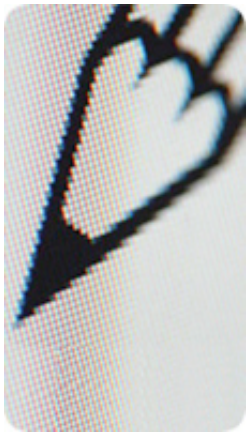


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CHECKLIST

Partnership Interests Aren't Simple Gifts for Charities

BY DENNIS WALSH, CPA
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Partnership interests (including interests in limited liability entities treated as a partnership) represent a potentially valuable gift to charities and private foundations, but with greater potential complications than gifts of stock. CPAs can alert principals to the following issues.

- ✓ **Determine whether the organization has the resources to perform due diligence, effect the transfer and either liquidate or carry the asset.** As part of this determination, assess the risks associated with ownership and marketability of the interest relative to the expected benefit and whether the time frame for the transfer will meet the donor's expectations.
- ✓ **Assess possible exposure to unrelated business income tax (UBIT).** A partner otherwise exempt from income tax under IRC § 501(a) may be subject to additional tax reporting and potential liability for UBIT under section 511 to the extent income is attributable to certain sources including ordinary income from a trade or business activity of the partnership and income from other sources to the extent produced from debt-financed property.

✓ **If gross income from unrelated business activities exceeds \$1,000 for a year, the organization must file IRS Form 990-T.** This is essentially a Form 1120, *U.S. Corporation Income Tax Return*, and net income from unrelated business activities is taxed at the regular C corporation rates. There should be no threat to the charity's tax-exempt status as long as unrelated business activities remain minor in relation to exempt charitable activities.

✓ **Verify whether the charity will assume any liability as a result of the transfer.** Legal counsel may need to help identify actual or contingent liabilities for which the transferee charity may become subject. Also determine whether any transfer or appraisal fees will apply and who will be responsible for them. In addition, scrutinize the partnership's activities for undisclosed liability, such as environmental liability for an entity with real property holdings.

✓ **Keep in mind that a sale, including a bargain sale, between a private foundation and a disqualified person is a prohibited act of self-dealing** subject to unwinding and excise taxes on parties to the transaction. A disqualified person may include a participating "foundation manager" as defined in section 4946(a).

✓ **For a gift, the charity must assign a fair market carrying value for financial reporting purposes.** Documentation of such value should be prepared contemporaneously and retained for the financial statement audit or review.

✓ **Maintain records of the charity's separate tax basis in the partnership interest.** Any suspended passive losses of a donor not recognized as the result of a gift are tacked on to the donee's carryover gift basis from the donor (section 469(j)(6)). This will affect the amount of taxable gain or loss recognized by the charity on subsequent disposition where UBIT is applicable (Treas. Reg. § 1.170A-4(c)(4)).

✓ **Documentation supporting carryover basis should be acquired from the donor at the time of transfer.** Added costs from such additional tax reporting and accounting needs should be considered as part of the cost/benefit analysis of accepting ownership.

✓ **As with any noncash contribution, the charity should provide written confirmation to the donor** that includes the donor's name and address, date and description of the property, and a statement that no goods or services were provided in exchange for the contribution (if this is the case). But the charity should not indicate a value. In addition, the charity should be prepared to complete Part IV of IRS Form 8283, *Donee Acknowledgment*, upon request by the donor and keep a copy.

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