

[IMAGE]

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Donating to Chiropractic Research

Tax Deduction for Appreciated Stock Donations Allowed before June 30th

By Editorial Staff

Because of his commitment to chiropractic research, Jack Donovan, DC, wanted to donate \$20,000 to the National Institute for Chiropractic Research (NICR). But rather than donate cash, he wanted to use corporate stock that had been appreciating. His goal was to donate the appreciated stock and deduct the full market value, which would be more beneficial than selling the stock, paying taxes on the gain and contributing the rest.

Dr. Donovan called his son, Richard, a tax attorney, to discuss the applicable tax laws. After getting the go ahead, he asked his stock broker at AG Edwards to set up a NICR account, which accommodated Dr. Donovan's donation of appreciated stock.

Unfortunately, the law that allowed Dr. Donovan to make his donation to NICR is going to expire on June 30, 1998. This means that anyone who would like to donate appreciated stock to NICR or any other chiropractic private foundation has less than two months to do so and still enjoy a deduction for the appreciated value.

We're not providing legal or tax advice, but what follows is a detailed explanation of the tax law provided courtesy of Richard Donovan. This information should be used in combination with consultation with a tax/legal advisor:

"Very general principles cause the amount of a taxpayer's deduction, for contribution and charity of appreciated property, to equal the property's fair market value at the time of the contribution. The contributing taxpayer would not sell the appreciated property, but still would deduct the amount of the full fair market value of the property (the original cost of the property plus its appreciation). That is, the taxpayer would enjoy the deduction for the contribution, not in cash but in kind, on the amount of the gain without ever having included the gain in income. Compare, of course, the treatment where the taxpayer would sell appreciated property, pay tax on the gain, and then contribute the remaining

amount of cash and take the deduction on that remaining amount of contribution.

"Such general principles have met with certain more-or-less arbitrary qualifications or limitations in recent years. Under current law, a taxpayer generally may include in the deduction for contribution of appreciated property only amounts of basis and long-term capital gain, not other types of gain. This rule for the deductibility of contributions in kind representing long-term capital gain, applies to contributions to private operating foundations, as relatively narrowly defined in the tax law. Private foundations, being less narrowly defined and in the main, enjoy less favor. Generally, a taxpayer cannot deduct any amount of appreciation, even an amount representing long-term capital gain, on property contributed to a private foundation. In practice, fair to say, the general limitation (no deduction of amounts of appreciation on contributions in kind) threatens to overshadow the general rule (no taxation on gain in lieu of an actual sale or comparable transaction involving the appreciated property).

"Current law also maintains an exception to that limitation, with respect to contributions to private foundations specifically in the form of qualified appreciated stock. But, the exception applies for contributions only as made through June 30, 1998. For a contribution of such stock, in kind, although to a private foundation, and if made through June 30th, the taxpayer still may include in the claimed deduction the amount representing long-term capital gain on the property contributed in kind. Qualified appreciated stock, with certain fairly rare exceptions, means stock for which quotations are readily available on an established securities market. This connotes the usual investment in listed or quoted, publicly held corporate equity, of course, and investment in comparable but closely held stocks, as well.

"The Taxpayer Relief Act of 1997 continued this exception to the limitation, by extending the deadline for contributions made under it from May 31, 1997 to June 30, 1998. That is, the exception takes on the form of a window, which had opened and reopened but which appears about to close again. The history of this exception, for contributions of long-term-capital-gain property to private foundations, enjoys a certain notoriety in itself. The exception originally appeared in 1984, and readers may recall that a prior version expired as of January 1, 1995. The Small Business Job Protection Act of 1996 revived the exception in its present form, specifically with respect to contributions of appreciated stock, for contributions made from July 1, 1996 through May 31, 1997. As stated, the 1997 legislation extended the revival, from May 31, 1997 through June 30, 1998. No further extensions, however, seem to have occupied serious attention in Congress.

"The window will close, and the contribution of quoted stock bearing long-term capital gain, made in kind to a private foundation, will lose its relatively favorable tax treatment after June 30, 1998. Perhaps the most one can do is to appreciate whether the donation belongs to the large class of private foundations or to its subset of private operating foundations. Contributors in kind, to private operating foundations, will continue to enjoy the deductibility of the long-term-capital-gain appreciation on their contributions. Also, the Taxpayer Relief Act of 1997 lowered the marginal rate on a taxpayer's net long-term capital gain from 28 percent to 20 percent. The harm or loss of opportunity from missing the window is reduced. But the general point persists.

Here's the process for leveraging a deduction on the contribution of a long-term appreciated stock to a private foundation (you have until June 30). A small but critical part of the applicable tax law, in Internal Revenue Code Section 170(e), describes the window as follows:

(e) Certain contributions of ordinary income and capital- gain property

(1) General rule The amount of any charitable contribution of property otherwise taken in to account under this section shall be reduced by the sum of: (a) the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and (b) in the case of a charitable contribution: (i) of tangible personal property, if the use of the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or (ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(E), the amount of gain which should have been long- term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

(5) Special rule for contributions of stock for which market quotations are readily available (A) In general, subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.



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