

Enforcing the Enhanced Charitable Deduction Improved Reporting on the Form 8283

Roger Colinvaux

The inventory, or stock in trade, of a business is eligible for a special “enhanced” charitable contribution deduction under the federal income tax. The many requirements to claim an enhanced deduction present unique challenges for the Internal Revenue Service (IRS). This issue brief highlights problems with how enhanced deduction contributions are reported and makes suggestions for changes to such reporting in order to improve enforcement capabilities.

Historical Background

Before 1969, donors, including corporate donors, were allowed a fair market value deduction for most contributions of property to an eligible donee organization. Congress changed this rule in 1969 for “ordinary income property”—that is, property that would generate ordinary income if sold and not donated. Instead of fair market value, a donor could deduct only its cost (known in tax parlance as the donor’s cost or adjusted basis). The reason for the change was to prevent donors being better off donating the property rather than selling it.

Subsequently, however, Congress grew concerned that certain critical inventory items, such as food and medical supplies, were no longer being donated. Because corporations could recover their basis without making a donation, corporate donors generally were indifferent between donating an item and throwing it

away. Accordingly, in 1976 Congress enacted an enhanced charitable deduction for contributions of inventory or stock in trade (generally, “enhanced deduction property”) that benefited the ill, the needy, or infants. This enhanced deduction is equal to the donor’s basis plus one-half of the appreciation built into the property, not to exceed twice the donor’s basis.

In later years Congress extended and adapted the enhanced deduction model to include special rules for contributions of food, books, scientific property used for research, and computer technology and equipment.¹

General Requirements for the Enhanced Deduction

The enhanced deduction contains a set of conditions not normally applicable to other charitable contributions. In general, fewer donees are eligible to receive deductible contributions, the contributed property must meet certain standards, there are special valuation considerations, and donee organizations face use restrictions and special substantiation requirements. As with other charitable contributions of property, donors must report the contribution to the IRS using Form 8283 (assuming filing thresholds are met).² The Form 8283 is therefore the principal way the IRS learns about contributions of enhanced deduction property and so is critical to enforcement.

¹ These special rules have at various times expired, been extended, and expired again. As of this writing, the special rules for food, books, and computers expired for contributions made after December 31, 2011. The special rule for scientific property is permanent.

² The usual threshold for filing the Form 8283 is \$500 of aggregate in-kind contributions for the taxable year. C corporations, however, have a higher filing threshold of \$5,000. Most donors of enhanced deduction property are required to be C corporations, meaning that the \$5,000 filing threshold generally applies for enhanced deduction property. Contributions of food inventory, however, may be made from any trade or business of a taxpayer, meaning that the regular \$500 filing threshold applies to non-C corporate donors of food inventory.

The Form 8283 contains two sections, A and B. Section A covers property with a claimed value of \$5,000 or less and certain publicly traded securities regardless of value. Section B covers property with a claimed value of more than \$5,000.³ Although there is some overlap between what is required in each section, there are also notable differences. Table 1, at the end of this brief, shows a comparison of the information required on Form 8283 by section.

Failure to Reflect Enhanced Deduction Special Rules in Form 8283 Reporting

The main deficiency in current reporting of enhanced deduction property is that in most respects enhanced deduction property is not distinguished from other charitable contributions for reporting purposes. In other words, notwithstanding the special rules that apply to enhanced deduction property, no real effort is made to capture these rules in how the contributions are reported to the IRS.

Eligible donees. The general rule for charitable contributions is that the contribution must be to an organization described in section 170(c) of the Internal Revenue Code.⁴ To claim an enhanced deduction, however, the contribution must be to a distinct subset of such organizations. For example,

- contributions for the benefit of the ill, needy or infants must be to a section 501(c)(3) organization other than a private nonoperating foundation;
- contributions of books must be to a public school (kindergarten through 12th grade);
- contributions of scientific property must be to a higher education institution or section 501(c)(3) scientific research organization; and
- contributions of computers must be to a public or private educational organization, an

organization that supports elementary and secondary education, or a public library.

However, these special rules on eligible donees are not reflected on Form 8283. The form does contain (for Section B property only) a “donee acknowledgment,” which requires, among other things, that the donee acknowledge that it is a “qualified organization under section 170(c).” This helps ensure that only qualified donees accept deductible contributions. For the enhanced deduction, however, a donee may be “a qualified organization under section 170(c)” but nonetheless not an eligible donee. In other words, for enhanced deduction property, the donee acknowledgment does not serve its purpose. In addition, the phrasing is misleading. To the extent donors and donees rely on Form 8283 to convey substantive information about who qualifies as a qualified donee, the natural (but incorrect) inference is that a “qualified organization under section 170(c)” necessarily is qualified for enhanced deduction purposes.

Property requirements. Enhanced deduction property must meet certain specifications. For example,

- food must be “apparently wholesome food” as defined by statute,
- scientific property must be constructed or assembled by the donor and contributed within two years of construction or assembly, and
- computers must have been in use for no more than three years, all by the donor.

The Form 8283 makes no effort to account for these requirements. Although donors must describe the property, the purposes of this description, as indicated in the form instructions, are to identify the property contributed and to aid in valuation. But neither the donor nor the donee need demonstrate in their reporting that the property satisfies the statutory standards. This may facilitate contributions of substandard property, as donors face no formal reckoning with the statute’s demands.

³ For reporting purposes, the value of groups of similar items is aggregated. For example, a contribution of 15 identical inventory items with a value of \$400 each would be reported in Section B, not Section A.

⁴ All section references are to the Internal Revenue Code.

Use restrictions. As a condition of the enhanced deduction, the donee must agree to and abide by certain use restrictions. For example, the donee

- may not transfer the property in exchange for money, other property, or services; and
- must generally use the property for the intended purpose in its exempt programs and, in the case of scientific property and computers, only in the United States.

These use restrictions are not accounted for in the Form 8283. The donee acknowledgment of Section B again is relevant but misleading. It requires that the donee affirm that if the donee sells, exchanges, or otherwise disposes of the contributed property within three years of receipt, it will file a Form 8282 with the IRS.⁵ By its terms, the acknowledgment thus incorrectly suggests that a sale, exchange, or other disposition is permitted. In addition, there is no ongoing reporting required of the donee organization relating to the use of enhanced deduction property on the Form 990 (which is the annual information return filed by donee organizations).

Substantiation rules. Special substantiation requirements apply for purposes of the enhanced deduction. Donees must certify in writing to the donor that the contributed property is appropriate, will be used as required, and (per the above rule) will not be sold.⁶ For example,

- property for the care of the ill, the needy, or infants (including food) must be certified as for such use;

- books must be certified as “suitable, in terms of currency, content, and quantity, for use in the donee’s educational programs”; and
- scientific property must be certified as for use by the donee for research or experimentation or research training in the United States in the physical or biological sciences.

However, the donee acknowledgment of Section B just requires that the donee check a box whether it “intend[s] to use the property for an unrelated use.” The Form 8283 does not require the donee to acknowledge that the requisite written certifications were provided to the donor, or ask the donor to acknowledge their receipt.

Valuation considerations. A determination of the fair market value of contributed property is necessary to calculate the amount allowed as an enhanced deduction. Valuation disputes are widespread for the charitable deduction generally and raise unique issues for enhanced deduction property. Unlike many other kinds of property, inventory or stock in trade of the donor will have a sales market upon which to base value. For this reason, special valuation rules apply. For example:

- No appraisal is required for enhanced deduction property, even for contributions of \$5,000 or more. This is an exception to the general rule requiring appraisals.
 - The reason for the exception likely is that Congress viewed an appraisal unnecessary given the existence of a robust market.
- Property must be valued according to the “usual market” for sales, in the quantity contributed.
 - Under Treasury regulations, the usual market could mean the wholesale market or the retail market, each of which would suggest a different value.
- Notwithstanding the “usual market,” value ultimately depends upon the facts and circumstances.

⁵ The Form 8282 tells the IRS the amount received upon any such disposition. It is an important check on the donor’s valuation and also helps ensure that the property was for a use related to the donee’s exempt purposes. A rule applies to recapture any donor deduction above basis if related-use property is disposed of by the donee. § 170(e)(7). The IRS should make clear in guidance that this recapture rule applies to enhanced deduction property.

⁶ The written certification requirement does not apply to donations of computers.

- If it is unlikely that the donor would get the usual selling price for an item, then the value is what the item actually would sell for.
 - For example, stale food⁷ or expired pharmaceuticals would not receive the usual selling price, and so the value will be hard to determine.

Even though a proper valuation is critical to enforcement of the enhanced deduction, existing reporting does little to highlight valuation issues. The initial failure occurs in IRS Publication 561—Determining the Value of Contributed Property. The publication has no discussion of valuation concerns for the enhanced deduction. Although inventory is mentioned, it is only in the context of stating the general rule for inventory contributions as providing a basis deduction, for which value is not relevant. A cross-reference to IRS Publication 526—Charitable Contributions is provided, but publication 526 merely describes the mechanics of the enhanced deduction for food inventory, omits discussion of other enhanced deductions, and provides no information about how to value inventory.

Form 8283 is no better. In fact, the form underreports the valuation of enhanced deduction property relative to many other contributions. Donors of Section A property (property with a claimed deduction under \$5,000), for example, must report not only the fair market value but also the method used to determine value. Donors of Section B property (property with a claimed deduction of \$5,000 or more), however, are not required to report the method used to determine value. The likely reason for this omission is that as a general rule, appraisals are required for Section B property, and an appraisal must contain information about valuation method. So a separate disclosure about method typically would be redundant of the appraisal. But because appraisals are not required for enhanced deduction property, important information about

valuation method typically⁸ will not be disclosed. Further, although the instructions to Form 8283 mention fair market value, it is only to cite the general regulatory definition (and not any special considerations for inventory or stock in trade) and to point out that a reduction from such value may be required in figuring the deduction. The instructions also note that value is relevant to the description of the property: “The greater the value of the property, the more detail you must provide.” But this is not especially helpful to highlight relevant valuation issues.

Donor anti-abuse rules. Donors claiming an enhanced deduction must reduce their costs of goods sold by the basis of the contributed property. This is to avoid the taking of a double deduction of the donor’s basis: first as a charitable deduction, and second by recovering basis as a business cost. In addition, to avoid circumvention of the percentage limitations, donors must claim the entire amount as a charitable deduction, not split the deduction into a charitable deduction for the appreciation and recovery of basis through costs of goods sold.

The Form 8283 does not clearly reflect these concerns. The instructions allude to the requirement of the costs of goods sold adjustment, but only in the context of explaining that a donor of enhanced deduction property uses the amount of the enhancement as the “claimed value” of the property for purposes of determining whether Form 8283 must be filed and, if so, whether to use Section A or Section B.⁹

⁸ Most donors of enhanced deduction property will likely claim deductions of \$5,000 or more and so report in Section B, not Section A.

⁹ The instructions also appear to provide an erroneous example in explaining the “Special Rule for Certain C Corporations.” As noted, the rule is that only the amount of the enhancement should be taken into account to determine whether to file the form (a \$5,000 filing threshold for C corporations), and then under which section (A or B) to report the property if the filing threshold is met. (Items valued under \$5,000 are reported on Section A.) The example, however, calculates an enhancement of \$3,000 and concludes that Section A should be used. However, if this is the only item contributed, then the form would not have to

⁷ *Lucky Stores, Inc. v. Commissioner*, 105 T.C. 420 (1995) (equating the value of days-old bread with fresh bread)

Suggestions for Improved Reporting

The general failure to provide for the adequate reporting of enhanced deduction property raises concerns about whether the IRS is collecting the information necessary to enforce the deduction, and whether the current spotty reporting fosters noncompliance. It also means that limited data are available regarding enhanced deduction contributions.

The gaps in reporting, however, should be easy to remedy.¹⁰ Mostly, given the special conditions for the deduction, either a separate form should be created to report enhanced deduction property—taking into account the concerns outlined above—or a new section of the Form 8283 should be developed specifically to report such contributions. In addition, changes to the Form 990 should be considered to reflect the fact that enhanced deduction property entails ongoing obligations for donee organizations. For example, the Schedule M to the Form 990—Noncash Contributions—lists 24 types of noncash property but, apart from “food inventory” and “drugs and medical supplies,” does not address enhanced deduction property as such. Finally, public information about enhanced deduction property also should be improved. The Statistics of Income Division of the IRS regularly provides data on noncash contributions, but only contributions made by individuals. Because most enhanced deduction property is by corporations, the enhanced deduction is not included in regular SOI reports, and publicly available data about the enhanced deduction are sparse.

Moreover, this brief highlights a basic problem with Form 8283, namely that a single form is being used to report such disparate noncash donations as inventory, clothing and household items, vehicles, and high-value

items, along with appraiser signatures and donations of partial interests in property, including conservation easements. Although the IRS goal of simplification may run counter to adding new forms, the current reporting regime puts too much burden on a single form, and the multiple purposes embedded in the form may confuse taxpayers with only simple deductions. Although the suggestions here would improve the form, perhaps it is time for a more comprehensive review of the reporting of all types of noncash donations.

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This publication is part of the Urban Institute’s Tax Policy and Charities project. The purpose of this project is to analyze the many interactions between the tax system and the charitable sector, with special emphasis on the ongoing fiscal debates at both the federal and state levels. For further information and related publications, see our web site at <http://www.urban.org/taxandcharities/index.cfm>.



be filed at all given the \$5,000 threshold, making the example at best misleading.

¹⁰ The IRS is hindered by the fact that several more recent enhanced deduction provisions are temporary. Nonetheless, the core enhanced deduction has been a permanent part of the law for decades. Reporting could be designed with the permanent provision as the centerpiece, and additional disclosures made (or becoming moot) as needed for the expiring provisions.

Table 1. Information Required by Form 8283, by Section

Information required on Form 8283	Section A	Section B	Issue, if any, as applied to enhanced deduction property
Applicability of Section A or Section B	Applies if deduction claimed is \$5,000 or less for a single item or groups of similar items.	Applies if deduction claimed is more than \$5,000 for a single item or groups of similar items.	Most enhanced deduction property will be reported in Section B.
Check a box that designates the type of property contributed	No (unless the property is a vehicle)	Yes	There is no box for inventory or enhanced deduction property. The box checked will be “equipment” or “other.”
Description of property	Yes	Yes	Description of property does not account for standards required of enhanced deduction property.
Date of contribution	Yes, as provided <i>by the donor</i> .	Yes, as provided <i>by the donee</i> in Section B, Part IV.	
Date of acquisition	Yes, if claimed value is > \$500.	Yes	
How acquired	Yes, if claimed value is > \$500.	Yes	
Donor’s cost or adjusted basis	Yes, if claimed value is > \$500.	Yes	
Fair market value (FMV)	Yes	Yes	Section B requires “appraised” FMV. Because appraisals are not required for enhanced deduction property, the instructions indicate that the donor’s determination of FMV is sufficient.
Method used to determine FMV	Yes	No	Information about valuation method is not required for Section B property, presumably because most such property must be independently appraised. Enhanced deduction property, however, need not be appraised.
Physical condition of property	No	Yes, if tangible property.	Physical condition of property does not (but could) account for standards required of enhanced deduction property.
Amount claimed as deduction	No	Yes	

Information required on Form 8283	Section A	Section B	Issue, if any, as applied to enhanced deduction property
Statement by the donor that a listed item has appraised value of \$500 or less	No	Yes	Inapplicable to Section A, and to enhanced deduction property even if reported in Section B because appraisals are not required.
Signed declaration by the appraiser of appraiser's independence and qualifications	No	Yes	Inapplicable to enhanced deduction property because appraisals are not required.
Signed acknowledgment of contribution by the donee	No	Yes	Requires that donee acknowledge it is a "170(c) organization," which is overbroad for the enhanced deduction; implies that the property may be sold; requires only an indication of intended related use.
Questions regarding whether donor has given only a partial interest	Yes	No	It is unclear why these questions do not apply to Section B property unless the answers are accounted for by an appraisal. Appraisals are not required, however, for enhanced deduction property.
Questions whether property is for a restricted use	Yes	No	It is not clear why these questions do not apply to Section B property, unless the answers are accounted for by an appraisal. Appraisals are not required, however, for enhanced deduction property.