

35 Estates, Gifts and Trusts Journal 274
(November 11, 2010)

Deductibility of Charitable Contributions — A Chart

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Different rules may apply for purposes of determining the deductibility of a contribution by an individual for income, estate and/or gift tax purposes. In general, a deductible “charitable contribution” may be made by an individual under Internal Revenue Code §§ 170(c), 642(c), 2055(a) and 2522(a) to or for the use of any of the organizations included in the following five categories:

- A state, a possession of the United States, or any of their political subdivisions, the United States, or the District of Columbia, but only if made for exclusively public purposes;
- A corporation, trust, or community chest, fund, or foundation that: (a) is created or organized in, or under the laws of, the United States, its possessions or the District of Columbia; (b) is organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals; (c) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and (d) does not as a substantial part of its activities attempt to influence legislation, and does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;
- A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization that is organized in the United States or any of its possessions, no part of the net earnings of which inures to the benefit of any private shareholder or individual;
- A domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals; and
- A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

A sixth category of deductible contribution is available in very limited circumstances for a transfer of employer securities from a charitable remainder trust to an employee stock ownership plan (ESOP) that is made after August 5, 1997.

The following chart summarizes these rules in easily referable form:

Charitable Deductions – Donee Eligibility Rules

	General Rule	Income Tax § 170(c) / § 642(c) ¹	Estate Tax § 2055(a)	Gift Tax § 2522(a)
Transfers to a Governmental Entity for Public Purposes	Deductible donations can be made to: <ul style="list-style-type: none"> • the U.S., • any state, • D.C., • any political subdivision,² or • any governmental agency or instrumentality provided that they are used for “exclusively public purposes.” ³	§ 170(c)(1) § 642(c)(1) <u>No Special Rules</u>	§ 2055(a)(1) <u>No Special Rules</u>	§ 2522(a)(1) <u>No Special Rules</u>
Transfers to Charitable Organizations or Trusts	Deductible donations can be made to: <ul style="list-style-type: none"> • a corporation, • association, • trust, • community chest, • fund, or foundation provided that: <ol style="list-style-type: none"> 1. Donee organized and operated solely for charitable⁴ purposes, 2. No Private Inurement, and 3. Donee stays out of politics.⁵ 	§ 170(c)(2) <u>Special Rule:</u> <ul style="list-style-type: none"> • No foreign donees⁶ § 642(c)(1) <u>No Special Rules</u>	§ 2055(a)(2)-(3) <u>Special Rules:</u> <ul style="list-style-type: none"> • Trust donee need not be organized and operated <u>exclusively</u> for charitable purpose⁷ • Transfers to a community chest, fund, or foundation <i>may not be deductible</i>⁸ 	§ 2522(a)(2) <u>No Special Rules</u>

¹ The charitable deduction for trusts is nearly identical to the deduction for individuals, which it references. See § 642(c)(1). Exceptions are noted in the table.

² Including the Commonwealth of Puerto Rico, see § 7701(d), and Indian tribal governments. See § 7871(a)(1)(A)-(C).

³ The statutory language has been broadly construed. Beckwith, 839 T.M., *Estate and Gift Tax Charitable Deductions* (hereinafter “TMP 839 – ESTATE AND GIFT TAX”) at A-5. See also TMP 839 – ESTATE AND GIFT TAX at A-5 n.20; Kirschten & Freitag, 863 -2d T.M., *Charitable Contributions: Income Tax Aspects* (hereinafter “TMP 863 – INCOME TAX”) at A-16 n.155 (unusual examples of organizations held to be valid donees). See also § 2055(g); Regs. § 20.2055-1(d) (referencing various agencies authorized to receive bequests and gifts “to or for the use of the United States”).

⁴ Including for “religious, charitable, scientific, literary, or educational purposes,” for “prevention of cruelty to children or animals,” or to “foster national or international amateur sports competition” other than the provision of “athletic facilities or equipment.” § 170(c)(2)(B); § 2055(a)(2)-(3); § 2522(a)(2).

⁵ Donee may not be “disqualified for tax exemption under section 501(c)(3) [for] attempting to influence legislation”; donee also may not “participate in,” or “intervene in” any political campaign “on behalf of (or in opposition to) any candidate for public office.” § 170(c)(2)(D); § 2055(a)(2)-(3); § 2522(a)(2). The well-advised charitable organization that wants to receive deductible donations should consider separate entities for educational and advocacy purposes.

⁶ Donee must be “created or organized in” or “under the law of” the U.S. or a U.S. possession, § 170(c)(2)(A), unless a specific tax treaty permits foreign donees. See, e.g., U.S.-Canada Income Tax Treaty, Art. XXI, ¶ 6; U.S.-Israel Income Tax Treaty, Art. XV-A; U.S.-Mexico Income Tax Treaty, Art. XXII, ¶ 2.

⁷ Deductible donations must still be used exclusively for charitable purposes. § 2055(a)(3).

⁸ Statutory language expressly permits such a donee for purposes of a charitable deduction under the income tax and the gift tax, but not the estate tax. Compare § 170(c)(2) and § 2522(a)(2) with § 2055(a)(2)-(3).

Charitable Deductions – Donee Eligibility Rules

	General Rule	Income Tax § 170(c) / § 642(c) ¹	Estate Tax § 2055(a)	Gift Tax § 2522(a)
Transfers to Fraternal Organizations	Deductible donations can be made to: <ul style="list-style-type: none"> • a fraternal society, • order, or • association, operating under the lodge system, provided that: <ol style="list-style-type: none"> 1. Donation is used solely for charitable⁹ purposes, and 2. No Private Inurement. 	§ 170(c)(4) § 642(c)(1)	§ 2055(a)(3)	§ 2522(a)(3)
		<u>Special Rule:</u> <ul style="list-style-type: none"> • No foreign donees¹⁰ 	<u>Special Rules:</u> <ul style="list-style-type: none"> • Donee must stay out of politics¹¹ • Specify that bequest is for a designated charitable purpose¹² 	<u>No Special Rules</u>
Transfers to Veterans' Organizations	Deductible donations can be made to: <ul style="list-style-type: none"> • a post or organization of war veterans,¹³ or • an auxiliary unit or society thereof, or • trust or foundation therefore provided that: <ol style="list-style-type: none"> 1. Donee is organized in the U.S. or its possessions and 2. No Private Inurement. 	§ 170(c)(3) § 642(c)(1)	§ 2055(a)(4)	§ 2522(a)(4)
		<u>No Special Rules</u>	<u>Special Rule:</u> <ul style="list-style-type: none"> • Donee must be incorporated by "Act of Congress"¹⁴ 	<u>No Special Rules</u>

⁹ In the case of gifts to a fraternal organization, charitable purposes include "religious, charitable, scientific, literary, or educational purposes," and the "prevention of cruelty to children or animals," but not fostering amateur sports competition. § 170(c)(2)(B); § 2055(a)(2)-(3); § 2522(a)(2).

¹⁰ Donee must be "domestic" to the U.S., § 170(c)(4), unless a specific tax treaty permits foreign donees. *See, e.g.*, U.S.-Canada Income Tax Treaty, Art. XXI, ¶ 6; U.S.-Israel Income Tax Treaty, Art. XV-A; U.S.-Mexico Income Tax Treaty, Art. XXII, ¶ 2.

¹¹ Same meaning as for transfers to charitable organizations or trusts. *See* note 5, *supra*; § 2055(a)(3).

¹² *See* TMP 839 – ESTATE AND GIFT TAX at A-7 (citing court cases where charitable deduction was denied as a result of testator's failure to restrict bequest for charitable purposes in "four corners" of the will).

¹³ At least 90% of the membership of the organization must be war veterans, unless there is a statutory exception. TMP 839 – ESTATE AND GIFT TAX at A-49, n.468 (citing Rev. Rul. 84-140 and TAM 9315002).

¹⁴ § 2055(a)(4).

Charitable Deductions – Donee Eligibility Rules

Other Unusual Donees				
	General Rule	Income Tax § 170(c) / § 642(c) ¹	Estate Tax § 2055(a)	Gift Tax § 2522(a)
Transfers to ESOPs	Not eligible for a charitable deduction.	<u>No Special Rules</u>	<p style="text-align: center;">§ 2055(a)(5)</p> <p><u>Special Rule:</u></p> <ul style="list-style-type: none"> • Transfer of employer securities from a CRAT may be deductible¹⁵ 	<u>No Special Rules</u>
Transfers to Nonprofit Cemetery Companies	Not eligible for a charitable deduction.	<p style="text-align: center;">§ 170(c)(5) / § 642(c)(1)</p> <p><u>Special Rule:</u></p> <ul style="list-style-type: none"> • May be deductible, provided that: <ol style="list-style-type: none"> 1. Donee is a nonprofit; and 2. No Private Inurement; and 3. Donee is either: <ul style="list-style-type: none"> ▪ Cemetery Co. owned and operated exclusively for benefit of its members; or ▪ Chartered solely for burial purposes and charter requires that all activities be incident to that purpose. 	<u>No Special Rules</u> ¹⁶	<u>No Special Rules</u> ¹⁶

¹⁵ This deduction has some “highly technical” requirements and is only available for a “limited period.” TMP 839 – ESTATE AND GIFT TAX at A-9 (explaining how § 2055(a)(5) has many requirements hidden within § 664(g)). One requirement is that the decedent must have died before Jan. 1, 1999. § 664(g)(1)(A). See § 664(g).

¹⁶ Although a donation to a nonprofit cemetery company is generally not eligible for the charitable deduction under the estate or gift tax, a charitable deduction may be permitted if the cemetery is owned and operated by a municipality. See Rev. Rul. 79-159 (treating the donation a transfer to a governmental entity for a public purpose). *But see Mellon Bank v. U.S.*, 762 F.2d 283 (3d Cir. 1985), *cert. denied*, 475 U.S. 1032 (1986) (stating that the anomalous treatment of nonprofit cemetery companies under the income tax and estate tax provisions must be respected by the Courts until Congress changes it).