Donation of Stock and Other Securities

WeConservePA

For both donors and recipients, the donation of stock and other marketable securities can be more advantageous than a cash donation.

AN ATTRACTIVE ALTERNATIVE TO CASH CONTRIBUTIONS

Donating shares of stock or other marketable securities to a conservation organization is a financially attractive alternative to a cash contribution when the donor's tax basis in the shares is lower than the current market value of the shares. Take, for example, a donor in a high tax bracket who owns $120 worth of shares that were originally purchased for $20 (the tax basis) and now wishes to use this asset to benefit a conservation organization that is recognized as a tax-exempt charity under §501(c)(3) of the federal tax code:

- **If the donor sells the shares prior to donation:** At the highest capital gains tax rate, the donor pays $20 to the U.S. Treasury and $3.07 to the Commonwealth of Pennsylvania on the capital gain of $100, leaving $96.93 for donation to the organization.
- **If the donor instead donates the shares directly to the conservation organization:** The organization may sell the shares and receive the full $120 value. The donor pays no tax because the donation does not result in recognition of a gain or loss; if there is no gain, then there is no capital gain tax due. Because it is a tax-exempt organization, the conservation organization pays no tax, even if it sells the shares for cash on the same day they were received. **The donor's gift to the organization is effectively 23% larger ($23.07) at no additional cost to the donor.**

BASIC PROCEDURE FOR TRANSFERRING STOCK

Arrangements for making and receiving a stock transfer typically use brokerage firms as agents for the donor and recipient. For example:

> The donor wants to donate to a conservation organization by transferring 50 shares of Apple stock he has owned for a long time. He contacts the organization to get the necessary information: the name of the brokerage authorized to act as agent for the organization and the account number to use for delivery of the shares. The donor then places an order with his broker to transfer 50 Apple shares to the organization's brokerage account. After the shares are confirmed to be in the organization's account, the organization checks the price at which Apple was trading on the day of receipt (for example, $150/share). The conservation organization then sends a letter to donor acknowledging receipt of a donation of $7,500.00 (50 shares × $150/share).

The conservation organization can continue to hold the donated shares as an investment or convert them to cash.

IS A DONATION AGREEMENT NEEDED?

Look a Gift Horse in the Mouth?

An organization has supporters who want to donate securities? Great. No sense in alienating them by demanding a donation agreement. There are times, however, when an agreement is in order. A prime example is when the organization would be placed in financial crisis if a promised donation failed to materialize, was less than the anticipated amount, or was not delivered by a certain time.

Scenario

The conservation organization has the opportunity to purchase land crucial to its mission. It has $20,000 on hand for the necessary deposit and more for due diligence but must find another $200,000 to pay the balance of the purchase price. The purchase and sale agreement will require that the organization close on the purchase, if at all, in 90 days; otherwise, it will lose its deposit, which would be a terrible hardship for the organization. Fortunately, it has donors who are willing to pledge $200,000 in highly appreciated stock to help make the purchase happen. (If instead the donors converted the stock to cash before donating, they would only be able to donate the after-tax value of $148,000.) Relying on these pledges, the organization signs the purchase agreement and makes the deposit.

The scenario features several factors that make a donation agreement desirable. First and foremost, the organization will lose its $20,000 deposit if the donor fails to follow through on their commitment for whatever reason, or dies and their estate can't follow through based on a supposed oral pledge. Other factors, which are described in detail below, include:

- The organization needs marketable securities.
- The organization needs a certain amount of money, not a certain number of shares.
- The organization needs the money delivered by a certain time.

(See the guide *Donation Agreements* for more information.)

Marketable Securities

The conservation organization needs assurance that the shares to be delivered can be immediately converted into cash for payment at closing. To provide this assurance, the donation agreement could stipulate that the shares to be delivered are unrestricted, marketable securities traded on the New York Stock Exchange (NYSE).

Limiting donations to publicly listed, marketable securities is sensible for other reasons as well:

- Publicly listed securities assure that a recognized market value is available for issuance of the contemporaneous written acknowledgment that the tax code requires for tax deductibility.
- Transfer of shares in a closely held company are often restricted by a shareholders' agreement. Moreover, shares representing a minority interest may have no resale value at all except to an existing shareholder.

Certainty in Amount of Money Versus Shares

Promise to Donate Certain Number of Shares or Certain Dollar Value?

To pay the purchase price of the land in the above scenario, the organization is relying on a specific dollar amount as the contribution. What happens if the donor agrees to donate a certain number of shares in a company and the share value drops substantially before the recipient receives the shares? When the recipient is relying on a specific dollar amount, the donation agreement ideally would require the donor to make up for a drop in share value with a donation of cash or transfer of additional shares.

Conversely, what happens if the shares yield more than the stipulated donation amount? Does the recipient automatically keep the benefit of the increase? Or is the excess returned to donor? The agreement should address the agreed-upon resolution of this issue as well.

Risk of Share Price Fluctuation

Share value varies day by day and minute by minute on the same day. To lessen the risk of a dispute between the donor and the organization if the dollar value of the donation changes between the time of day the shares are confirmed to be in the recipient's account (say 10 a.m.) and the time the shares are sold for cash (say 3 p.m.), the donation agreement could stipulate that the value of the donation is established as of the close of the NYSE (4 p.m.) on the day of delivery to the account of the conservation organization. Then it does not matter if the price of the shares went up or down after 10 a.m.

Delivered by a Certain Time

Given the time constraint presented by the scenario's purchase agreement, the donation agreement needs to be clear as to when and how the donation is to be delivered.

Date and Time of Delivery

In the scenario, the closing must occur no later than 90 days following the agreement date. It could happen before the 90-day mark or, subsequent to the agreement, the seller and buyer could agree to a later date. Due to this variability, donation agreements typically provide for delivery within a certain number of business days after a call by the organization. When deciding on the number of days, the recipient needs to consider (and allow sufficient time for) the sequence of communications and actions that will be triggered between the call and the transfer of funds into the settlement agent's escrow account to be applied to the purchase price at closing. The organization may want to discuss this with its broker to determine a realistic time frame; often, several business days are needed. If measuring by business days, the agreement should define what constitutes a business day, for example, "a day when the NYSE is open for not less than six hours."

Call Notice

Donor and recipient need to consider—and stipulate in the donation agreement—the means of notice most likely to get the donor's quick attention when the need for delivery of the promised shares is imminent. Will the donor attend to an email even if traveling? Could the closing occur while the donor is traveling overseas without reliable means of communication? Is someone else authorized to act on behalf of the donor? These are critical issues to resolve when the organization is relying on the promised donation.

ACKNOWLEDGMENT OF VALUE FOR TAX PURPOSES

The organization's letter to the donor acknowledging the receipt of publicly traded stock, bonds, or other marketable securities must include a dollar figure valuing the donation (the same as a cash contribution). Form 8283 may also be required for certain donations. Organizations receiving donations of securities are advised to obtain from the donors the valuation arrived at by the donors' tax professionals, including an explanation of the method used to calculate that value in accordance with the guidance set forth in IRS Publication 561 and, if required under that guidance, submission of Form 8283 for review and approval by the organization. A discussion of the valuation factors addressed in Publication 561 is outside the scope of this guide.

To assure that the organization has received and has had the opportunity to review the taxpayers' valuation and supporting information, the donation agreement, if any, could allow the organization to withhold its acknowledgment (and, if applicable, signature on Form 8283) until it receives a full explanation of the valuation and has had the opportunity to review (or have its professional advisors review) for compliance with IRS published guidance.

WeConservePA produced this guide with support from the Colcom Foundation, the William Penn Foundation, and the Community Conservation Partnerships Program, Environmental Stewardship Fund, under the administration of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.

Patricia L. Pregmon, attorney at law, and Andrew M. Loza are the authors.

v. 10/10/2023