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THE TAX LAWYER

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Property Won't Sell? Donate It, Claim Tax Write Off, Skip Capital Gain



After reportedly not being able to sell his DC area mansion, [former NFL owner Dan Snyder donated his \\$35 million mansion to charity](#). That's a nice tax

write-off, and it created some talk about this unusual strategy. There was more talk when it developed that the [American Cancer Society that received it was selling it 2 months later](#). But the idea of donating appreciated property to charity is hardly a new tax strategy. In fact, on a smaller scale, many others do this with real estate and many other kinds of property. Here are some of the key tax rules that govern these contributions.

The big benefit of charitable contributions in kind is claiming the fair market value of the property as a deduction, plus not having to pay [capital gain](#) tax on all the appreciation. If you have held your property for over a year, you should have long term capital gain if you sell. It's the same concept with something that is usually very easy to sell, stock in a public company.

Tax Deduction Plus No Capital Gain Tax

Let's say you bought something for \$100,000. It could be stock in Amazon, Apple, stock in a private company, or it could even be your home or other real estate. Let's say it's worth \$1M today. You can sell it, and pay capital gain tax on the \$900,000 gain, although if it was your primary residence, you might qualify to exclude up to \$500,000 of your gain on a joint tax return. Rather than paying tax on your up to \$900,000 gain, what if you instead donate it to a qualified public charity instead?

You can write off the whole \$1M. But exactly when you get the entire tax benefit depends on your income, as there are limits on how much of a deduction you can claim in any one year. The primary rule is that you can only take a deduction of up to 60% of your adjusted gross income for most charitable contributions. But there are exceptions, and you may be subject to a 30% limit. However, if your income isn't high enough to claim all your deduction in the year of the donation, it is not lost. You can use the rest of

your deduction the next year, or the next even. You have five years to use up your deduction.

A key issue, not surprisingly, is valuation. Amazon stock presents no problem, but how about real estate? If you were having trouble selling, is your listing price really the fair market value? You'll need a qualified appraisal, discussed below.

Of course, it is important to make sure that your chosen organization is qualified. You can't deduct contributions to individuals, political organizations or candidates. Verify the tax status of the organization by asking the charity for their IRS exemption letter or checking with the IRS. The IRS maintains a list of all charities. To check whether particular organizations are on the IRS list, [Search for Charities](#) or you can also check our IRS [Publication 78](#), Cumulative List of Organizations.

Donations of stock or other property are usually valued at fair market value. But there are special rules for donations of vehicles. Clothing and household items must generally be in good used condition or better to be deductible. Cash contributions of \$250 and up must be supported by even more. Here, you'll also need a statement by the charity showing whether the charity provided any goods or services in exchange for the gift. If you make a property contribution worth \$250 or more, you must also retain a statement by the charity describing the property and its value.

Get a Qualified Appraisal

If your noncash contributions for the year total over \$500, you must complete IRS Form 8283, Noncash Charitable Contributions, and attach it to your tax return. IRS [Form 8283](#), Noncash Charitable Contributions is important, as are

the [Instructions](#) to this form. If you donate an item (or a group of similar items) worth more than \$5,000, you must also complete Section B of Form 8283, which requires an appraisal by a qualified appraiser. A "qualified appraiser" must meet IRS criteria, so allow time for these formalities.

What if the Charity Sells It?

If an organization receives charitable deduction property and within 3 years sells, exchanges, or disposes of the property, the organization must file [Form 8282, Donee Information Return](#). However, an organization is not required to file Form 8282 if the property is valued at \$500 or less, or if the property is distributed for charitable purposes. Form 8282 must be filed within 125 days after the disposition. A copy of Form 8282 must be given to the previous donor. If the organization fails to file the required information return, penalties may apply.

For additional explanation of these and other charitable contribution rules, see IRS [Publication 526](#), Charitable Contributions. If you want the IRS's take on valuation issues and how to value noncash items, see IRS [Publication 561](#). There are many other rules governing charitable contributions too. For example, you can't deduct the value of your time or services. This is so even if you bill by the hour and donate many hours of otherwise billable time to charity. If your donations entitle you to merchandise, goods or services, you can only deduct the amount *exceeding* the fair market value of the benefits you received. So if you pay \$500 for a charity dinner ticket but receive a dinner worth \$100, you can deduct \$400, not the full \$500.

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