

NON PROFITGPS

HELPING TO KEEP YOU ON THE RIGHT ROAD



Bargain Sales to Charity



A bargain sale to a charity occurs when an item is sold to a charity for less than its fair value. The seller and the charity both benefit. The charity benefits because they receive the excess value, and the donor benefits because they receive some payment and a deduction. The payment they receive usually gets preferred tax treatment as a capital gain, and the charitable gift from the excess of the fair market value over the selling price is deductible as an itemized deduction.

Another variation of the bargain sale occurs when an individual transfers debt-encumbered property to a charity. The debt that is assumed by the charity is treated as a payment, so like a traditional bargain sale, this is a part-sale/part-gift, generally resulting in capital gains and a charitable contribution deduction to the donor.

Both of these methods can be an excellent way to get assets to a charity and favorable tax treatment to the donor.

For example, suppose a property owner purchased land for \$10,000. It is now worth \$100,000. He agrees to sell the land to the charity for \$40,000. The property owner has a capital gain (which is taxed at lower rates) of \$30,000 (\$40,000 selling price less \$10,000 tax cost). The transferor also has a charitable contribution of \$60,000 (fair value of \$100,000 less selling price of \$40,000).

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Clergy Compensation Complication

IRS has an online federal tax withholding estimator that works for most people, but not for ordained clergy. Ordained clergy are considered employees for wage purposes but self-employed for Social Security/Medicare purposes. As a result, many clergy find themselves seriously underpaid and owing IRS at tax time.

Here are a few things clergy need to know about FICA or Social Security and Medicare.

- Unless they have opted out of Social Security early in their career, clergy will pay all of their Social Security and Medicare whereas non-ordained employees pay one half (which is withheld from their paychecks).
- Clergy tax returns report self-employment income and pay self-employment tax. This is the same as Social Security and Medicare.
- Clergy federal withholding and/or estimated payments need to be sufficient to cover federal income tax and self-employment tax.
- The combined self-employment tax rate for clergy is 15.3%, but there is an adjustment which brings it down to 14.1%. That amount is also a deduction against taxable income.

In many cases the religious organizations/employer will compensate clergy for the share of Social Security/Medicare taxes normally paid by the employer.

To avoid coming up short at the end of the year, ordained clergy should base their withholding on federal and state withholding tables and withhold an additional amount necessary to cover their estimated self-employment tax. Let us know if you have questions or need help.



ESL Foundation Focuses Grants on Education, Employment, Housing, and Other Initiatives

ESL Foundation, one of many local foundations, has a broad strategy for supporting local non profits and charitable initiatives.

Their mission states, in part, the goal of their charitable efforts are, "To be a catalyst for transformation of systems, organizations, and places that uplift the Greater Rochester area for all who live and work within it."

For specifics, search online for *ESL charitable foundation*. Their website clearly lists their core values, what they fund, and provides a link for charities to submit a funding application as well as other contact information.



Status of the Unrelated Business Income Taxation of Nonprofit Provided Transportation Fringe Benefits, Including Parking

While the Unrelated Business Income Tax on nonprofit employer provided parking and other transportation fringe benefits still exists, there have been two house bills that would repeal the tax. These have bipartisan support and have been approved by the Ways and Means Committee.

James Clyburn, House Majority Whip, and Carolyn Maloney, Vice Chair of The Joint Economic Committee, recently sent a letter to their congressional colleagues requesting co-sponsorship and support for both of these bills.

Some non profits have submitted Unrelated Business Income tax returns, others have filed extensions that will expire November 15. All are hopeful this legislation will be repealed in the near future.

We will report any significant updates in our next newsletter and also in a blog on our *NFPnet.org* website.

Changes to a Nonprofit's Activity

If a nonprofit organization's activity changes, there are certain IRS and state Charities Bureau requirements.

As an example, a newly formed nonprofit may start with the intention of disseminating research about a particular type of cancer, but later finds that there are other excellent resources for this, so they begin to focus on seriously ill patient amenities.

The IRS can be notified with form 990. Part III of the form asks whether any new significant program services were undertaken during the year and

whether the organization ceased conducting or significantly changed any of its program services.

An organization can also request a determination letter regarding the effect of changed activities on its public charity or private foundation status. This is done with IRS form 8940. Form 8940 can also be used to request approval for treatment of a grant as an unusual grant (which increases the public support percentage) or to request exemption from filing form 990 based on a religious affiliation.

If there is significant uncertainty about whether the new activity will continue to qualify for exemption, the nonprofit can request a private letter ruling, but

that can be an expensive and time-consuming process.

The Charities Bureau has an additional focus. They want to be sure that contributions solicited for one purpose are not used for another purpose. The organization has a responsibility to use contributions for the purpose for which they were given. Donors cannot enforce that but the Charities Bureau can and will.



Donor Strategies

With lower tax rates and more taxpayers using the standard deduction, donors are considering other alternatives. One of these is "bunching" contributions. For example someone who has historically made contributions near year-end could make contributions in early January and again the following December, "bunching" two years' worth of contributions into one year, and increasing the likelihood they will be over the threshold for itemizing.

Another strategy is to set up a donor advised fund and payout contributions to charities over two or three years. United Way of Greater Rochester, the Community Foundation, and online services such as Fidelity all accommodate donor advised funds.

Taxpayers who are over age 70 ½ at the end of the year, and required to take minimum distributions out of their retirement plan, can have some or all of those distributions paid directly to charities. This doesn't produce an itemized deduction, but even better, it eliminates taxable income. This may avoid higher tax brackets and may avoid "wasting" the very substantial standard deduction.

Charitable remainder trusts can also be a very cost-effective way to support charities. These are best suited for individuals who would benefit by using income from investments during their lifetime, but don't need to leave all of their assets to heirs, or have assets they intended to give to charities through their wills.

The best way for charities to benefit from these different strategies is by reminding and educating their constituents.

If you would like more information about any of these strategies, please contact us.

Use Caution Engaging Third Parties

Many of you may remember the Rochester payroll processor that withheld but did not remit federal or state taxes several years ago. It was very harsh for clients because IRS' position was the government did not get paid, and even though clients diligently paid their withholdings to the payroll processor, the IRS required them to pay them a second time.

Recently, another problem was announced by the New York State Attorney General. *NYcharities.org*, an online organization that assisted non profits with fundraising, collected but did not forward hundreds of thousands of dollars to New York charities.

On July 31, Attorney General Letitia James announced that an investigation had been launched into the organization and its operators. If you have been impacted by this organization, call the Charities Bureau hotline 800-771-7755 or email charities.complaints@ag.ny.gov.

New York State Charities Bureau Registration Must Be Electronic

Registrations with the NYS Charities Bureau (including all attachments), must be electronic. The "Register a Charity Online Now" button appeared on the NYS Charities Bureau website recently with very little fanfare.

Emails for each of the board members are required and, after the application is uploaded, New York State will send an email to the president and treasurer requesting their electronic signature for the registration. If electronic signatures aren't received within 30 days, the registration will need to be redone. The advantage of using the electronic registration is a very prompt acceptance by New York.



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This Month's WebStar Winner Is:

IRS

[irs.gov/charities-and-nonprofits](https://www.irs.gov/charities-and-nonprofits)

We never expected to acknowledge IRS for a great website, but they have just reorganized and redesigned their charities and nonprofits webpage to be more user-friendly.

Take a glance at:

<https://www.irs.gov/charities-and-nonprofits>

You will see key topics such as: applying for or reinstating exempt status, charitable contributions, and IRS' tool for searching for charities (including those eligible to receive contributions and those whose exempt status has been revoked). There is also a decent search engine, educational topics and a news section.

The educational resources include publications, forms and instructions, statistical information about exempt organizations, and even the guidebook IRS auditors use when auditing a nonprofit.



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The screenshot displays the IRS website's 'Charities and Nonprofits' section. At the top, there's a navigation bar with the IRS logo and links for 'Help', 'News', 'Language', 'Charities & Nonprofits', and 'Tax Pro'. Below this is a secondary navigation bar with tabs for 'File', 'Pay', 'Refunds', 'Credits & Deductions', and 'Forms & Instructions'. The main heading is 'Charities and Nonprofits'. The content is organized into three columns: 'Exempt Organization Types' with links for 'Lifecycle of an Exempt Organization', 'Annual Filing and Forms', 'Charitable Contributions', 'Search for Charities', and 'Education Sessions'; 'Tax Exemption' with sub-sections 'Apply for Tax-Exempt Status' (How to apply for IRS recognition of tax-exempt status) and 'Reinstate Tax-Exempt Status' (What to do if your tax-exempt status is revoked); and 'News' with a list of recent articles including 'Revenue Procedure 2019-22 (Additional method for a private school to satisfy requirements)', 'Exempt Organizations Annual Reporting Requirements - Filing Procedures: Incomplete Returns', and 'Revenue Procedure 2019-5 (Procedures for issuing)'. The page is in English.