

Timeshare Donations and IRS Regulations

Abstract: Much of the following is not well understood by those dealing with real estate (and timeshare) donations. Essentially, a real property, one that is deeded, can be transferred as a donation to a qualified organization for donation credit. The amount of donation credit is based on a process flow system. If the donated property is sold by the charity (NPO) acting as an agent the proceeds received by the NPO becomes the credit of the donation. If the property is transferred from the owner to the charity (NPO) and then transferred to another party within 36 months, the proceeds received by the NPO becomes the limit of the donation credit the owner can take. If a delay in action took place an amended return must be filed by the NPO to the IRS. If the property is held for more than 36 months then, without that sale price, a method of evaluation dictated by the IRS must be used. This IRS evaluation is based on 1.) comparable sales with specific detailed information required within an appraisal and must include all sales, including resort sales; 2.) The investment return value if that was the purpose (usually doesn't apply); and 3.) The replacement cost often only quickly available at the resort. A single distressed sale on the secondary market isn't applicable. Any licensed appraisal must use these methods. The appraiser is specifically warned against using distressed sales usually of lower values. Without the 36 month delay, a \$5,000 non-appraisal donation credit can not be taken since a sale price occurred. If the title is held for more than 36 months, the \$5,000 non-appraisal donation credit can be taken with little risk of audit.

One extra point to understand. Even though this treatise is concerned with timeshare donations, the IRS rules and regulations that control it are those same ones that control regular real estate donations. Therefore, if you are considering donating real estate, read on.

It is up to you, the property owner, to understand the IRS regulations concerning your decision to donate your property. Don't just accept the word of a nonprofit organization (NPO), your CPA or attorney. No one wants to read a stack of IRS books and publications so we have filtered the critical points out for you here. We won't discuss the reasoning, only quote and try to explain the law. **All direct quotes from IRS regulations and publications are in bold print and a Times Roman font.** (The publication, form of regulation follows the quote and is in parenthesis). Comments are indented. All references to donation deduction, credit, etc. specifically mean a reduction in your adjusted gross income equal to the amount of the donation credit you are taking. It is NOT a tax credit.

You can donate anything to a federally qualified NPO. Understand that there are different kinds of NPOs. Some are the familiar 501(c)3, others fall under 501(c)(8), 170(c)(1), or 7871(d), and other sections may apply. All can accept donations and give credit but the main difference is how you can apply those income deductions to your return. The only real differences apply to what percentage of your adjusted gross income you can deduct for the contribution - from 20% (**limit applies to all gifts of capital gain property**) of your adjusted gross income depending on several factors too complicated to go into here. If you're not donating at least ½ of your adjusted gross income you generally don't need to worry about this. If you do, find out which section the NPO is classified under and ask the IRS how it applies to you. If your income is \$30,000 and you donate a \$50,000 property and claim the full deduction, you may be limited to taking part this year and the remaining as a carryover for the next 5 years.

“Carryovers

You can carry over your contributions that you are not able to deduct in the current year because they exceed your adjusted-gross-income limits. You can deduct the excess in each of the next 5 years until it is used up, but not beyond that time. Your total contributions deduction for the year to which you carry your contributions cannot exceed 50% of your adjusted gross income for that year. “ (Publication 526)

The IRS has established criteria for different types of donation. We'll deal with timeshares only.

Although the same criteria is used for all real estate property.

Who must file? Any taxpayer who claims a noncash donation of more than \$500 must file form 8283 which must be signed by the NPO as having received the item(s) on a particular date. The valuation on the form is up to you, the taxpayer. The NPO is supposed to give you a separate thank you letter/receipt stating what they think the donation may be worth but that only comes into question if the property is sold within 36 months after receipt (explained later). All they do on Form 8283 is sign as having received the property on a specific date.

“Part IV Donee Acknowledgment - To be completed by the charitable organization.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date _____ Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file Form 8282, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.” (Form 8283)

“You must file Form 8283 if the amount of your deduction for all noncash gifts is more than \$500.”

“Form 8283 is filed by individuals, partnerships, and corporations.”

“File Form 8283 with your tax return for the year you first claim a deduction.”

(Instructions for Form 8283 - Noncash Charitable Contributions)

If the taxpayer is going to claim more than \$500 in donation credit and file form 8283, they can actually take up to \$5,000 in such credit without having to get an appraisal. This is still subject to the Fair Market Value (FMV) determined by other means, but it is a limit that the IRS generally grants without further proof of value. Anything above that amount requires a licensed appraisal.

“Section A. Donated Property of \$5,000 or Less and Certain Publicly Traded Securities - List in this section only items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also, list certain publicly traded securities even if the deduction is more than \$5,000 (see instructions).”

“Section B. Donated Property Over \$5,000 (Except Certain Publicly Traded Securities) - List in this section only items (or groups of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions of certain publicly traded securities reported in Section A). An appraisal is generally required for property listed in Section B (see instructions).” (Form 8283)

It is up to the taxpayer to state what the FMV is. The only absolute criteria is that it can't exceed the purchase price of the property otherwise it falls into a different category as a capital gain donation. However, FMV is important to determine because of potential penalties if you overstate its value and the IRS asks you to prove it.

“FMV is the price a willing, knowledgeable buyer would pay a willing, knowledgeable seller when neither has to buy or sell.”

“Reductions to FMV. The amount of the reduction (if any) depends on whether the property is ordinary income property or capital gain property.”

“An acceptable measure of the FMV of a donated vehicle is an amount not in excess of the price listed in a used vehicle pricing guide for a private party sale of a similar vehicle.”

(Instructions for Form 8283 - Noncash Charitable Contributions)

(This says vehicle but can be construed to cover other items with similar information readily available to the public such as coins, other collectibles, and even timeshares if there is enough information available.)

According to the above, a willing and knowledgeable buyer and seller. Does that describe you and most other property buyers? The IRS does NOT factor in information available and known to a relative few people that have long term experience with timeshares and the “secondary market”. The majority of people, like yourself maybe, don’t know about disposing of a timeshare at the time they purchase so that is not a relevant issue. The only issue the IRS considers is whether the property was considered an income producing property or was purchased for investment (capital gain) purposes. Pricing guides may be used, but that is only a guideline and may include unusual seller market conditions.

When you fill in Column D on Form 8283 AND the amount you are claiming is \$5,000 or less you must enter how you, as a layman, arrived at that value.

Column (h). Enter the method(s) you used to determine the FMV.

Examples of entries to make include “Appraisal,” “Thrift shop value” (for clothing or household items), “Catalog” (for stamp or coin collections), or “Comparable sales” (for real estate and other kinds of assets). See Pub. 561. (Form 8283 - Noncash Charitable Contributions)

In determining the FMV, the IRS gives these guidelines:

“Factors.

In making and supporting the valuation of property, all factors affecting value are relevant and must be considered. These include:

- **The cost or selling price of the item,**
- **Sales of comparable properties,**
- **Replacement cost, and**
- **Opinions of experts.”**

(Publication 561 - Determining the Value of Donated Property)

“Cost or Selling Price of the Donated Property

The cost of the property to you or the actual selling price received by the qualified organization may be the best indication of its FMV. . .

The cost or selling price is a good indication of the property’s value if:

- **The purchase or sale took place close to the valuation date in an open market,**
- **The purchase or sale was at ‘arm’s length’,**
- **The buyer and seller knew all relevant facts,**
- **The buyer and seller did not have to act, and**
- **The market did not change between the date of purchase or sale and the valuation date.”**

(Publication 561 - Determining the Value of Donated Property)

Take Note! The valuation is best made based on either your purchase price or what the property actually sold for if it was sold within 36 months of your donation date to the NPO (covered later). As for the “close to the valuation date” the IRS generally considers 36 months adequate. Did you buy your property within the last 36 months? In other words, if you claim \$5,000 and the NPO sells it for \$500, all you can claim is \$500 because that is how the IRS will look at it’s best FMV representation. Notice, also, that both parties knew the facts (not just the buyer knowing he could get a steal) and you did not have to act (were you pressured to sell due to finances, time or change in your life that would cause a depressed sale?)

Here is a factor the IRS will consider. This applies to many of the sales at greatly reduced prices in the secondary market for timeshares.

“Unusual Market Conditions

For example, liquidation sale prices usually do not indicate the FMV. Also, sales of stock under unusual circumstances, such as sales of small lots, forced sales, and sales in a restricted market, may not represent the FMV.” (Publication 561 - Determining the Value of Donated Property)

In other words, those sales made when an owner simply says, “Get me out at anything you can get. FAST!” don’t have to be considered indicative of FMV.

Without the above Unusual Market Conditions or without a sale price within 36 months of your donation date, the IRS gives clear guidelines as to how to determine FMV. There are three methods they consider:

1. Comparable Sales,
2. Capitalization of Income, and
3. Replacement Cost.

Notice that what an experienced “used” timeshare buyer is willing to pay is NOT considered.

“1. Comparable Sales

For each comparable sale, the appraisal must include the names of the buyer and seller, the deed book and page number, the date of sale and selling price, a property description, the amount and terms of mortgages, property surveys, the assessed value, the tax rate, and the assessor’s appraised FMV. . . . Only comparable sales having the least adjustments in terms of items and/or total dollar adjustments should be considered as comparable to the donated property.” (Publication 561 - Determining the Value of Donated Property)

“Selection of Comparable Sales

. . . the amount of weight given to a sale depends on the degree of similarity between the comparable and the donated properties. The degree of similarity must be close enough so that this selling price would have been given consideration by reasonably well-informed buyers or sellers of the property.” (Publication 561 - Determining the Value of Donated Property)

Here you read that the comparable sale must be backed up with actual individual information, not assumptions or offered prices, but actual sales. And that any difference from such researchable comparable prices must be given greater weight the closer they are to the donated property in description, location, and other essentials like use week, etc. A question arises, where can a person get that information? If not from the normal sales conducted at the resort, a person must try to delve through county records on all sales to find those that match and have all the information required. Unfortunately, such records on the secondary market are not usually available or complete. Therefore, they are not usable.

“2. Capitalization of Income

This method capitalizes the net income from the property at a rate that represents a fair return on the particular investment at the particular time, considering the risks involved.” (Publication 561 - Determining the Value of Donated Property)

Unless the property was bought specifically for investment purposes, this doesn’t apply. Even if an individual tries to rent it out each year, it doesn’t qualify unless the term of the rental is MORE than 7 days.

“3. Replacement Cost New or Reproduction Cost Minus Observed Depreciation

This method . . . generally tends to set the upper limit of value.” (Publication 561 - Determining the Value of Donated Property)

Where would you find a replacement? Can you always know you'll find a comparable timeshare on the secondary market in the Internet or through a broker or dealer? No. The best place to find a replacement is at the resort at resort prices.

All of the above has been dealing with a claim of \$5,000 or less. Before looking at a higher deduction let's consider the ramifications of error. According to the IRS, if the property is sold within 36 months of the donation date, they must send the IRS (and a copy to you) of Form 8282 - Donee Information Sheet to state what the difference was between what they stated in their thank you/receipt letter and what they actually received for it. They gave you \$5,000 in credit but only received \$500.

Form 8282 is what many NPOs fail to understand or file. This can get both them and you in trouble. It is specific in its intent. If the property is sold for cash or equivalent value (stock, bonds, etc.) within 36 months of your donation date, the actual value must be reported to the IRS if it differs from the thank you/ receipt they gave you. After the 36 months has elapsed, there is no longer such a requirement. Once you are given your thank you/receipt letter, you better ask how much or when the property will be sold by the NPO so you don't get stuck on this issue.

“Purpose of Form

Donee organizations use Form 8282 to report information to the IRS and donors about dispositions of certain charitable deduction property made within 3 years after the donor contributed the property.”

(Form 8282 - Donee Information Return (Sale, Exchange, or Other Disposition of Donated Property))

“Penalties

Failure to file penalty. The organization may be subject to a penalty if it fails to file this form by the due date, fails to include all of the information required to be shown on this form, or fails to include correct information on this form. The penalty is generally \$50.”

(Form 8282 - Donee Information Return (Sale, Exchange, or Other Disposition of Donated Property))

What are the consequences if you claimed an incorrect amount? According to the IRS there is a 20% or 40% penalty (on the tax you should have paid) if the following conditions arise. Notice the “and” to include both criteria in each section. In a 20% tax bracket, that would require an income deduction of \$25,000 or more to be penalized.

“Penalty

20% penalty. The penalty is 20% of the underpayment of tax related to the overstatement if:

- **The value or adjusted basis claimed on the return is 200% (150% for returns filed after August 17, 2006) or more of the correct amount, and**
- **You underpaid your tax by more than \$5,000 because of the overstatement.**

40% penalty. The penalty is 40%, rather than 20%, if:

- **The value or adjusted basis claimed on the return is 400% (200% for returns filed after August 17, 2006) or more of the correct amount, and**
- **You underpaid your tax by more than \$5,000 because of the overstatement.”**

(Publication 561 - Determining the Value of Donated Property)

Appraisals

Appraisals are not necessary for items of property for which you claim a deduction of \$5,000 or less.

(Publication 561 - Determining the Value of Donated Property)

Anything above the \$5,000 claimed deduction requires a licensed appraisal. For one thing, this essentially gets you off the hook if it's later determined untrue. You relied on a licensed

professional.

“Appraisal Requirements

The appraisal must be made by a qualified appraiser (as defined on page 6) in accordance with generally accepted appraisal standards.”

“If you had to get an appraisal, you must get it from a qualified appraiser.”

“In addition, the appraiser must complete Part III of Form 8283.”

(Publication 561 - Determining the Value of Donated Property)

Let's take a look at that appraisal. According to the IRS it can only include comparable sales and must include the following information on all those comps.

For each comparable sale, the appraisal must include the names of the buyer and seller, the deed book and page number, the date of sale and selling price, a property description, the amount and terms of mortgages, property surveys, the assessed value, the tax rate, and the assessor's appraised FMV. . . . Only comparable sales having the least adjustments in terms of items and/or total dollar adjustments should be considered as comparable to the donated property.” (Publication 561 - Determining the Value of Donated Property)

In addition, there must be reasonable valuation based on actual sales without weighing heavily on depressed or unusual markets. Notice it says, “ **Only comparable sales having the least adjustments in terms of items and/or total dollar adjustments should be considered. . .** ”

“Unusual Market Conditions

For example, liquidation sale prices usually do not indicate the FMV. Also, sales of stock under unusual circumstances, such as sales of small lots, forced sales, and sales in a restricted market, may not represent the FMV.” (Publication 561 - Determining the Value of Donated Property)

It is not our intent to advise you to claim more than FMV for your property donation. Just make sure you DO claim a reasonable FMV and not some depressed figure because you wanted to bail out at any cost. It is reasonable to use resort data since that is where the majority of sales are coming from and where the best comparable information can be found. It is reasonable to discount that amount by some factor to consider the costs of sale. Must you only accept 20% to 50% of what you paid for it? I don't believe so.

If you are going to claim the \$5,000 deduction, make sure the NPO doesn't cut that out from under you by selling it for less. If you are going to claim more than \$5,000, talk it over with a few different appraisers in the area of your property. Tell them the law as you've found it here and ask them how they would do their appraisal and what a general estimate might be before you pay them for the appraisal. Doing these simple things can make a big difference in how much you actually get back from Uncle Sam for donating your property to a nonprofit organization.

If you are going to donate and want to find an NPO that accepts properties, doesn't sell them during the 36 months window, and lets you take a bigger donation credit as a result you can go to <http://www.communityhealthtraining.org/Timeshares/> Understand that there will be a cost for their service since they don't get anything by selling your timeshare. That cost is \$500 plus all closing costs (about \$300). Do a personal comparison of your tax bracket, what you will get with different donation credits and consider the benefits one way or the other to you. Plug in your own numbers in this formula. $(\$500 \text{ credit}) \times (20\% \text{ tax bracket}) = (\$100 \text{ tax refund})$. Without a sale or an appraisal, you can effectively take the \$5,000 donation credit versus what another NPO will actually sell your timeshare for. Use this article to talk to an appraiser. If you believe you can get a higher appraisal plug that number into the formula.

If you have any questions, feel free to contact me.

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