



Gift Date – When It Is and Why It Matters

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By Edie Matulka, Senior Consultant, PG Calc

There are different factors that determine when a gift has been completed, as discussed below. But why does it matter, since in most cases it's just the matter of a few days? That day can make a difference at any point in the year, by changing what discount rate is used for calculating the deduction or in determining the amount of a pro-rated first gift annuity payment. However, it is particularly significant— to many of your donors – at year-end, as it affects when they can take their charitable deduction. A day late, a gift made on January 1st rather than December 31st, and the deduction is “lost” for a year.

And so, a few examples on when that gift is complete:

- **Cash (check)**

If *cash*, or more frequently *a check*, is handed to you in person, the gift is made that date. . . unless the check is post-dated (i.e., written for a future date). In that situation, the gift is made as of the date on the check.

If *mailed* to you, the gift is made as of the postmark date. . . this is known as the mailbox rule. It applies when sending through the US Postal Service. Treas. Reg. §1.170A-1. Whoever is charged with opening the mail should understand the importance of keeping the envelope. A check might be dated December 31, but if the postmark is January 2 the gift has been made in the new year, not the old.

While use of private delivery service companies is addressed in I.R.C. §7502(f) for the timely filing of tax documents, there is a difference of opinion whether this provision carries over to determining a gift date. If it did, the gift date would be the same as what is marked on the shipping label, like a postmark. However, if there is any question of a courier delivery arriving after the desired gift date, it may be preferable to direct the donor send it via US Postal Service. Also, it should be noted that I.R.C. §7502(f) does not designate delivery service companies broadly as being acceptable, but rather

designates specific types of services offered by those companies (e.g., Fed Ex Standard Overnight, or UPS Next Day Air).

Finally, though a less common occurrence, if a person makes the gift via a *wire transfer*, the gift would be considered made on the date the funds are transferred out of the donor's account, as shown on the account statement. Rev. Rul. 80-335.

- **Stock**

When transferred *electronically*, the most common practice, the gift is complete on the date the shares are received in the charity's account.

If a donor hands over actual *paper certificates and powers*, then the gift date is determined the same as noted above for cash, depending on whether done in person or via the mail. And if the transfer is being completed by *reregistering ownership* of the shares, the date of the gift is the date of the new stock certificate. Treas. Reg. § 1.170A-1(b) Note that reregistering ownership of stock shares can take up to several weeks and so it is wise for donors to avoid this approach near year-end.

When it comes to *mutual funds*, if the donor's shares are held in an account maintained by the mutual fund company itself the charity will need to open a new account in its name (unless the charity already has such an account with the company). The gift date will be the date the shares are received in the charity's account. Many mutual fund companies have detailed requirements to which the donor and the charity must adhere before a donor's shares can be transferred. It is advisable to try to get an estimate from those involved in the transfer as to the expected timeframe. That information should then be provided to the donor, to set realistic expectations as to when the gift will be complete. Since the process can take several weeks, it is best to allow that type of cushion leading up to any pre-determined gift date a donor has in mind.

- **Credit Card**

A gift made via *credit card* is made as of the date the charge is posted to the donor's account. As with the mailbox rule discussed above, here too, there can be some disagreement, with arguments made in favor of the gift date being the date the donor provides the card information to the charity or the date the charity runs it through, rather than the posting date. The IRS has not been consistent in the language it uses, referring to deductibility of the gift in the year the "charge is made" (Rev. Rul. 78-38) but in news releases indicating that to support such a gift a donor should have an account statement showing the "transaction posting date" I.R.B. 2006-192, I.R.B. 2014-110. From a charity's perspective the key is to be consistent in the approach taken to determine the gift date and, particularly with respect to calendar year end, to encourage donors not to wait until the last minute to make such gifts.

- **IRA Rollover**

An appealing benefit of an IRA rollover gift (formally known as a qualified charitable distribution, or QCD) is that it can count towards the individual's required minimum distribution. However, for the distribution to count towards a given year's RMD, the funds must be withdrawn from the individual's IRA by December 31. Donors should be encouraged to provide lead time in making their request, to allow the plan administrator time to process it before year's end.

Conclusion

The above are the most common gifts a charity will receive in the waning days of the year. Beware of a prospective donor who approaches you in December trying to complete a gift of real estate or artwork (or other tangible personal property), by year's end. While the gift date itself can be straight forward (when the completed deed is received by the charity in the former, or when the donor gives up control in the latter), there are decision points and various steps that go into getting to that point. Trying to rush through in a short time period could lead to later regrets. Instead, know the rules, be realistic in setting expectations, and enjoy helping your donors make timely gifts.