



# Counsel from the Council

## Gifts of Tangible Personal Property By Andrew C. Schulz, Deputy General Counsel

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*A donor is considering starting a fund at the community foundation using a piece of jewelry instead of a cash gift. The jewelry cost her \$1,000 (35 years ago) and is now worth \$20,000. May the community foundation accept the gift? What documentation must the community foundation prepare? From the donor's perspective, how does a gift of tangible personal property differ from a gift of cash or securities?*

**DEFINITION** A quick definition of the term is anything, other than land, that can be touched. For a more exact definition, it may be easier to say what is *not* tangible personal property: real estate and improvements to real estate are not considered tangible personal property, nor is money, including stocks, bonds, options and other negotiable instruments. Patents, trademarks, and copyrights, while personal property, are not tangible. Thus, items such as art, antiques, jewelry, stamp collections, automobiles and even animals are tangible personal property.

**ACCEPTANCE** It is legal for the community foundation to receive gifts of appreciated personal property, but that does not mean the foundation should accept all offered items. Some gifts are of no use to the foundation and may be difficult and time-consuming to sell. Others may present transportation, insurance, storage and preservation problems. Before accepting any gift, check your foundation's gift acceptance policy to see if it offers any guidance.

**DOCUMENTATION** As with all contributions over \$250, the community foundation must provide the donor with a written acknowledgement of the gift. The receipt should describe the item but should not assign a value. It is the donor, and not the community foundation, who is responsible for determining and substantiating the value of the gift.

Ordinarily, a donor must file Form 8283 with the IRS if she gives property with a total value of more than \$500 to one or more charities. If the value of a single item (or collection of similar items) exceeds \$5,000, the donor must also get a *qualified appraisal*—a valuation prepared and signed by a qualified, independent appraiser—and file an appraisal summary on Form 8283. This summary must be signed by the community foundation. If the community foundation later sells or otherwise disposes of property worth \$500 or more within two years after receiving the gift, the community foundation must report that transfer to the IRS on Form 8282 within 125 days.

**INCOME TAX DEDUCTION** While foundation staff should never give tax advice to donors (refer them to their tax advisor instead), it can be helpful to understand how a gift of tangible personal property will affect the donor's income tax liability. The value that the donor will be able to use as the basis for her income tax deduction depends on how the community foundation uses the property. If the foundation's use of the property is *related* to its charitable purposes, the donor may use the fair market value of the property (here, \$20,000) in calculating her deduction.

Examples of property put to a related use would be art displayed at a public museum or books given to a library. The fact that proceeds from the sale will be used to fund foundation activities is not enough for the use to be considered related. A gift of jewelry to a community foundation is virtually certain to be considered unrelated to the foundation's charitable purposes. If the use of the property is unrelated, as in this case, the donor's deduction is limited to the cost basis of the property. Generally, basis is what the donor paid for the property—here, \$1,000.

Once the donor has determined what value to use, she can figure the maximum deduction allowed for that year. The deduction for a gift of related-use property where the donor uses fair market value is limited to 30 percent of the donor's adjusted gross income (AGI). If the value of the donation is calculated using basis (unrelated use), however, the donor may claim a deduction up to 50 percent of her AGI. In either case, any excess that cannot be applied in the current year can be carried forward and applied to future tax years for up to five years. By comparison, gifts of cash and most securities are deductible at fair market value and up to 50 percent of AGI with no related-use issue.

**OTHER FACTORS** In addition to the issue of whether or not the foundation will put the property to a related use, other factors, including how long the donor owned the property, whether the property is capital gain property or ordinary income property, and whether the property has increased or decreased in value may affect both the value and amount of the deduction allowed. In some cases, the donor may be able to choose between different calculations for the best tax result. For these reasons, the donor should always be encouraged to consult with her tax advisor to determine the tax implications of a gift of tangible personal property.

*Questions? Contact Andrew Schulz at [schua@cof.org](mailto:schua@cof.org).*