



IT'S YOUR LEGACY. EXPLORE IT.

TRANSFER INSTRUCTIONS FOR PRIVATELY HELD STOCK

1. The donor should provide information as to whether the company is a C corporation or an S corporation. If the company is an S corporation, additional analysis will be necessary before the Foundation can determine if it will accept the stock. The additional issues to be analyzed in connection with a proposed gift of S corporation stock are summarized in paragraphs 10–16 below.
2. Generally, a written appraisal is needed for non-cash gifts of \$5,000 or more. However, if the non-cash gift is non-publicly traded stock, the applicable threshold is \$10,000.
3. The instructions for IRS Form 8283 set out the appraisal requirements in general. If an appraisal is needed, the donor must obtain a qualified appraisal by an independent third party to determine the value of the property at the time the gift is made. The appraisal must be prepared, signed and dated by a qualified appraiser; prepared not more than 60 days prior to the contribution; and not involve a prohibited type of appraiser fee. The donor's accountant may be a good resource to obtain a referral for an appraiser. The appraisal must be delivered to the donor before the due date (including extensions) of the return on which the donor will first claim a deduction for the stock. If a deduction is first claimed on an amended return, the appraisal must be received before the date the amended return is filed. Greater detail about the required contents of the appraisal can be found in IRS Regulations Section 1.170A-13(c)(3).
4. At the time of the gift, there must be no agreement or other binding commitment between the donor and the corporation to redeem or repurchase the stock from the Foundation. Stated differently, the Foundation must be able to retain the shares if it chooses to do so. If a repurchase agreement exists, the Foundation could be viewed as acting as an agent for the donor and the donor could be deemed to be the seller of the stock and be responsible for the tax attributable to any resulting gain.
5. The donor should provide a copy of the company's most recent financial statements, tax returns, and a copy of any shareholders agreements in effect (including buy-sell agreements) that evidence any restrictions on the sale or transfer of the shares to other shareholders or third parties. This information is necessary to determine if the donor can contribute the stock to the Foundation without having to obtain consent from other shareholders and whether any restrictions may apply to a subsequent sale by the Foundation of the donated shares.
6. A determination should be made as to whether the company owns any real property. If so, it must be determined whether there are any toxic waste/hazardous substance issues related to the property.
7. A description of the company's activities should be obtained to ascertain whether owning the stock could generate any negative or unwanted publicity for the Foundation. If there is any question with respect to this issue, Foundation counsel will be consulted.
8. Because it is likely that the Foundation will be a minority shareholder, the identity and ownership interests of the other shareholders should be determined and an effort made to ascertain whether the Foundation will be treated fairly by the controlling shareholder(s).

9. A determination must be made as to whether there are any laws enacted by the company's state of domicile that may prevent the Foundation from acquiring ownership of the stock.
10. Due to the distinctive tax issues presented by contributions of S Corporation stock, the Foundation does not accept all contributions of S corporation stock that are offered. The Foundation's policy is that potential contributions are to be evaluated on a case-by-case basis.
11. S corporation stock is a unique asset. This is because an S corporation's success or failure depends upon the managerial skills of the entity's directors and shareholders and the Foundation could be subject to certain negative income tax consequences as a result of owning S corporation stock. The Foundation's planned giving staff, in consultation with the Foundation's financial advisors, shall make a recommendation to the Chief Executive Officer of the Cal Poly Foundation as to whether the S corporation stock would be a prudent investment for the Foundation. This recommendation shall be in writing and based upon an analysis of the benefits and burdens (as described herein) of owning the stock. The final determination as to whether a proposed gift of S corporation stock shall be accepted shall be approved, in writing, by the Chief Executive Officer of the Cal Poly Foundation.
12. The Foundation's general policy shall be to sell all S corporation stock as soon as practicable after taking into account the S corporation's current and expected future activities, and the current and expected future value of the S corporation's stock. Only in unusual circumstances will the Foundation retain S corporation stock. Such circumstances shall be determined by Foundation planned giving staff and the Foundation's financial advisors and shall be approved, in writing, by the Chief Executive Officer of the Cal Poly Foundation.
13. If it is determined that S corporation stock will not be immediately sold by the Foundation, it must be ascertained whether the stock will generate positive cash flow, after taking into account the Foundation's obligation to pay all required income taxes on the unrelated business taxable income ("UBTI") that will be generated by the stock. This determination shall be made by Foundation planned giving staff in consultation with Foundation counsel and its financial advisors. As part of this analysis, Foundation planned giving staff shall consult with the Foundation's business office to determine if the expected UBTI that will be generated by the S corporation stock may be offset by deductions realized by the Foundation from other sources.
14. An estimate of the UBTI that may be generated by the S corporation stock attributable to the income generated by the S corporation's operations, and the gain resulting from the sale of the S corporation stock, shall be made to determine the scope of the Foundation's potential tax liability. To make this determination, an estimate of the fair market value of the stock must be made and the donor's adjusted tax basis in the stock must be determined.
15. If it is determined that the S corporation stock will not be immediately sold by the Foundation, an attempt should be made to secure an agreement from the S corporation that it will distribute sufficient cash to the Foundation to allow it to pay its income tax liability (including estimated tax payments) as a result of the UBTI that will be generated by the S corporation's operations.
16. If the donor is seeking "credit" equal to the fair market value of the contributed S corporation stock toward a pledge or other commitment, a reduction to the amount of the credit must be made. This reduction shall reflect the income tax liability that will be incurred by the Foundation attributable to the UBTI that will be generated by the S corporation stock.



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