

THE WEIRD & BIZARRE – HOW TO HANDLE THOSE QUIRKY GIFTS

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Agenda – Part 3 of 3

- ▣ Gift Acceptance Committees
- ▣ Gift Acceptance Policies
- ▣ Related & Unrelated Use
- ▣ Documentation Associated w/GIKs
- ▣ Valuing & Counting GIKs
- ▣ IRS Forms
- ▣ 2006 Recapture Rule
- ▣ Specific Nonstandard Gift Issues
 - Insurance; Stock; Fractional Gifts; Virtual Currency; Vehicles; Software; This & That

**Color copies of all text slides will be found
in the Presentations & Papers section of
the FundSvc.org download site:
<http://fundsvcs.org/modules/wfdownloads/>**

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Gift Acceptance Committee

- Safety in numbers – avoid being cellmates
- Remain true to the institution's mission
- Who is on yours?
 - VP/C for Institutional Advancement
 - Assoc. VP/Cs for Development
 - Assoc. VP/C for Financial & Business Services
 - Assoc. VP/C for Advancement Services
 - Assoc. General Counsel
 - Director of Planned Giving
 - Other experts and officials as necessary

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Gift Acceptance Policy

- The committee does NOT have to approve everything!
 - Cash and security donations to pre-existing programs – but should establish “rules” on stock donations (more about this in a bit)
 - Computers and other equipment you need
 - Medical equipment (assuming you have a need!)
 - Items for *immediate* auction or raffle
- The policy should outline those gifts that must be approved – Essentially, *anything* that presents a moderate or material risk:

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What A Committee *Must* Review

- Outright gifts of real property
- Gifts of real property when a bequest is realized
- Life estates
- Gifts of personal property with a FMV value exceeding \$X if unrelated use; gifts of personal property with a FMV >\$X if related use. Examples could include:
 - Works of art or other objects
 - Airplanes, boats, cars, or other vehicles (more later)
 - Mineral, water, or timber rights
 - Oil wells
 - Overseas investments
 - Manuscripts
 - Literary works
 - Computer software
 - Computer hardware
 - Intellectual property
 - Patents

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What A Committee *Must* Review

- ▣ Other gifts of unusual items or gifts of questionable value
- ▣ Conditional pledges, including those with matching requirements
- ▣ Gifts of real or tangible personal property subject to donor restrictions regarding disposal of the property
- ▣ Partnerships
- ▣ LLCs
- ▣ Non-publicly traded securities with a FMV >\$5,000
- ▣ Cash gifts with significant donor restrictions
- ▣ Partnership investments
- ▣ Interest in business entities
- ▣ Alternative investment requirements
- ▣ New gift types the institution has not dealt with before

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Gift Acceptance Policy

- ▣ Explains generally how to receipt/acknowledge in-kind donations
- ▣ Key references found in 3 IRS Publications:
 - 561 - Determining the Value of Donated Property
 - 526 - Charitable Contributions
 - 1771 - Substantiation and Disclosure Requirements

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How Will This Benefit Us?

- ▣ What's the determining factor for acceptance of a gift-in-kind?
 - Related use: The GIK must be useful to the institution in fulfilling the purpose or mission for which the institution was granted tax-exempt status

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How Will This Benefit Us?

- Unrelated use: *May still qualify as a gift-in-kind* (that you can count and the donor can deduct – sort of) provided it was given specifically to be sold (charity auction)
 - ▣ “The Treasury Regulations under section 170 provide that if a donor contributes tangible personal property to a charity that is put to an "unrelated use", the donor's contribution is limited to the donor's tax basis in the contributed property”
 - ▣ “The term "unrelated use" means a use that is unrelated to the charity's exempt purposes or function . . . The sale of an item is considered unrelated, even if the sale raises money for the charity to use in its programs”

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What You Should Require To Get A Gift-in-kind Recorded

- ▣ Description of asset (you certainly don't need it in your parking lot! Well, maybe once in a while . . .)
- ▣ Purpose of the gift (e.g., To fund an endowed chair, a deferred gift, an unrestricted gift) and the department(s), program(s), or endowment(s) to benefit from the gift
- ▣ An estimate or appraisal of the gift's fair market value and marketability

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What You Should Require To Get A Gift-in-kind Recorded

- ▣ Any potential related use and, if so, written review by the area to benefit from the asset
- ▣ Any special arrangements requested by the donor (e.g., price considerations, time durations prior to disposition - watch out here; we'll discuss later; potential buyers, etc.)

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Valuing & Counting GIK's

- ▣ It is the **donor's** responsibility to value and substantiate a GIK for tax purposes. It is **your** responsibility to count it.
- ▣ If valued at \$5,000+, use the appraisal the donor must obtain to claim a deduction. But what if there's no appraisal?
 - Could raise a red flag and require review by the GAC.
 - Could be legitimate, as in the case of a painter donating their own work of art. But for insurance purposes you will likely need to obtain your own appraisal.
 - New car from a dealer? Sticker price! But no FREE LEASE

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Valuing & Counting GIK's

- ▣ If estimated at less than \$5,000 (per CASE):
 - May still use appraisal if provided
 - May use value declared by donor
- ▣ But John suggests you:
 - Obtain copy of paid bill of sale; or
 - Obtain invoice and proof of payment; or
 - Value as determined by qualified expert on faculty or staff; or
 - Use online auctions (eBay); It's Deductible ®

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Valuing & Counting GIK's

- Remember, costs associated with conveying gift per the IRS – appraisals, transportation, etc. – and sales tax are not deductible and therefore are not to be included in recorded value
- If uncomfortable with, or not certain of, GIK value, record at \$0.01 in order to generate receipt and recognize donor, and adjust when value becomes known – but **not** to include “appreciation”

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What Are Your – And Your Donor's – Legal Responsibilities Regarding Reporting to the IRS?

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A word to the wise (and the donor) regarding 8282s

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PPA 2006 Recapture Rule

- ❑ Gifts of *all* tangible personal property can be deducted at FMV provided the gift is for a related use.
- ❑ If disposed of within a year of the gift the deduction is limited to the lesser of the donor's basis or sales price unless the charity certifies that it had been used for a related purpose *or* it had been planned to be used but that became impossible or infeasible.

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PPA 2006 Recapture Rule

- ▣ If disposed of after 1 year but in less than 3, the donor must include as ordinary income the difference between the claimed deduction and the donor's basis or sales price unless the charity provides the discussed certification.
- ▣ 8282s must now be filed if the property is sold within three years – not 2.
- ▣ \$10,000 penalty for claiming related use when truly unrelated.

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**Let's Talk About Additional
Items A Gift Acceptance
Policy (GAP) Should Address**

Gifts of Life Insurance

- ▣ Absolutely a gift as long as the nonprofit is designated as the owner and the beneficiary of the policy.
 - While the policy will identify the nonprofit as the beneficiary, the development officer should work with the donor to clarify the purpose of the gift – whether it be for an endowment (existing or new), a specific program or department, or unrestricted use – by attachment of a memorandum, letter, or endowment agreement to the policy
 - The actual gift is the premium payment and current cash surrender value (if any)

Life Insurance Issues a GAP Should Address

- A minimum face value – \$100,000?
- Has a payment schedule not to exceed ten years (the gospel according to John is actually more like 5 years)
- Requires charitable contributions from the donor to the nonprofit in the amount of any premiums, including unscheduled premiums, which may become due
 - Problems with payments to insurance companies . . .
- If intended for endowment purposes, the face value of the policy meets the minimum funding standards for endowments by the board of trustees.
 - But what to do if those minimums go up before the donor dies?
- Donor recognition rules & communications
 - \$10,000,000 “gift”
 - \$1 MM Lifetime Gala “disaster”

A GAP Must Address Stock Transfer Options

- ▣ Describe handling and accounting procedures for:
 - Publicly-traded versus Restricted/Closely Held – including gift value calculations depending on:
 - ☞ US mail
 - ☞ Third party vendor
 - ☞ Hand delivery
 - ☞ DTC Is The Best (if feasible)
 - ☞ But you need to know about it in advance:

Stock Donations Issues a GAP Should Address

- ▣ See John's White Paper at FundSvcs.org
 - Centralize control of the entire process
 - Identify historical stock donors and notify of procedural change.
 - Select single brokerage account.
 - Close all other brokerage accounts.
 - Develop an automated tracking system

Legal Requirements & Resources

- ▣ Good resources related to in-kind gifts
 - IRS Publication 526: Charitable Contributions
 - IRS Publication 561: Determining the Value of Donated Property
 - CASE Management & Reporting Standards
 - FASB/GASB Standards
 - www.FundSvcs.org
 - Instructions for completion of IRS Forms 8283 and 8282

“Fractional” In-kind Donations

- ▣ Can a donor spread the deduction for a gift of artwork over several years?
- ▣ Maybe!

“Fractional” In-kind Donations

- ▣ The donor must still convey legal ownership for a percent of the year in perpetuity – but the donee does not physically have to take possession
- ▣ The amount of the donor’s deduction is QUESTIONABLE
 - Some courts have ruled that the FMV of the interest must be reduced to reflect the negative nature of such donations
 - Difficulty of selling the interest
 - Disadvantages of co-tenancy
 - Expense of partitioning the property
 - Other courts have ruled in favor of a deduction of the pro rata FMV of the portion transferred
- ▣ What’s my advice?
 - Advise your donor to seek legal and financial counsel
 - If donated ensure there is a detailed “Deed of Gift”
 - Make sure your legal gift receipt provides ONLY a description!

VIRTUAL CURRENCY

Virtual Currency

- ▣ IRS Notice 2014-21: IRS Virtual Currency Guidance
 - Can be used to pay for goods or services
 - Is a digital representation of value that functions as a medium of exchange
 - In some environments, operates like “real” currency
 - *Does not have legal tender status in any jurisdiction*

- ▣ Virtual Currency that has an equivalent value in real currency – or can act as a substitute for real currency – is referred to as “convertible” virtual currency. The IRS recognizes Bitcoin as a convertible virtual currency

Virtual Currency

- ▣ So how is virtual currency treated for federal tax purposes?
 - It is treated as **PROPERTY**
- ▣ What is the basis of virtual currency received as a payment?
 - It is the Fair Market Value (FMV) of the virtual currency in US dollars as of the date of *receipt*
- ▣ How is the FMV of virtual currency determined?
 - Okay – now for a bit of IRS mumbo-jumbo:
 - “If a virtual currency is listed on an exchange and the exchange rate is established by market supply and demand, the FMV of the virtual currency is determined by converting the virtual currency into US dollars at the exchange rate, in a reasonable manner that is consistently applied.”

Virtual Currency

- ▣ If virtual currency is property, what does IRS Publication 561 (Determining the Value of Donated Property) say about this?
 - Not a darn thing
- ▣ Okay, but certainly there are instructions for filing IRS Form 8283 (Noncash Charitable Contributions) pertaining to virtual currency?
 - Not a darn thing
 - The lack of guidance here is **HUGE** – Let’s discuss the possible ramifications if donors must complete Section **B** of the 8283
 - Of course this is all total speculation – neither the IRS nor a noted tax attorney have returned my call . . .
- ▣ Many thanks for those useful answers. Now what?

Virtual Currency

- ▣ My best advice is to treat these “convertible” gifts of virtual currency the same as we would gifts of publicly traded securities
- ▣ The IRS treats publicly traded stock gifts as property as well
- ▣ Donors must report those stock gifts on section **A** of their 8283
- ▣ That means we do not see the 8283 – don’t sign the 8283 – and don’t tell donors whether or not they must file and 8283

Virtual Currency

- ▣ But don't we still need to issue a receipt?
 - Absolutely – A donor cannot claim a deduction without one. But we need to follow IRS Regulations (in particular IRS Publication 1771) for these receipts
- ▣ So I simply report the FMV on the receipt?
 - **ABSOLUTELY NO**
 - Per 1771, page 3, provide the “description (but not the value) of non-cash contribution”
- ▣ But go back 4 slides – you stated that the IRS recognizes that individuals may still treat this as currency (convertible)!

Virtual Currency

- ▣ As do donors who contribute convertible (publicly traded) stock. In theory, however, receipts for both should only describe what was given:
 - Thank you for your gift of 40 shares of Berkshire Hathaway (now wouldn't that be nice – now trading at above \$200K/share on September 8)
 - Thank you for your gift of 40 Bitcoins (trading at \$450+ on September 8)
- ▣ But in reality, donors may need some indication of value:
 - Thank you for your gift of X Bitcoins (or X shares of Y stock), which we have valued for our internal purposes *only* at \$Z as of MM/DD/YY. For tax purposes you will want to seek guidance from a tax professional in determining your deductible amount.

The Trouble With Cars

- ☐ Must support mission
 - Receipt to donor must explain HOW
 - ☐ If you plan to sell, receipt to donor must reflect:
 - *Name of donor
 - *Tax ID of Donor
 - *Vehicle ID
 - Date of Gift Date of Sale
 - Proceeds from Sale
 - Comment that sale was at "arms length"
 - Statement to donor that their deduction is limited to the gross proceeds
- *Required whether car is sold or not

Higher Penalties Than Other Receipt Violations

- ☐ "The penalty applicable to an acknowledgment relating to a qualified vehicle described in section 3.02(1) of this notice is the greater of (1) the product of the highest rate of tax specified in § 1 (currently 35%) and the sales price stated on the acknowledgment, or (2) the gross proceeds from the sale of the qualified vehicle. The penalty applicable to an acknowledgment relating to any other qualified vehicle the claimed value of which is more than \$500 is the greater of (1) the product of the highest rate of tax specified in § 1 and the claimed value of the qualified vehicle, or (2) \$5,000."

IRS References

- ❑ Publication 4302: A Charities Guide to Car Donations (still under revision)
- ❑ Publication 4303: A Donor's Guide to Car Donations (still under revision)
- ❑ Form 1098c (use it and/or your receipt?):

Mega Gifts Of Software

- ❑ Is it really a gift? It's unlikely.
- ❑ Read the agreement entered into by you and the vendor.
- ❑ Intellectual property rights aside, do you end up "owning" the software?
- ❑ Look for language that permits the "donor" to review and renew the agreement annually.
- ❑ Look for language that requires the return of the software at the end of a certain period or program.
- ❑ Ask the donor if they are treating this as a donation in the eyes of the IRS.

Mega Gifts of Software

- ▣ PACE: Partners of Collaborative Engineering Education
- ▣ Partners:
 - GM (General Motors)
 - Sun Microsystems
 - EDS (Electronic Data Services)
- ▣ “PACE contributions . . . are not contributed under the guidelines for charitable contributions of the IRS.”
 - Elaine Chapman-Moore, Manager PACE Partnerships, GM Knowledge Center

Mega Gifts of Software

- ▣ But this is NOT to say that all mega software gifts are not “true” gifts.
- ▣ Again, look carefully at the agreement and see if there is language conveying ownership.
- ▣ Here’s one good example from an agreement donating \$2,000,000 worth of software to an institution in New York:

“Full legal title and property in the goods shall be vested in customer.”
- ▣ So mega “gifts” are possible!

Other Gift/Non-Gift Issues

- ▣ Timeshares
 - Better think twice!
 - Fulfill mission?
 - Able to sell?
- ▣ Event Expenses
 - Reasonable and verifiable
 - Best for the institution to pay and donor write you a check
- ▣ IP and Patents
 - Will need an appraisal
 - Does it “feel” right?
- ▣ Frequent Flier Miles & EE Savings Bonds
 - It’s simply not possible to “give” either!
- ▣ Software

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Other Examples – Gift or Not?

- ▣ Trophies from Safaris – one case in Toronto & another in Louisiana
- ▣ 212 Tuxedos to Winthrop University
- ▣ Sperm from Secretariat
- ▣ Art given by the artist
- ▣ Whaling expenses
- ▣ A body (deceased!) given by a family
- ▣ 3 specific rulings from the IRS
 - Blood donations: Rev. Rul. 53-162
 - Advertising space: Rev. Rul. 57-462
 - Radio broadcast time: Rev. Rul. 67-236
 - All 3 found at FundSvcs.org

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Final Q&A Additional Resources

- ▣ John's listserv, "FundSvcs"
- ▣ Advancement Services Download Site
 - www.FundSvcs.org
- ▣ Association of Advancement Services Professionals (AASP - Advserv.org)
- ▣ 2015 CASE Advancement Services book: Advancement Services - Enhancing Fundraising Success
- ▣ CASE Reporting Standards & Management Guidelines - & 10/2011 Clarification
- ▣ IRS Publications 526, 561, 1771 & 4221 (3 versions)52