



The Charitable Contribution of Horses

by B. Paul Husband, Esq.

Contributions of horses to qualified charities continue to be tax deductible. However, donors have been saddled with new Internal Revenue Service requirements in order to obtain charitable contribution deductions.

Charitable contributions of certain appreciated horses now have an additional tax advantage. Specifically, deduction of the part of the fair market value which is the result of appreciation is no longer a "preference" item for alternative minimum tax purposes. This is very important when it is remembered that the Alternative Minimum Tax Rate has been increased under the Clinton Administration to 26% on Alternative Minimum Taxable Income (AMTI) under \$175,000 and 28% for AMTI over \$175,000.

A charitable contribution of a horse, provided that the horse has been held by the donor for more than 24 months, for sporting, breeding, or draft purposes, generates a deduction equal to the fair market value of the horse, not the cost (or basis) if all of the government's requirements are met.

The fair market value in the case of appreciated property includes increases in value which have not as yet been taxed by the government. Therefore, deductions (and thus tax savings) can be generated with value undiminished by the government. This is a great deal!

This is especially so in the case of some horses, which might be worth substantial sums, and which may have been bred by the taxpayer. In such a case, the taxpayer could potentially obtain a very large deduction from both regular income tax and (under present law) the insidious and gradually rising alternative minimum tax, and do it with

property which was created by the taxpayer, which has increased in value, and from which the government has not had an opportunity to extract any taxes.

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These potential benefits to taxpayers (and loss of possible government revenue) have not been overlooked by the government. Thus, there are numerous and serious restrictions placed upon the ability to take

income tax deductions on the charitable contribution of appreciated personal property, including horses.

The restriction most apt to trip an unwary horseman is that no deduction for the part of the fair market value which is due to appreciation of a horse (or other tangible personal property) is available if the charity's use of the horse (or other tangible personal property) contributed is unrelated to the charity and its charitable purpose. If the charity's use is unrelated to its purpose, the owner's deduction is limited to his basis in the horse.

Suppose, for example, a horse is donated to the American Cancer Society. No deduction will be available in excess of the basis of the horse (no deduction of appreciation) because the horse is unrelated to the charitable purpose of the American Cancer Society.

In addition, the use to which a horse is put by the donee (recipient) charity also must be in accordance with its tax exempt purpose. For example, when a horse is donated to a university which has

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a horse breeding or related agricultural program, and rather than placing the horse in its breeding or agricultural program, the horse is simply sold, and the university takes the money into its general fund, no charitable contribution deduction would be available to the donor for the horse's appreciated value in excess of his basis (basis usually equals the purchase price, less depreciation and is usually zero in a homebred).

In the case described in the previous paragraph, if the horse was purchased for \$20,000 (let's assume no depreciation deductions) and was worth \$50,000 at the time of the gift, a deduction would be available for \$20,000 (the tax basis-in this case-the cost) not \$50,000. If the horse was a homebred worth \$50,000 at time of donation, the charitable contribution amount would be zero, the owner's basis.

By contrast, if the university uses the horse in conjunction with its exempt charitable purpose or the horse is donated to an organization such as North American Riding for the Handicapped, or a similar organization, and used in their riding program for children, then the fair market value (including appreciation) can be taken as a deduction, assuming the hurdles discussed below are clear.

Limitations on Contributions

This "use in accord with charitable purpose" limitation can be tricky, although, with careful planning, it can be surmounted in some unusual situations. For example, an appreciated homebred horse, held for more than 24 months for show purposes, might be donated to a church and still be deductible as far as this limitation is concerned if that horse was donated to a missionary effort where the missionary effort involved remote sites where horses were used for transportation, or as pack animals, or some other mission-related work purpose. The missionary effort is a part of the church's tax exempt purpose, and the horse was used in it.

Two lessons need to be drawn from this limitation on the deductibility of an appreciated horse. First, donors of appreciated horses should seek to find

an appropriate charitable donee. Secondly, the charitable donee should be asked to specify the use to which the horse will be put, or at least that the horse will be put to a use which is related to their exempt function. (What if the representative of the charity lies? Answer - taxpayer would still win, provided that the taxpayer had a reasonable expectation that the use of the horse following the gift would be related to the charity's exempt function.)

The prudent course is to require that the charity declare its intent in writing, prior to making the gift: (1) to use the horse in conjunction with its charitable purpose; and (2) that they will hold the horse at least 24 months.

Filing Requirements

The next set of fences which need to be jumped for a taxpayer to successfully claim a charitable contribution deduction relate to verification and valuation.

In these areas, initially, it is essential that the taxpayer have proof that the contribution was made, that is, some kind of receipt. Plus, the taxpayer's records must include the following information: (1) the name of the receiving charity; (2) the address of the receiving charity; (3) the date of the contribution; (4) the location of the contribution; (5) a description of the horse in "detail reasonably sufficient under the circumstances"—this means the greater the value claimed, the more detail will be required; (6) the horse's fair market value at the time of the contribution, and the method used in determining the fair market value, including, if an appraisal was used, a copy of the signed appraisal; (7) the terms of any agreement or understanding relating to the use or disposition of the horse.

Next, if the value of the horse was more than \$250, but less than \$5,000, the law requires that the giver have a written acknowledgment from the receiving charity. This written acknowledgment must include: (1) a description of the property received; (2) a statement concerning whether any goods or services were provided by the charitable donee to the donor in exchange, in whole or in part, for the

horse; and (3) a description and good faith estimate of the value of any goods and/or services which were received (if any) by the donor in exchange for the horse.

In other words, if you receive ten tons of a new type of pellet horse feed worth \$1,000 from a university in exchange for donation of a horse worth \$2,000, the government wants to know, and is fairly entitled to know, of this transaction.

If the horse is worth more than \$5,000, Internal Revenue Service Form 8283 must be prepared and filed. In addition to the information described above, information required to be shown on Form 8283 includes: (1) how the taxpayer acquired the horse, whether by purchase, gift, breeding or whatever; (2) the approximate date of acquisition; (3) the cost or other basis of the horse, including any basis adjustment (for example, if you spent \$500 on air travel to inspect the horse personally prior to purchase, the \$500 air travel should have been added to the purchase price of the horse which would increase the horse's tax basis by \$500; or, if you took depreciation deductions for the horse, the amount of the horse's tax basis is decreased by the total of the depreciation deductions taken).

The completed Form 8283 must be attached to the tax return upon which the charitable contribution deduction is taken. If the taxpayer is unable, for a "reasonable cause" to provide the acquisition date or cost basis, the taxpayer is required to attach a statement of explanation to his or her return.

The Form 8283 filing requirement is important. The IRS says it will disallow the deduction if Form 8283 is not filed. Thus far, in practice, the IRS has been kind enough in many cases to simply request that a Form 8283 be filed. However, this kindness cannot be relied upon. Official policy is: "No Form 8283—no charitable contribution deduction".

Qualified Appraisal Necessary

Finally in the valuation and verification area, if the

horse is worth more than \$5,000, a written appraisal will be required. The written appraisal must be performed by a "qualified appraiser."

A separate "qualified appraisal" is required for each horse donated for which a charitable contribution deduction is claimed in excess of \$5,000, unless a group of similar items, e.g., a herd, or 2-3 horses at one time to 1 charitable donee) is donated. In the case of a group of similar items, e.g., horses, only one appraisal is needed; but the group appraisal must specifically describe each horse and specifically value each horse.

The qualified appraisal must be made not earlier than 60 days prior to the date of contribution, and not later than the due date (including extensions) of the return on which a charitable deduction is first claimed. If the deduction is first claimed on an amended return, the appraisal must be made by the date the amended return is filed.

The qualified appraisal must be prepared, signed and dated by a qualified appraiser, and contain the following information: (1) a description of the horse(s); (2) the physical condition of the horse; (3) the date, or expected date of the contribution; (4) the terms of any agreement relating to the use, sale, or other disposition of the horse(s); (5) the identity and qualifications (background experience, education, and professional association membership) of the appraiser; (6) a statement that the appraisal was prepared for income tax purposes; (7) the date the horse(s) was (were) appraised; (8) the appraised value of the horse(s) on the contribution date; (9) the method of evaluation used (for example, market data approach or income approach); and (10) the specific basis for valuation, such as specific comparable sales transactions.

The IRS defines the term "qualified appraiser" as an individual who includes on the appraisal summary a declaration that: (1) the individual holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis; (2) because of the appraiser's qualifications as de-

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scribed in the appraisal, the appraiser is qualified to make appraisals of the type of property being valued; (3) the appraiser is not within a group of disqualified people, which includes: the donor, the person who sold, exchanged, or gave the horse to the donor, or acted as an agent in the sale, exchange or gift (unless the property is donated within two months of the date of acquisition and its appraised value does not exceed the acquisition price) the donee, and/or any employee, relative or spouse of any of the people described above); and (4) the appraiser understands that an intentionally false or fraudulent overstatement of the value of the property appraised may subject the appraiser to penalties.

Additionally, the appraisal may not involve an appraisal fee based on a percentage of the appraised value of the property, with a small exception for appraisals by non-profit appraisal associations where the appraiser is not compensated.

Appraisal Summary Defined

The taxpayer must also attach an "appraisal summary" to his tax return. Note, however, despite the name "appraisal summary", the appraisal summary is not simply a summary of what is in the appraisal.

The contents of this qualified appraisal, described above, vary from the "appraisal summary" re-

quired by Treasury Regulation Section 1.170A-13(c)(4)(i). The appraisal summary must: (1) be made on Schedule B of IRS Form 8283; (2) be signed and dated by the donee(the charity) or presented to the donee for signature; (3) be signed and dated by the qualified appraiser who prepared the qualified appraisal; and (4) contain information as to the donor, the property donated, the donee, and the appraiser, and any other information which may be specified in IRS Form 8283.

The fees for the appraiser and the tax advisor are not considered part of the charitable contribution. However, these expenses can be deducted on Schedule A as expenses of preparation of tax return, although these expenses are subject to the 2% floor limitation on miscellaneous itemized deductions.

Although the process by which charitable contribution deductions for appreciated horses are obtained may seem like the cross country course in a three day event, in view of the tremendous benefits available from donation of appreciated horse to appropriate charities, such gifts are still a good idea provided that the taxpayer has four essential elements. Those elements are: (1) a horse with appreciated value; (2) an appropriate charity to accept the donation and use the horse in accordance with charitable purpose; (3) a qualified appraiser; and (4) a well informed tax advisor.

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