Adopt a "donor beware" attitude when clients make non-marketable gifts

Market declines and inflation have made 2022 a more challenging year for some clients to fulfill their traditional giving objectives or early-year gifting intentions.

With annual inflation hovering at 8% (and no relief in sight) and liquidity perhaps less than ideal, cash may be hard for donors to part with. Giving stock may also be hard to swallow, at least psychologically, in a down market. For example, assume shares of a client's stock have dropped 15% over the last quarter, from $200 per share to $170. If the client has been intending to make a $10,000 gift to charity this year, last quarter the client could have accomplished that with a gift of 50 shares. Now, though, the client will need to give nearly 59 shares to hit that $10,000 target. Realizing that it will "take more shares to do the same good," your clients may be less inclined to give depreciated stock shares to their donor-advised funds and other charitable recipients.

So, with money tight and stock perhaps painful to give, your clients may be considering alternatives to cash or securities for their gifts to charity. You and your clients need to be aware of the rules—meaning the IRS's rules—to both meet the clients' objectives and stay in Uncle Sam's good graces.

A high-level understanding starts with the $5,000 threshold for documentation that appears on IRS Form 8283, titled Noncash Charitable Contributions. This form is required to be filed with any tax return claiming such a deduction.

Substantiation of value up to $5,000 is routine and consistent with securities (*i.e.*, acquisition and contribution dates, fair market value of the item(s) and method of value determination). Requirements for gifts up to $500 are less stringent.

Real estate, closely held stock, art, jewelry, vehicles or baseball card collections, for example, valued at $5,000 or greater require more specifics. They're also subject to greater scrutiny if the donor is audited or questioned.

Consider the additional documentation requirements:

- From the donor (your client): the type of gift, description, physical location, and a third-party appraisal of value.
- From the appraiser: a signed declaration on the tax form describing their qualifications and identification number; that they do this work regularly; and where they can be located.

- From the recipient (the charity, sometimes known as the "donee"): signed confirmation of qualification, receipt, federal identification number and a commitment to document and notify if disposition occurs within three years. (The community foundation is accustomed to filing this documentation for donors' gifts to funds.)

Your clients also need to know that meeting the requirements for declaring value rests with them and not their tax preparer, recipient organization or appraiser. In the recent case of *Heinrich C. Schweizer v. Commissioner*, a donor/taxpayer was found liable for reimbursements and penalties related to a decade-old donation of art first valued at $600,000—later reduced by more than 50%—and exacerbated by the IRS's determination of participants' roles and responsibilities. Tax advisors continue to be reminded of the intricate requirements to substantiate hard-to-value gifts such as conservation easements, watching carefully to see how taxpayers can win valuation arguments with the IRS.

So, while a high-value donation of real property to your client's donor-advised at the community foundation or a little-used auto to benefit a charity is admirable and relieves the pressure on making traditional cash or securities gifts, patrons should take a vigilant and "donor beware" approach to alternative gifting. While beauty is in the eye of the beholder, value and deductibility are determined by others.