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# irs guidelines on new qualified appraisal rules

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March 2007

## practice areas

transactional tax

Under current law, a taxpayer is required to obtain a qualified appraisal for donated property for which a charitable deduction of more than \$5,000 is claimed and in certain instances, an appraisal summary must be attached to the income tax return on which the deduction is claimed. As briefly discussed in the prior issue of the MSK Charitable Sector Letter, the Pension Protection Act of 2006 provided new statutory definitions of qualified appraisal and qualified appraiser for tax returns filed after August 17, 2006.

Under the new substantially more stringent standards, the term "qualified appraisal" means an appraisal that is (1) treated as a qualified appraisal under regulations and other guidance issued by the IRS, and (2) conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations.

The term "qualified appraiser" is defined to mean an individual who:

- (1) has earned an appraisal designation from a recognized professional appraisal organization or has otherwise met minimum education and experience requirements to be determined by the IRS;
- (2) regularly performs appraisals for which the individual receives compensation;
- (3) demonstrates verifiable education and experience in valuing the type of property for which the appraisal is being performed;
- (4) has not been prohibited from practicing before the IRS at any time during the three years preceding the date of the appraisal; and
- (5) is not excluded from being a qualified appraiser under applicable Treasury regulations.

As regulations under this new provision have not been published, these new standards created many uncertainties. For example, to be a qualified appraiser under the new definitions, an appraiser must either have an appraisal



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designation from a professional appraisal organization or have "otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary." An appraiser holding a designation (such as MAI or ASA) from the Appraisal Institute or the American Society of Appraisers would appear to be a qualified appraiser. However, many appraisers do not hold such designations and must therefore meet the education and experience requirements. As of the effective date of the new definitions, the regulations have not yet been issued. Therefore, it was unclear how an appraiser without a designation such as a MAI or ASA could qualify under the new rules.

To address these concerns, on October 19, 2006, the IRS issued Notice 2006-96 to provide transitional guidance relating to these terms. Until the governing regulations are published, taxpayers can rely on the Notice for claims filed after August 17, 2006 and before the effective date of the expected regulations.

The terms of the Notice provide that an appraisal will be treated as a qualified appraisal if it complies with all of the requirements of the existing regulations (except to the extent that they are inconsistent with the new law) and is conducted by a qualified appraiser in accordance with generally accepted appraisal standards. In its discussion of generally accepted appraisal standards, the Notice refers to the Uniform Standards of Professional Appraisal Practice ("USPAP"). If an appraisal is consistent with the substance and principals of USPAP, it will be considered to meet generally accepted appraisal standards. For more information, please see <http://www.appraisalfoundation.org>.

The existing regulations provide that to be a qualified appraisal, a document must relate to an appraisal made less than 60 days before the contribution date and before the due date of the return where the donor first claims the deduction. The appraisal must be prepared, signed, and dated by a qualified appraiser and cannot involve a prohibited appraisal fee. The appraisal must also contain specific information listed in the regulations. In addition, a separate qualified appraisal must be obtained for each item of property that is not included in a group of similar items.

The Notice further clarifies the meaning of the terms "verifiable education and experience" and "minimum education and experience requirements."

An appraiser will be treated as having demonstrated "verifiable education and experience" in valuing the property if the appraiser makes a declaration in the appraisal that, because of the appraiser's background, experience, education, and membership in professional associations, the appraiser is qualified to make appraisals of the type of property being valued.

To meet the minimum education and experience requirements to appraise property other than real property, the Notice states different rules for tax returns filed on or before February 16, 2007 and thereafter.

For returns filed on or before February 16, 2007, the minimum education and experience requirements are met if the appraiser satisfies the requirements of the current regulations. Under current regulations, an appraiser must make a declaration relating to his or her qualification in the appraisal summary and hold himself or herself out to the public as an appraiser who performs appraisals on a regular basis. But even with a declaration, an individual is not a qualified appraiser if the donor has knowledge of facts that would lead a reasonable person to expect the



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appraiser to falsely overstate the value of the donated property. This would be the case where the donor and appraiser agree that the appraiser will value the property at a certain amount and the donor knows that the amount exceeds the property's fair market value.

Additionally, under the existing regulations, the following individuals cannot be qualified appraisers:

the donor or taxpayer who claims the charitable deduction;

a party to the transaction in which the donor acquired the property, unless the property is donated within two months of the acquisition date and its appraised value does not exceed its acquisition price;

the donee;

any person employed by, related to, or married to anyone in one of the three categories described above; and

any person regularly used by anyone in one of the three categories described above who does not perform a majority of his or her appraisals during his or her taxable year for other persons.

For returns filed after February 16, 2007, the Notice provides additional requirements. A qualified appraiser is required to have (1) successfully completed college or professional-level coursework that is relevant to the property being valued, (2) obtained at least two years of experience in the trade or business of buying, selling, or valuing the type of property being valued, and (3) fully described in the appraisal the appraiser's education and experience that qualify the appraiser to value the subject property. In addition, the required declaration to the appraisal summary must contain an additional statement that the appraiser understands that he or she may be subject to civil penalty for preparing an appraisal resulting in a substantial or gross valuation misstatement.

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