

# GIFTS-IN-KIND GUIDELINES

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## 1. Definition

Gifts-in-kind are gifts of tangible or intangible personal property (other than gifts of cash or investment securities) that are deductible by the donor under federal tax law. Examples of gifts-in-kind are gifts of artwork, books, equipment, automobiles, inventory, patents and royalties. Acceptance and use of gifts-in-kind are subject to Regental bylaws and policies of the University.

Contributions of a partial or limited use of property are generally not considered to be gifts-in-kind because such contributions are not deductible under federal tax law. For example, the use of the donor's home for a University event or of an automobile for one year would not be a tax-deductible gift and, therefore, would not be considered a gift-in-kind.

Also, contributions of personal services are generally not deductible and would not be considered gifts-in-kind. As a general rule, a gift to the University is a nondeductible gift of personal services if two criteria are met: (1) the gift is of time, labor or personal efforts, and (2) the gift of services is to be performed by the donor, rather than a third party. Examples of nondeductible gifts of personal services include one year of service on equipment that has been donated to the University, daycare services, legal services consultation, a manicure, and a personal training package. These examples assume that the donor is to personally perform the service. In contrast, if the donor purchases the personal training package or another service from someone else and then transfers the right to this service to the University, the transfer is a tax deductible gift-in-kind. Additional examples of nondeductible gifts are airline tickets provided by an airline, free lodging provided by a hotel, and services provided by a restaurant, printer or publisher.

## 2. Valuation of Legal Credit

According to CASE Management Reporting Standards, the legal credit valuation for a gift-in-kind is counted at the "full fair market value regardless of the value the donor may be able to take as a charitable deduction".

Gifts-in-kind with a fair market value over \$5,000 should be counted at the value placed on them by qualified independent appraisers, as required by the IRS for valuing non-cash charitable contributions. However, if a C corporation (ex. IBM) donates its own inventory or other property, then the C corporation is responsible for substantiating the fair market value of the gift-in-kind. In this situation, an independent appraisal is not required.

Gifts-in-kind with a fair market value of \$5,000 and less may be reported at the value declared by the donor. Sales tax should not be included in the gift-in-kind's value.

### 3. **Transmittal Form**

Once the University has decided to accept a gift-in-kind, the receiving unit prepares a Gift-in-Kind Transmittal Form and sends it with supporting or related documents to the Office of Gift Administration (A copy of the Gift-in-Kind Transmittal Form is attached to this document.)

### 4. **IRS Requirements**

If a donor wishes to claim an income tax charitable deduction for more than \$500 of gift-in-kind property, federal law requires the donor to substantiate the deduction by using IRS Form 8283. If the donor wishes to claim an income tax charitable deduction for more than \$5,000 of gift-in-kind property, the donor must obtain the acknowledgement of the University on the donee acknowledgement portion of IRS Form 8283. It is the donor's responsibility to forward the IRS Form 8283 to the University for completion of the donee acknowledgement portion of the form. The IRS Form 8283 may be sent with the Gift-in-Kind Transmittal Form to the Office of Gift Administration if it is available at the time the Transmittal Form is submitted. The University returns the signed form to the donor.

In the event of disposition within two years of receipt by the University of any item of gift property over \$5000 or for which the University signed the donee acknowledgement portion of IRS Form 8283, Tax Resources must be notified. Tax Resources will prepare and file IRS Form 8282 as required by law. (NOTE CHANGE IN LAW NOTED IN ADDENDUM BELOW)

### 5. **Questions**

Questions may be directed to the Office of Gift Administration or Development Legal Services.

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#### Addendum following the Pension Protection Act of 2006

(Adopted August 17, 2006 with following changes effective on or before September 1, 2006)

1. Reporting of the disposition of gift-in-kind property to the IRS is now required if the disposition is within 3 years (not 2 years) of receipt.
2. For gifts-in-kind of tangible personal property, preexisting law limits the donor's charitable deduction to tax basis unless the University's use of this property is related to the University's exempt purpose or function. Section 1215 of the Pension Protection Act provides that the deduction is also limited to tax basis (or provides for recapture of any deduction taken in a prior year in excess of tax basis) for tangible personal property valued in excess of \$5,000 that is (1) related to the University's exempt purpose or function and (2) sold or disposed of within 3 years of receipt, unless the University completes a statement certifying the related use and attaches the certified statement to its filing of IRS Form 8282.
3. Section 1218 of the new law further limits the deductibility of fractional interests in tangible personal property (this is of limited relevance, but may be important in isolated cases, particularly for University museums and libraries).
4. Section 1219 of the new law limits who may be a "qualified appraiser" and lowers thresholds for penalties applicable to overstatement or understatement of appraised value.