verifiable. Education and experience in valuing the type of property are verifiable if the appraiser specifies in the appraisal the appraiser's education and experience in valuing the type of property, as described above, and the appraiser makes a declaration in the appraisal that, because of the appraiser's education and experience, the appraiser is qualified to make appraisals of the type of property being valued.

Appraiser declaration. It must include this statement: "I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under IRC Section 6695A, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the IRS pursuant to 31 U.S.C. Section 330(c)."

Caveat appraisers. You know your specialty. Unless you're also an expert in the tax laws governing your appraisals, consult knowledgeable tax professionals.

Other reporting and substantiating requirements. I've focused on the appraisal requirements for substantiating non-marketable charitable contributions. That's important, but it's just part of the story. A myriad of other reporting and substantiating requirements must also be met for gifts that require or don't require appraisals. But that's for another time.