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The Charitable Deduction for Individuals: A Brief Legislative History

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SUMMARY

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The Charitable Deduction for Individuals: A Brief Legislative History

This report provides a brief history of the major legislative changes to the charitable deduction that have occurred over the past 100 years, focusing on changes to the amount that taxpayers could deduct. Over the past 100 years, Congress has generally increased the amount that eligible taxpayers can deduct for their charitable donations. These changes are summarized in the below table.

As Congress has expanded the amount that can be deducted by those who claim the deduction, policymakers have debated the deduction's effectiveness at increasing charitable giving and the broader role of government subsidies for the philanthropic sector—a discussion that continues to this day.

Major Legislative Changes to the Charitable Deduction for Individuals, 1917-Present

Year	Public Law	Legislative Changes
1917	P.L. 65-50	Enacted the charitable deduction for individuals. Applicable to contributions of cash or gifts to organizations operated for religious, charitable, scientific, or education purposes or for the prevention of cruelty to animals or children. Maximum allowable deduction capped at 15% of taxable income.
1924	P.L. 68-176	Enacted the unlimited charitable deduction (UCD), which waived the 15% limitation for taxpayers who made consistently large charitable contributions.
1944	P.L. 78-315	Changed income measure for limitation from taxable income to adjusted gross income (AGI). Hence, charitable deduction was limited to 15% of AGI.
1952	P.L. 82-465	Increased charitable contribution limitation to 20% of AGI.
1954	P.L. 83-591	Increased charitable contribution limitation to 30% of AGI for donations to churches, educational institutions, or hospitals. *(Donations to other organizations still subject to the 20% AGI limit.)*
1964	P.L. 88-272	Expanded the list of organizations for which taxpayers were subject to the 30% AGI limitation to include most charitable organizations, except private nonoperating foundations. *(Donations to private nonoperating foundations were still subject to the 20% AGI limit.)*
1969	P.L. 91-172	Phased out the UCD and increased the AGI limit to 50% of AGI for cash and ordinary income contributions to charities. *(Gifts of appreciated property to public charities were still subject to the 30% limitation. Gifts to private nonoperating foundations [both of cash and appreciated property] were still subject to the 20% AGI limit.)*
1981	P.L. 97-34	Enacted a temporary above-the-line charitable deduction for taxpayers who did not itemize their deductions. This provision expired as scheduled at the end of 1986.
1984	P.L. 98-369	Increased the AGI limit to 30% for gifts of cash or ordinary income property to donations made to private nonoperating foundations. *(Gifts of long-term capital gain property to private nonoperating foundations were still subject to the 20% of AGI limit.)*
2017	P.L. 115-97	Increased the AGI limit to 60% for gifts of cash to charities.

Source: CRS analysis of public laws and the Joint Committee on Taxation.

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Introduction

This report provides a brief history of the major legislative changes to the charitable deduction for individuals, from its enactment in 1917 through the recent changes enacted at the end of 2017. Policymakers considering changes to this tax benefit may find it helpful to understand how this benefit has evolved over the past 100 years. This report does not address all the legislative changes made to this tax benefit, nor does it provide a broad overview of charitable giving in general, charitable giving tax incentives, their economic effects, or policy options to modify them. Those issues are discussed in CRS Report R45922, *Tax Issues Relating to Charitable Contributions and Organizations*, by Jane G. Gravelle, Donald J. Marples, and Molly F. Sherlock, and CRS In Focus IF11022, *The Charitable Deduction for Individuals*, by Margot L. Crandall-Hollick and Molly F. Sherlock.

This report begins with a brief overview of the current charitable deduction for individuals. It then describes major legislative changes made to the deduction from 1917 through the present day, with the most recent changes being those made in 2017. For the purposes of this report, major legislative changes include those that changed the amount that taxpayers could deduct. The bills summarized in this report do not include those that temporarily modified the charitable deduction in response to a disaster.[1] Laws that modified definitions[2] or changed substantiation requirements for taxpayers claiming the deduction are also generally excluded.[3] This report will be updated as necessary to reflect future legislative changes.

Current Tax Benefit for Individual Charitable Donations

Under current law, taxpayers who itemize their deductions can—subject to certain limitations—deduct charitable donations to qualifying organizations. (Individuals who take the standard deduction may not deduct their charitable contributions.) Deductions that cannot be claimed in the current tax year can be carried forward for up to five years, subject to certain limitations.

Types of Qualifying Organizations

Under current law, charitable contributions are tax deductible when made to qualifying Section 501(c)(3) organizations, governmental units, veterans' organizations, fraternal organizations, and cemetery companies. A Section 501(c)(3) organization is either a public charity or private foundation.[4]

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[1] For an overview of some recent charitable giving incentives for disasters, see CRS Report R45864, *Tax Policy and Disaster Recovery*, by Molly F. Sherlock and Jennifer Teefy.

[2] For example, in 1934, §23(o)(2) of the Revenue Act of 1934 (P.L. 73-216) included a provision that prohibited a deduction for contributions made to organizations whose activities were substantially composed of attempting to influence legislation.

[3] For example, the Pension Protection Act of 2006 (P.L. 109-280) included a provision that requires donors to keep reliable written records of their charitable contributions. For contributions of at least $250 in value, the donor has to obtain a contemporaneous written acknowledgment from the organization. Additional requirements apply if the contribution is of high-value property. In addition, under the law taxpayers are penalized for substantial valuation misstatements and substantial estate or gift tax valuation understatements.

[4] Joint Committee on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions*, October 14, 2011, JCX-55-11, p. 13.

Private foundations often are tightly controlled, receive significant portions of their funds from a small number of donors or a single source, and make grants to other organizations rather than directly carry out charitable activities.[5] Most private foundations—91% of all private foundations in 2015[6]—primarily make grants to other charitable organizations and to individuals. These foundations are referred to as *nonoperating foundations*. Foundations that directly operate their own charitable programs are referred to as *operating foundations*.

In contrast, public charities tend to have broad public support and provide charitable services directly to beneficiaries.[7] Public charities include organizations "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition … or for the prevention of cruelty to children or animals."[8]

Types of Donations

Tax-deductible donations to qualifying organizations can be in the form of cash, securities, or property. Properties or securities held for more than a year are often referred to as *long-term capital gain properties*. Properties or securities held for less than a year are often referred to as *short-term capital gain properties.* (For more information on general valuation rules of noncash property, see **Appendix B**.) Depending on (1) the type of property donated and (2) the type of qualifying organization that receives the donations, there are limitations on the total dollar amount that the taxpayer can deduct, as illustrated in **Table 1**. The limitations are defined as a percentage of the taxpayer's adjusted gross income (AGI).[9]

[5] For more information, see Joint Committee on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions*, October 14, 2011, JCX-55-11, and CRS Report 96-264, *Frequently Asked Questions About Tax-Exempt Organizations*.

[6] Internal Revenue Service, *SOI Tax Stats—Domestic Private Foundation and Charitable Trust Statistics*, Table 1. Domestic Private Foundations: Number and Selected Financial Data, by Type, https://www.irs.gov/statistics/soi-tax-stats-domestic-private-foundation-and-charitable-trust-statistics.

[7] §501(c)(3) organizations are presumed to be private foundations and, if they want to be treated as public charities, must generally tell the IRS how they qualify for public charity status based on the support and control tests found in Internal Revenue Code (IRC) §509. Specifically, "[p]rivate foundations are defined under section 509(a) as all organizations described in section 501(c)(3) other than an organization granted public charity status by reason of: (1) being a specified type of organization (i.e., churches, schools, hospitals and certain other medical organizations, certain organizations providing assistance to colleges and universities, or a governmental unit); (2) receiving a substantial part of its support from governmental units or direct or indirect contributions from the general public; or (3) providing support to another section 501(c)(3) entity that is not a private foundation." Joint Committee on Taxation, *Description of Present Law Relating to Section 501(c)(3) Organizations and Summary of Section 501(c)(3)-Related Provisions of the Pension Protection Act of 2006 and Proposed Legislative Proposals*, July 19, 2007, JCX-53-07, p. 8.

[8] IRC §501(c)(3). For more information on the distinction between private foundations and public charities, see Joint Committee on Taxation, *Historical Development and Present law of the Federal Tax Exemption for Charities and Other Tax-Exempt Organizations*, April 19, 2005, JCX-29-05.

[9] Adjusted gross income (AGI) is equal to a taxpayer's total income (e.g., wages and salary income, investment income, passthrough business income, farm income, rents and royalties) minus any above-the-line deductions for which the taxpayer may be eligible. Above-the-line deductions are available to taxpayers regardless of whether they itemize deductions or claim the standard deduction. For more information, see CRS Report RL30110, *Federal Individual Income Tax Terms: An Explanation*, by Mark P. Keightley; CRS Report R45145, *Overview of the Federal Tax System in 2019*, by Molly F. Sherlock and Donald J. Marples; and CRS Infographic IG10014, *The U.S. Individual Income Tax System, 2019*, by Molly F. Sherlock.

Table 1. AGI Limitations on Charitable Deduction for Individuals, by Recipient Organization and Type of Property Donated

Type of Property Donated	Recipient Organization	Limitation on the Amount a Taxpayer Can Deduct
Cash (or ordinary income or short-term capital gain property)	Public charity; private operating foundation; federal, state, local government	60% of AGI (2018-2025) for cash 50% of AGI for ordinary income or short-term capital gain property (and cash after 2025)
	Private nonoperating foundation[a]	30% of AGI
Long-term capital gain property	Public charity; private operating foundation	30% of AGI
	Private nonoperating foundation[a]	20% of AGI

Source: *IRS Publication 526, Charitable Contributions* and Internal Revenue Code (IRC) Section 170.

Notes: These are general rules, and there are numerous exceptions. AGI = adjusted gross income.

a. This includes contributions to veterans' organizations, fraternal societies, and nonprofit cemeteries. In addition, not all nonoperating foundations are subject to the 30% limit.

History of the Charitable Deduction

Enacted in 1917, the deduction for charitable giving has changed over the years from "a short statutory provision into a complex set of rules."[10] Below is a brief legislative history of the major legislative changes to the charitable deduction that have occurred over the past 100 years, focusing on changes to the amount that taxpayers could deduct.[11] **Table 2** summarizes these changes.

Over the past 100 years, Congress has generally increased the amount that eligible taxpayers can deduct for their charitable donation. The history of the charitable deduction illustrates two main policy objectives of this benefit. In its early years, the charitable deduction served to ensure that resources given to charity would not be treated as income for the purposes of taxation. When the charitable deduction was created, the income tax was in its early years, and applied only to the very top of the income distribution. Thus, when the deduction was created, it could be viewed as having been designed to "protect voluntary giving to public goods by rich industrialists who had made their fortunes in business."[12] Today, many policymakers are focused on the charitable deduction's impact on giving, and its efficacy at inducing additional giving. As the deduction has changed over time, policymakers have continued to discuss its effectiveness at increasing

[10] Vada Waters Lindsey, "The Charitable Contribution Deduction: A Historical Review and Look to the Future," *Nebraska Law Review*, vol. 81, no. 1056 (2003), p. 1057.

[11] For a detailed summary of legislative changes to the charitable deduction, see Joint Committee on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions*, October 14, 2011, JCX-55-11; Vada Waters Lindsey, "The Charitable Contribution Deduction: A Historical Review and Look to the Future," *Nebraska Law Review*, vol. 81, no. 1056 (2003); and John Y. Taggart, "The Charitable Deduction," *NYU Law Review*, vol. 26 (1970).

[12] Nicolas J. Duquette, "Founders' Fortunes and Philanthropy: A History of the U.S. Charitable-Contribution Deduction," *Business History Review*, 2019, p. 2.

charitable giving, the broader role of the government in the philanthropic sector, and reform proposals—a discussion that continues to this day.[13]

Table 2. Summary of Major Legislative Changes Made to the Charitable Deduction for Individuals, 1917-Present

Year	Public Law	Legislative Changes
1917	P.L. 65-50	Enacted the charitable deduction for individuals. Applicable to contributions of cash or gifts to organizations operated for religious, charitable, scientific, or education purposes or for the prevention of cruelty to animals or children. Maximum allowable deduction capped at 15% of taxable income.
1924	P.L. 68-176	Enacted the unlimited charitable deduction (UCD), which waived the 15% limitation for taxpayers who made consistently large charitable contributions.
1944	P.L. 78-315	Changed the income measure for deduction limitation from taxable income to adjusted gross income (AGI). Hence, charitable deduction was limited to 15% of AGI.
1952	P.L. 82-465	Increased charitable contribution limitation to 20% of AGI.
1954	P.L. 83-591	Increase charitable contribution limitation to 30% of AGI for donations to churches, educational institutions, or hospitals. *(Donations to other organizations still subject to the 20% AGI limit.)*
1964	P.L. 88-272	Expanded the list of organizations for which taxpayers were subject to the 30% AGI limitation to include most charitable organizations, except private nonoperating foundations. *(Donations to private nonoperating foundations were still subject to the 20% AGI limit.)*
1969	P.L. 91-172	Phased out the UCD and increased the AGI limitation to 50% of AGI for cash and ordinary income contributions to charities. (*Gifts of appreciated property to public charities were still subject to the 30% limitation. Gifts to private nonoperating foundations [both of cash and appreciated property] were still subject to the 20% AGI limit.)*
1981	P.L. 97-34	Enacted a temporary above-the-line charitable deduction for taxpayers who did not itemize their deductions. This provision expired as scheduled at the end of 1986.
1984	P.L. 98-369	Increased the AGI limitation to 30% for gifts of cash or ordinary income property to donations made to private nonoperating foundations. *(Gifts of long-term capital gain property to private nonoperating foundations were still subject to the 20% of AGI limit.)*
2017	P.L. 115-97	Increased the AGI limitation to 60% for gifts of cash to charities.

Source: CRS analysis of public laws and the Joint Committee on Taxation.

The War Income Tax Revenue Act of 1917

The charitable deduction was initially enacted to offset the potential negative effects of increased income taxes on charitable giving among the wealthy. The federal income tax,[14] enacted four

[13] For example, see Senate Committee on Finance, *Charities and Charitable Giving: Proposals for Reform*, April 5, 2005, https://www.finance.senate.gov/hearings/-charities-and-charitable-giving-proposals-for-reform; Senate Committee on Finance, *Tax Reform Option: Incentives for Charitable Giving*, October 8, 2011, S. HRG. 112–646. In addition, see Congressional Budget Office, *Curtail the Deduction for Charitable Giving*, Options for Reducing the Deficit: 2019 to 2028, December 13, 2018, https://www.cbo.gov/budget-options/2018/54790.

[14] While Congress had enacted an income tax in 1894, it was declared unconstitutional by the Supreme Court in 1895. The passage of the Sixteenth Amendment in February 1913 preceded passage of the income tax in October of that year.

years earlier as part of the Tariff Act of 1913, generally applied a top rate of 7% to only the wealthiest Americans.[15] The War Income Tax Revenue Act of 1917 (P.L. 65-50) increased federal income tax rates—the top rate on individuals rose to 67% by 1917[16]—as a way to pay for the costs of the United States' involvement in World War I. According to the Joint Committee on Taxation (JCT),[17] some

> [l]egislators feared that the [tax] increase would reduce individuals' income "surplus" from which they supported charity. It was thought that a decrease in private support would create an increased need for public support and even higher rates, so the [charitable] deduction was offered as a compromise.

In short, some policymakers were concerned that without the charitable deduction, wealthy taxpayers subjected to these higher tax rates would no longer contribute to charities or institutions of higher education[18] (or would contribute less). As Senator Hollis[19] stated,

> Usually people contribute to charities and educational objects out of their surplus. After they have done everything else they want to do, after they have educated their children and traveled and spent their money on everything they really want or think they want, then, if they have something left over, they will contribute it to a college or to the Red Cross or for some scientific purposes. Now when war comes and we impose these very heavy taxes on income, that will be the first place where wealthy men will be tempted to economize, namely in donations to charity. They will say, "Charity begins at home." I should not favor allowing any man to deduct all of his contributions to these objects from his income-tax return, but if we limit it to 20 percent of his income we cannot be doing much harm to the Public Treasury. Look at it this way: For every dollar that a man contributes for these public charities, educational, scientific, or otherwise, the public gets 100 percent; it is all devoted to that purpose.

And since "many believed charities could deliver social services better than the government,"[20] a drop in funding to charitable groups could have led to what many may have perceived as the inefficient provision of social services and public goods by the government.

The law allowed a deduction for cash or gifts made to organizations operated for religious, charitable, scientific, or education purposes, or for the prevention of cruelty to animals or

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For an overview of federal tax policy before 1913, see Sheldon D. Pollack, "Origins of the Modern Income Tax, 1894-1913," *The Tax Lawyer*, vol. 66, no. 2 (Winter 2013).

[15] According to the statute, the first $3,000 of income was exempt from taxation for an unmarried taxpayer, versus $4,000 for a married taxpayer. In 2018 dollars, these amounts equal approximately $77,000 and $103,000. IRS data from 1916 indicate that roughly three-quarters of all taxpayers at the time had income over $10,000. In 2018 dollars, that amount equals roughly a quarter of a million dollars. See Revenue Act of 1913, Section II, C., 38 Stat. 114, 168; the Bureau of Labor Statistics CPI Inflation Calculator https://www.bls.gov/data/inflation_calculator.htm; and Table 2 in Treasury Department United States Internal Revenue, *Statistics of Income Compiled from the Returns for 1916 Under the Direction of the Commissioner of Internal Revenue*, Treasury Department Document No. 2817, 1918.

[16] See Louis Alan Talley, "A Concise History of U.S. Federal Taxation," *CRS Report for Congress 90-963*, June 4, 1990 (available to congressional clients upon request). The increase in marginal rates from 67% to 77% between 1917 and 1918 was a result of legislative changes made by the Revenue Act of 1918.

[17] Joint Committee on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions*, October 14, 2011, JCX-55-11, p. 4.

[18] Ellen P. Aprill, "Churches, Politics, and the Charitable Contribution Deduction," *Boston College Law Review*, vol. 42, no. 843 (July 2001), p. 849.

[19] Senator Hollis, *Congressional Record*, vol. 55 (September 7, 1917), p. 6728.

[20] Joint Committee on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions*, October 14, 2011, JCX-55-11, p. 4.

children.[21] The overall amount that could be deducted was limited to 15% of net taxable income[22] "to ensure that individual taxpayers could not eliminate their tax liability through the deduction."[23]

The Revenue Act of 1924

Several years later, Congress waived the 15% limitation for taxpayers who made consistently large charitable donations. Specifically, as a result of the Revenue Act of 1924 (P.L. 68-176), taxpayers who donated "more than 90% of their net taxable income in the current year and in each of the previous 10 years"[24] were not subject to the 15% net taxable income limitation. This provision was often referred to as the "Philadelphia nun" provision, after Mary Katherine Drexel, a wealthy Philadelphia native who became a nun and underwrote her charitable activities from her sizable inheritance.[25] (In later years, it was also referred to as the "unlimited charitable deduction" (UCD), or "unlimited charitable contribution deduction.")

The Individual Income Tax Act of 1944

In 1944, Congress changed the limitation of the charitable deduction, which effectively increased the maximum amount that taxpayers could deduct. As previously discussed, for most taxpayers the charitable deduction was limited to 15% of net taxable income. The Individual Income Tax Act of 1944 (P.L. 78-315) changed the measurement of this limitation from net taxable income to adjusted gross income. Since AGI was generally larger than net taxable income, the maximum amount that could be deducted in dollar terms was larger.[26]

This law also created a standard deduction, which some charities worried would result in a reduction in charitable giving. The federal income tax, which before the early 1940s had been levied only on high-income Americans, was expanded to apply to most working-age Americans by the end of World War II. According to the IRS,[27]

> In 1939 only about five percent of American workers paid income tax. The United States' entrance into World War II changed that figure. The demands of war production put almost

[21] IRC §501(c)(3). For additional information, see Vada Waters Lindsey, "The Charitable Contribution Deduction: A Historical Review and Look to the Future," *Nebraska Law Review*, vol. 81, no. 1056 (2003), p. 1061.

[22] Net taxable income was defined as gross income less allowable deductions except deductions for charitable contributions. Net taxable income included capital gains. Vada Waters Lindsey, "The Charitable Contribution Deduction: A Historical Review and Look to the Future," *Nebraska Law Review*, vol. 81, no. 1056 (2003), p. 1062.

[23] Joint Committee on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions*, October 14, 2011, JCX-55-11, p. 4.

[24] Joint Committee on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions*, October 14, 2011, JCX-55-11, p. 4.

[25] For more information, see Donald L. Barlett and James B. Steele, *America: Who Really Pays the Taxes?* (New York: Touchstone, 1994). Mary Katherine Drexel, who became a nun in 1889 and was referred to as Mother Drexel, was reported to have used her $6 million inheritance to feed, educate, and clothe the poor. Even with the 15% charitable deduction, a substantial portion of Mother Drexel's income was subject to taxation. According to one source, the Philadelphia nun provision was enacted "to free from income taxation one who is habitually contributing to benevolent organizations amounts equaling virtually his entire income." See J. S. Seidman, *Seidman's Legislative History of Federal Income Tax Laws, 1938-1861* (1938), p. 734.

[26] Vada Waters Lindsey, "The Charitable Contribution Deduction: A Historical Review and Look to the Future," *Nebraska Law Review*, vol. 81, no. 1056 (2003), p. 1062.

[27] See Internal Revenue Service, *Understanding Taxes: Taxes in U.S. History*, https://apps.irs.gov/app/understandingTaxes/teacher/whys_thm02_les05.jsp.

> every American back to work, but the expense of the war still exceeded tax-generated revenue. President Roosevelt's proposed Revenue Act of 1942 introduced the broadest and most progressive tax in American history, the Victory Tax. Now, about 75 percent of American workers would pay income taxes.

This expansion was driven by increasing needs for revenue to finance World War II expenses. As more Americans became subject to the federal income tax, Congress became interested in simplifying tax preparation for these new taxpayers, which motivated the creation of a standard deduction. However, some worried that among those who used the standard deduction, there would be a reduction in charitable giving since there would be no additional tax benefit for these donations.

Others who advocated for the standard deduction contended that charitable contributions were made for more than just financial reasons, and that especially among lower- and middle-income taxpayers (who were most likely to claim the standard deduction), the tax benefit for giving was not an important factor in their decisions to give. According to Senator Walter George, Chairman of the Senate Finance Committee,[28]

> The committee does not believe that it can be proved that a tax incentive has been an important factor in the making of such gifts by individuals having less than $5,000 of adjusted gross income, and certainly the $500 standard deduction will not remove the tax incentive for persons in the higher brackets, upon whom the charities depend for contributions in substantial amounts.

Acts Increasing the AGI Limitations: 1952-1964

In 1952, as part of P.L. 82-465, Congress further increased the maximum amount taxpayers could deduct, raising the limitation to 20% of AGI.

In 1954, Congress further increased the maximum deduction limit to 30% of AGI (P.L. 83-591)[29] for any contributions to certain charitable organizations[30]—namely churches, educational institutions, or hospitals.[31] The 10% of additional AGI that taxpayers could deduct was allowable only for contributions made to one of these eligible organizations. Deductible donations to other eligible organizations were still limited to 20% of AGI. One commentator noted that this was "the first time that Congress encouraged certain charitable giving by granting more generous deductions for donations to certain charitable organizations than to others … [to] encourage additional contributions to these organizations to offset their rising costs and modest returns on endowment funds."[32]

Congress expanded the list of organizations for which taxpayers could claim the 30% charitable deduction as part of the Revenue Act of 1964 (P.L. 88-272)[33] to include those that "receive a

[28] Senator George, *Congressional Record*, vol. 90 (May 19, 1944).

[29] The 1954 Internal Revenue Code (IRC) also renumbered the sections of the IRC, consolidating three sections of the 1939 code that pertained to charitable contributions in IRC §170. See U.S. Congress, House Committee on Ways and Means, *Report of the Committee on Ways and Means House of Representatives to Accompany H.R. 8399, A Bill to Revise the Internal Revenue Laws of the United States*, 83rd Cong., 2nd sess., March 9, 1954, p. 25.

[30] The Revenue Act of 1964 (P.L. 88-262) expanded the list of organizations that qualified for the 30% of AGI limitation.

[31] IRC of 1954 §170(b)(1)(A)(i)-(iii).

[32] See Vada Waters Lindsey, "The Charitable Contribution Deduction: A Historical Review and Look to the Future," *Nebraska Law Review*, vol. 81, no. 1056 (2003), pp. 1063.

[33] The law also allowed taxpayers to carry over contributions in excess of the 30% limit for five years.

substantial part of [their] support from a governmental unit … or from direct or indirect contributions from the general public."[34] This effectively expanded the 30% AGI limitation to most charitable organizations except private nonoperating foundations, which were still subject to the 20% limitation. In addition, the law included a provision that allowed for charitable contributions in excess of the AGI limits to be carried forward up to five years. This five-year carryforward allows taxpayers who contributions exceed the AGI limit in a given year to still potentially receive a tax benefit from that contribution in future years.[35]

The Tax Reform of 1969

The Tax Reform of 1969 (P.L. 91-172) made several modifications to the charitable deduction, including increasing the maximum AGI limits, phasing out the "Philadelphia nun" provision, and creating certain limitations on donations of appreciated property. Many of the current parameters of the charitable deduction for individuals were enacted as part of this law.

At the time that Congress was debating this legislation, there was increased concern that taxpayers were using tax benefits like the charitable deduction to avoid paying income taxes.[36] In particular,

> … the unlimited charitable contribution deduction (UCD) had become a sanctuary in which many of the very wealthy were sheltered from the income tax. Prior to its repeal, the UCD was being used by an estimated 100 taxpayers who generally had economic income in excess of one million dollars. Since the UCD had a particular appeal to taxpayers having large amounts of appreciated capital which could be donated to charitable institutions, with the deduction based on the full market value rather than acquisition value, it not surprisingly became a prime target for reformers.[37]

The Tax Reform Act of 1969 phased out the "Philadelphia nun provision" over five years while also raising the maximum AGI limitation to 50% of AGI for donations of cash/short-term capital gain property to public charities. The increase in the AGI limit was intended to "offset any decreased incentive resulting from the repeal of the unlimited charitable contributions deduction."[38] In addition, the increased AGI limitation was intended to

> [s]trengthen the incentive effect of the charitable contributions deduction for taxpayers.… It is believed that the increase in the limitation will benefit taxpayers who donate substantial portions of their income to charity and for whom the incentive effect of the deduction is strong—primarily taxpayers in the middle- and upper-income ranges.[39]

The new 50% limitation generally *did not* apply to gifts of property that had appreciated in value (e.g., capital gains), which were still generally subject to the 30% AGI limitation. In addition, the

[34] §209 of P.L. 88-272.

[35] See §209(c) of P.L. 88-272. Taxpayers electing the UCD were prohibited from using this five-year carryforward.

[36] See Vada Waters Lindsey, "The Charitable Contribution Deduction: A Historical Review and Look to the Future," *Nebraska Law Review*, vol. 81, no. 1056 (2003); and Donald L. Barlett and James B. Steele, *America: Who Really Pays the Taxes?* (New York: Touchstone, 1994).

[37] John Holt Myers and James W. Quiggle, "Charitable Contributions and Bequests by Individuals: The Impact of the Tax Reform Act," *Fordham Law Review*, vol. 39, no. 2 (1970), p. 206.

[38] Joint Committee on Taxation, *Summary of H.R. 13270, the Tax Reform Act of 1969*, 91st Cong., 1st sess., August 18, 1969, p. 31.

[39] Joint Committee on Taxation, *Summary of H.R. 13270, the Tax Reform Act of 1969*, 91st Cong., 1st sess., August 18, 1969, p. 75.

20% AGI limitation for donations to private nonoperating foundations (irrespective of the form of the donation) was unchanged by the law.[40]

The Economic Recovery Act of 1981

Under the Economic Recovery Act of 1981 (P.L. 97-34), taxpayers who did not itemize their deductions—i.e., those who took the standard deduction—could claim a new deduction for charitable giving. This was a temporary provision that went into effect in 1982 and was scheduled to expire at the end of 1986. (The law made no change to the itemized deduction for charitable giving.) The amount that nonitemizers could deduct was limited to a percentage of the contributed amount, subject in some years to an additional fixed dollar cap. In 1982 and 1983, 25% of contributions could be deducted, subject to a $100 cap. In 1984, the contribution percentage remained unchanged (25%), but the dollar cap rose to $300. In 1985, 50% of contributions could be deducted, and the contribution cap was eliminated, and in 1986 100% of contributions could be deducted with no contribution cap.[41] In addition to these caps, the amounts that could be deducted were also subject to the AGI limits applicable to the itemized deduction for charitable giving.

This temporary provision was opposed by the Treasury Department and some economists at the time. For example, Donald Lubick, Assistant Secretary for Tax Policy at the Treasury Department, argued that the main beneficiaries of the above-the-line deduction—lower- and moderate-income taxpayers—would be less responsive than higher-income taxpayers in terms of additional giving.[42] Lubick argued that the above-the-line deduction "would go, in very large measure, to those who are already giving with respect to their existing gifts,"[43] providing them with a windfall gain. He testified that an above-the-line deduction "would result in a large revenue loss to the Treasury and little increased giving for the charities."[44]

But according to JCT,[45] Congress disagreed.

> The Congress believed that allowing a charitable deduction to nonitemizers stimulates charitable giving, thereby providing more funds for worthwhile nonprofit organizations, many of which provide services that otherwise might have to be provided by the Federal government.

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[40] Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1969 H.R. 13270, 91st Congress, Public Law 91-172*, prepared by Joint Committee on Internal Revenue Taxation, 91st Cong., December 3, 1970, s-16-70, pp. 75-81.

[41] This deduction was generally subject to the same eligibility rules as the itemized deduction for charitable giving. Joint Committee on Taxation, *General Explanation of the Economic Recovery Act of 1981*, December 29, 1981, JCS-71-81, p. 50.

[42] Senate Committee on Finance, *Statement of Donald C. Lubick, Assistant Secretary for Tax Policy, U.S. Treasury Department*, Hearings Before the Subcommittee on Taxation and Debt Management Generally of the Committee on Finance on S. 219, 96th Cong., 2nd sess., January 30, 1980, p. 67.

[43] Senate Committee on Finance, *Statement of Donald C. Lubick, Assistant Secretary for Tax Policy, U.S. Treasury Department*, Hearings Before the Subcommittee on Taxation and Debt Management Generally of the Committee on Finance on S. 219, 96th Cong., 2nd sess., January 30, 1980, p. 51.

[44] Senate Committee on Finance, *Statement of Donald C. Lubick, Assistant Secretary for Tax Policy, U.S. Treasury Department*, Hearings Before the Subcommittee on Taxation and Debt Management Generally of the Committee on Finance on S. 219, 96th Cong., 2nd sess., January 30, 1980, p. 68.

[45] Joint Committee on Taxation, *General Explanation of the Economic Recovery Act of 1981*, December 29, 1981, JCS-71-81, p. 49.

In addition, supporters of this provision believed that "[p]eople ought not be taxed on money they contribute to charitable causes. This should be true whether or not their other economic actions make it advantageous for them to itemize their deductions."[46]

This tax benefit expired as scheduled at the end of 1986, and was not extended as part of the Tax Reform Act of 1986. According to one commentator, "The big idea of the '86 Act was to pare away deductions and credits to broaden the base so you could bring the top rates down. And that was a pretty powerful tide and the nonitemizer [deduction] just wasn't strong enough to swim against that current."[47]

The Deficit Reduction Act of 1984

As part of the Deficit Reduction Act of 1984 (P.L. 98-369), Congress increased the contribution limits on donations of cash or ordinary income property to private nonoperating foundations from 20% of AGI to 30% of AGI.[48] (Donations of long-term capital gain property to private nonoperating foundations remained limited to 20% of AGI.) In explaining this increase, JCT noted the following:

> Because as a general rule public charities and operating foundations directly carry out charitable function and programs, expend charitable donations more promptly and have public involvement, support, and supervision, the Congress concluded that a tax preference for contributions to public charities and operating foundations [50% AGI limitation] continues to be appropriate. However, acknowledging the substantial role of many grant making foundations in private philanthropy, the Congress believed that the extent of this tax preference should be narrowed by increasing to 30 percent the deduction limitation for gifts by individuals of cash and ordinary-income property to nonoperating foundations.[49]

The Tax Cuts and Jobs Act of 2017

At the end of 2017, President Trump signed into law P.L. 115-97, often referred to as the Tax Cuts and Jobs Act (TCJA),[50] which made numerous changes to the federal income tax for individuals and businesses.[51] Among the many changes, the law temporarily increased the AGI limit for cash donations made to public charities from 50% to 60%.[52] This change went into effect in 2018, and is scheduled to expire on December 31, 2025.

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[46] Senate Committee on Finance, *Statement of Hon. Barber B. Conable Jr. A Representative in Congress from the State of New York*, Hearings before the Subcommittee on Taxation and Debt Management Generally of the Committee on Finance on S. 219, 96th Cong., 2nd sess., January 30, 1980, p. 23.

[47] Robert A. Boisture as quoted in *Tax Notes*. See Fred Stokeld, "Should Nonitemizers Get the Charitable Deduction," *Tax Notes*, July 15, 1997, p. 159.

[48] The law also extended the five-year carryover rule to include donations made to private nonoperating foundations.

[49] Joint Committee on Taxation, *General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984 (HR 4170, 99th Congress; Public Law 98-36)*, committee print, 98th Cong., December 31, 1984, 40-926 O, p. 667.

[50] The original title of the law, the Tax Cuts and Jobs Act, was stricken before final passage because it violated what is known as the Byrd rule, a procedural rule that can be raised in the Senate when bills, like the tax bill, are considered under the process of reconciliation. The actual title of the law is "To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018." For more information, see CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule"*, by Bill Heniff Jr.

[51] For more information on the changes made to the tax code by P.L. 115-97, see CRS Report R45092, *The 2017 Tax Revision (P.L. 115-97): Comparison to 2017 Tax Law*, coordinated by Molly F. Sherlock and Donald J. Marples.

[52] According to statute, the 60% limitation applies only if *all charitable donations* made to a public charity are in cash. IRC §170(b)(G). Hence, if a taxpayer made a charitable donation that was in part cash and in part unappreciated

According to the House Ways and Means Committee report that accompanied H.R. 1 (the House-passed version of P.L. 115-9):[53]

> The Committee believes that a robust charitable sector is vital to our economy, and that charitable giving is critical to ensuring that the sector thrives. For this reason, the Committee believes that it is desirable to provide additional incentives for taxpayers to provide monetary and volunteer support to charities. Increasing the charitable percentage limit for cash contributions to public charities will encourage taxpayers to provide essential monetary support to front-line charities.

While this change to the charitable deduction may increase the amount that some taxpayers can deduct and hence may encourage more charitable giving, other changes made by the law are expected to result in an overall reduction in charitable giving.[54] TPC estimates that even after including the increased 60% limitation, the changes TCJA made to the tax code could result in charitable donations falling by 5%.[55]

property (i.e., short-term capital gain property), they would be subject to the 50% limit and not be eligible for the 60% limit. For example, if an individual has AGI of $100,000 and makes a $50,000 donation of short-term capital gain property to a charity (subject to the 50% AGI limit), they cannot deduct any additional cash donations to a public charity. However, according to the Joint Committee on Taxation (JCT), this was not the original congressional intent of this provision. Instead, according to JCT, the 60% limitation "for cash contributions is intended to be applied after (and reduced by) the amount of noncash contributions." Joint Committee on Taxation, *General Explanation of Public Law 115-97*, December 20, 2018, JCS-1-18. Under these coordination rules, if an individual has AGI of $100,000, and makes a $50,000 donation of short-term capital gain property to a charity (subject to the 50% AGI limit), the maximum amount they can deduct in a given year as cash is $10,000. Specifically, the taxpayer calculates the maximum amount they can deduct as short-term property as $50,000 (50% of their AGI) and subtracts this amount from the maximum they can donate as cash, which is $60,000 (60% or $100,000), yielding a maximum cash deduction of $10,000. A draft of the Tax Technical and Clerical Corrections Act includes a provision that "corrects the coordination of the 60-percent limit applicable to cash contributions and the 50-percent limit applicable to noncash contributions. Under the provision, the 60-percent limit for cash contributions is reduced by the amount of certain noncash contributions." As of the date of this report, this bill has not been passed by Congress. For more information, see Joint Committee on Taxation, *Tax Technical and Clerical Corrections Act*, January 2, 2019, JCX-1-19.

[53] Committee on Ways and Means, *Report of the Committee on Ways and Means House of Representatives on H.R. 1 Together with Dissenting and Additional Views*, November 13, 2017, Report 115-409, p. 177.

[54] For more information, see CRS In Focus IF11022, *The Charitable Deduction for Individuals*, by Margot L. Crandall-Hollick and Molly F. Sherlock; Howard Gleckman, *21 Million Taxpayers Will Stop Taking the Charitable Deduction Under The TCJA*, The Tax Policy Center, January 8, 2018, https://www.taxpolicycenter.org/taxvox/21-million-taxpayers-will-stop-taking-charitable-deduction-under-tcja.

[55] Renu Zaretsky, *For Charitable Giving, 'Tis the Season… But Will It Still Be, Post-TCJA?*, Tax Policy Center, TaxVox: Individual Taxes, December 5, 2018, https://www.taxpolicycenter.org/taxvox/charitable-giving-tis-season-will-it-still-be-post-tcja.

Appendix A. Definitions of Commonly Used Terms

Term	Definition
Adjusted gross income (AGI)	Adjusted gross income (AGI) is equal to a taxpayer's total income (e.g., wage and salary income, investment income, passthrough business income, farm income, rents, and royalities) minus any above-the-line deductions for which the taxpayer may be eligible. (Above-the-line deductions are available to taxpayers regardless of whether they itemize deductions or claim the standard deduction.)
Basis	Basis is generally the amount of capital investment in property. In most situations, the basis of an asset is its cost to the taxpayer.
Capital gain property—long term	Long-term capital gain property is a capital asset that, if sold at its fair market value on the day it was donated, would have generated a long-term capital gain. Long-term capital gains are realized when an asset has been held for 12 months or more.
Capital gain property—short term	Short-term capital gain property is a property that, if sold at its fair market value on the day it was donated, would have generated a short-term capital gain. Short-term capital gains are realized when an asset has been held for less than 12 months. For the purposes of the charitable deduction, short-term capital gains and ordinary income property are often treated the same.
Fair market value (FMV)	Fair market value (FMV) is the price that property would sell for on the open market. It is the price that would be agreed on between a willing buyer and a willing seller, with neither being required to act and both having reasonable knowledge of the relevant facts.
Ordinary income property	With respect to individual taxpayers, ordinary income property is a property that would have generated ordinary income or short-term capital gain had it been sold at its fair market value on the date it was donated. Examples include a work of art or manuscript created by the donor. (Ordinary income property with respect to businesses includes goods that are held by the donor for sale to customers in a trade or business—i.e., inventory.)
Private operating foundation	A private operating foundation is a private foundation (which generally has one source of financing and derives its revenue from its investment assets) that primarily operates its own charitable programs.
Private nonoperating foundation	A private nonoperating foundation is a private foundation (which generally has one source of financing and derives its revenue from its investment assets) that primarily makes grants to *other* charitable organizations and to individuals.
Public charity	A public charity is supported on an ongoing basis by public donations from individuals, corporations, trusts, and other legal entities.

Source: IRS Publication 561; IRS Publication 526; Bruce R. Hopkins, *Charitable Giving Law Made Easy* (New York: John Wiley & Sons, 2007); *Historical Development and Present Law of the Federal Tax Exemption for Charities and Other Tax-Exempt Organizations*, April 19, 2005, JCX-29-05.

Appendix B. Valuation of Noncash Donations for the Charitable Deduction

For noncash donations, there are certain rules on how to value the property. Depending on the type of property and the recipient organizations, the property is generally valued either at its basis (i.e., what the taxpayer originally paid for the property) or its fair market value (how much the taxpayer would receive in an open market for the property at the time it is donated), as summarized in **Table B-1**. For an overview of these and other terms often used in the context of the charitable deduction, see **Appendix A**. If a property increases or appreciates in value, its fair market value when sold will be greater than its basis. If property decreases or depreciates in value, its fair market value when sold will be less than its basis. Hence, deducting the fair market value of an appreciated (depreciated) property results in a larger (smaller) deduction for the taxpayer than the basis value of that same property.

Table B-1. Valuation of Property for the Charitable Deduction

	Type of Recipient		
Type of Property	**Public Charity**	**Private Foundations (Nonoperating)[a]**	**Private Foundations (Operating)**
Short-term capital gain / ordinary income property	Basis of the property (fair market value net of any gain)	Basis of the property (fair market value net of any gain)	Basis of the property (fair market value net of any gain)
Long-term capital gain property	Fair market value of property at the time the gift is made	Basis of the property (fair market value net of any gain)	Fair market value of property at the time the gift is made

Source: *IRS Publication 526,| Charitable Contributions* and Internal Revenue Code (IRC) Section 170.

Note: These are general rules, and there are numerous exceptions.

a. Includes qualifying contributions to veterans' organizations, fraternal societies, and nonprofit cemeteries.

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