

New Rules on Charitable Gifts of Cryptocurrency

In published guidance, the IRS has confirmed that a “qualified appraisal” is required if a donor of cryptocurrency is claiming an income tax charitable deduction greater than \$5,000. This position, set forth in Chief Counsel Advice [CCA 202302012](#) (Jan. 13, 2023), is consistent with an earlier IRS pronouncement ([Notice 2014-21](#)) that cryptocurrency would be treated like other forms of property, such as real estate and partnership interests, for charitable deduction valuation purposes and would not be treated like cash or public traded securities. In addition to impacting donors, the new guidance also raises potential reporting obligations by nonprofit recipients.

Substantiation and Reporting Requirements

To be eligible for a charitable deduction, gifts of property must satisfy certain substantiation requirements. For gifts of property for which the claimed deduction exceeds \$5,000, the donor must obtain a “qualified appraisal” of the property containing specific information such as the value, valuation methodology, and specific basis for conducting the valuation. The appraisal must also be prepared by a “qualified appraiser” who, among other requirements, must have earned an appraisal designation from a recognized professional appraiser organization or have specific minimum education and experience. For purposes of calculating the \$5,000 threshold triggering the appraisal requirement, all types of donated cryptocurrency and digital assets from one donor are likely to be aggregated together.

In general, donors of property must file a Form 8283 with their tax return claiming the charitable deduction. The Form 8283 must contain a summary (or an actual copy, for larger donations) of the qualified appraisal, and it must be signed by the qualified appraiser and the nonprofit recipient. A nonprofit that receives a gift of property must also file a Form 8282, and provide a copy to the donor, if it sells or otherwise disposes of donated property within 3 years of receiving it.

There are a limited number of exceptions to these donor and donee requirements. Most notably, neither a qualified appraisal nor a Form 8282 is required for a gift of publicly traded securities for which market quotations are readily available on an established securities market. Although there is ongoing debate about the circumstances in which digital assets should be classified as “securities” under U.S. federal securities laws, this recent IRS guidance confirms that cryptocurrency does *not* qualify as a “publicly traded security” for charitable donation purposes. The IRS reasoned that cryptocurrency falls outside the relevant tax law definition of “security,” which is limited to “a share of stock in a corporation; a right to subscribe for, or to receive, a share of stock in a corporation; or a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form.” Thus, donors need to get qualified appraisals for cryptocurrency, and charitable donees need to report dispositions of cryptocurrency occurring within 3 years of the gift, even though cryptocurrency has a readily ascertainable value and is listed on public exchanges.

Consequences of Failure to Comply

The new guidance on gifts of cryptocurrency is also significant because it confirms that there is essentially no leeway afforded to a cryptocurrency donor who claims a deduction greater than \$5,000 and fails to obtain a qualified appraisal. In other contexts, donors may be excused from gift substantiation requirements if their failure to comply is due to reasonable cause and not due to willful neglect. The IRS guidance provides that this reasonable cause exception does not apply to taxpayers who fail to obtain a qualified appraisal for gifts of cryptocurrency and that any such charitable deductions will be denied in their entirety.

Nonprofits also face consequences if they do not file a Form 8282 as required after selling donated cryptocurrency. Failure of a charitable recipient to file a Form 8282 may result in financial penalties of up to \$250 per return, up to \$3 million per calendar year, or in the case of intentional disregard, penalties equal to the greater of \$500 per return or 5% of the aggregate amount of items to be reported, with no maximum.

Charitable recipients and donors of cryptocurrency alike should be mindful of these strict substantiation and reporting rules to avoid the risk of tax reporting penalties or (in the case of donors) the risk of losing the charitable deduction.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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