Written Testimony of Roger Colinvaux[1]
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Hearing on Tax Reform and Charitable Contributions
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Chairman Camp, Ranking Member Levin, Members of the Committee, thank you for inviting me to testify today and for holding this hearing. My testimony will focus on two things. First, the various rationales for the charitable deduction, and what these rationales suggest about reforms. And second on noncash charitable contributions.

I. Rationales for the Deduction – and What Rationale Says about Reform[2]

Although the charitable deduction is almost as old as the income tax, there is no consensus about its role or function in the tax system. Is the deduction merely a way to measure income, and nothing more? Or is the charitable deduction a federal subsidy or tax expenditure, and if so what are we spending the money on? Is it a subsidy just to encourage people to give – because giving makes for an altruistic society? Is it a subsidy designed to let people and not government allocate tax dollars – in effect a government matching grant program? Or is it a subsidy to promote particular activities, such as basic needs? The charitable deduction may be for all of these things to a greater or lesser extent. But depending on which rationale is emphasized, different reforms are suggested.

A. <u>A Base Measurement Rationale</u>. Under a base measurement rationale, the charitable deduction is viewed as just a necessary adjustment to measure income. Charitable expenses are considered to be unlike other personal expenses, and so properly taken out of the tax base. A base measurement approach to the deduction generally means that the government's role in setting a policy for the deduction is or should be somewhat passive. This is because the charitable deduction merely reflects first principles of an income tax.

The base measurement rationale offers clarity on a number of reform proposals. First, under this approach, the tax incentive should remain as a deduction and not be converted to a credit. This is because a deduction, by definition, completely removes the expense from the tax base. A credit on the other hand would subject some charitable expenses to tax, assuming that the rate for the credit is less than the highest marginal rate.

For similar reasons, the base measurement rationale disfavors caps on the deduction. A cap – whether styled as a flat dollar amount, an overall limitation on the benefit from itemized deductions, or set at particular marginal rate – has the effect of putting charitable expenses above the cap amount back into the tax base. This is inconsistent with the base measurement rationale – which holds that charitable expenses

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[1] Associate Professor, Columbus School of Law, The Catholic University of America; Legislation Counsel, Joint Committee on Taxation, 2001-2008.
[2] This portion of the testimony is based on a forthcoming article, *The Charitable Deduction: Changes Should be Informed by Rationale*, to be published March 25th in Tax Notes magazine.

simply are outside of the base. Relatedly, the base measurement rationale suggests that the present law percentage limitations should be eliminated.

However, a base measurement rationale is consistent with placing a floor under the deduction. A floor can be understood as taking into account the fact that there is some aspect of a personal expense from making a contribution. This may take the form of an incidental benefit like a naming right, or simply the warm glow a donor feels from giving to others. This personal component is like a private consumption, and so should not be deductible. A floor – so long as it is low enough – also can be viewed as not significantly affecting ability to pay taxes, which is another part of the base measurement rationale.

The base measurement rationale also has important implications for gifts of noncash property. It follows clearly from this rationale that the ability under present law to deduct the unrealized appreciation in property gifts should be repealed. Allowing a fair market value deduction for gifts of appreciated property lets the donor deduct income never realized. This deduction is therefore not in respect of realized income given away, but offsets other income of the donor not given to charity. This is flatly inconsistent with base measurement.

The base measurement rationale also suggests not adopting a nonitemzer charitable deduction. If a charitable deduction were allowed in addition to the standard deduction, for taxpayers with expenses (including charitable contributions) below the standard deduction amount, the result would be in effect to allow a double deduction for charitable expenses – once as a standard deduction, and again as a charitable deduction. Allowing two deductions for the same expense is contrary to the base measurement idea.

Finally, the base measurement rationale arguably favors limiting the pool of donees that are eligible to receive deductible contributions. Important to the rationale is a definite and protected tax base. However, the broader the definition of eligible donee – and under present law it is broad – the greater the erosion of the tax base. In short, there is nothing immutable about the present law definition of an eligible donee under the base measurement theory. The base could be broadened to cover more expenses that currently are considered charitable, but need not be.

B. Subsidy Rationale. Under a subsidy rationale, charitable expenses generally are properly within the tax base as personal expenditures. The charitable deduction then is an exception to the general rule that disallows deductions for personal expenses. The exception takes on the language of tax expenditure or subsidy – namely, by providing a deduction, the federal government is promoting or encouraging something. In contrast to the base measurement rationale, the federal government has a greater role to play.

A subsidy rationale for the deduction is consistent with a wide variety of changes. Here it is important to consider which strain of the subsidy rationale is being emphasized. One policy is to promote giving as such – i.e., the more giving the better. Here the focus is not on who gives or who receives, but rather on increasing the social good (i.e., giving) in the aggregate. Under this approach, all things equal, whether or how to change the deduction should be based on whether a change will enhance, or not much reduce, giving relative to revenue raised.

For example, the Tax Policy Center has estimated that if the revenue target was to raise approximately $10 billion, it could be raised in at least four different ways, but each with a very different impact on giving.[3] At one end of the spectrum, if present law were replaced with a 15.25% refundable credit – this would raise about $10 billion but also reduce giving in a range of $6 to $10 billion. At the other end, if present law were replaced by a nonitemizer deduction with a 1.7% AGI floor, this would raise about the same amount of revenue but with no decrease in charitable giving overall.

If the policy of the charitable deduction is to promote altruism in society and to let individuals choose how tax revenue should be allocated, then reforms that make the charitable deduction available to more people on an equal basis have some appeal. Here, a nonitemizer deduction might make sense. A nonitemizer deduction would expand the charitable deduction to all taxpayers (instead of just the roughly one-third of taxpayers who itemize), and thus would provide all taxpayers both a federal incentive to give and the ability indirectly to allocate taxpayer dollars.

Relatedly, an emphasis on promoting altruism and choice raises questions of equality and whether some taxpayers should be rewarded more for their choices than others. Retaining the charitable deduction as an itemized deduction magnifies this inequity. In addition, because the incentive takes the form of a deduction, charitable giving is cheapest for the wealthiest taxpayers. Moving to a credit, available to all taxpayers at the same percentage of charitable contributions (irrespective of tax rate or wealth) would make for a more equal distribution of the tax benefit. Similarly, proposals to cap the deduction appear to be motivated in part by equity concerns – because caps would reduce the value of the benefit for the wealthiest taxpayers.

For example the Obama Administration proposal to cap the deduction at 28 percent of the gift[4] (even if the taxpayer's top marginal rate is higher) only makes sense, in terms of the deduction's rationale, in the context of equity – the cap just directly limits the value of the benefit to the wealthy. Not all caps are the same, however. A cap on the overall benefit derived from itemized deductions, could, depending on its design, have the effect of largely eliminating the charitable incentive for those subject to the cap. This is because charitable expenses, unlike some other itemized expenses, are discretionary and so taxpayers subject to the cap might have no incentive to make contributions.

Alternatively, emphasis could be placed less on encouraging giving and private choices as an abstract policy goal, and more on encouraging giving for particular ends. Under current law, a wide variety of organization types may qualify to receive deductible

[3] *See* Roger Colinvaux, Brian Galle & Eugene Steuerle, Evaluating the Charitable Deduction and Proposed Reforms, Urban Institute, Table 6, (June 2012), avail. at http://www.urban.org/publications/412586.html.
[4] The cap would apply to all itemized deductions, and so does not reflect a specific policy with respect to the charitable deduction.

contributions. But the policy of the charitable deduction does not have to be open-ended. Rather, the policy could be to favor organizations that serve the social safety net, or perform more traditional "charitable" functions. If this is the priority, then a credit might make more sense than a deduction, perhaps with higher credit percentages (i.e., a larger tax benefit) for the preferred type of organization.

C. Summary of Rationale Implications. Given the many views, there may be no way to neatly rationalize the deduction. The base measurement rationale contemplates a lesser role of government, favors a deduction over a credit, disfavors caps (including the percentage limits of current law), generally would not support a nonitemizer deduction, is consistent with a floor, calls for repeal of the fair market value deduction for appreciated property, and would permit base broadening by making fewer donees eligible for the deduction. A subsidy rationale is much messier, and may be consistent with any number of changes, depending on which strand of the rationale is emphasized. A desire to maximize giving suggests picking the option that would raise revenue while minimizing the effect on giving. A concern for equity leads more toward caps, a nonitemizer deduction, and converting to a credit. A belief that the deduction should be more in support of basic needs or other type of charity also suggests a credit, or narrowing the scope of the deduction.

Despite the absence of consensus, it is worth noting that a floor is consistent with either of the main rationales for the deduction, and would have considerable administrative benefits by eliminating the need to verify small, especially noncash, contributions. Also, either rationale provides support for narrowing the scope of the deduction so that fewer organizations are eligible.

II. Noncash Contributions

The current debate about the charitable deduction tends to view the deduction monolithically – as one deduction. In reality, however, the charitable deduction has two main aspects. There is one deduction for cash, which is relatively straightforward, and one for property, which is not. The deduction for noncash contributions raises its own set of issues and policy considerations, but has largely been absent from reform discussions – an omission that neglects its importance.

On average, over $45 billion of property is given to eligible donee organizations each year, about 25 percent of the total charitable deduction.[5]

[5] The numbers in the first two columns of the *Table* are derived from the following publications: Pearson Liddell & Janette Wilson, *Individual Noncash Contributions, 2009*, STAT. OF INCOME BULL., Spring 2012 at 62; Liddell & Wilson, *Individual Noncash Contributions, 2008*, STAT. OF INCOME BULL., Winter 2011 at 76; Liddell & Wilson, *Individual Noncash Contributions, 2007*, STAT. OF INCOME BULL., Spring 2010 at 52; Liddell & Wilson, *Individual Noncash Contributions, 2006*, STAT. OF INCOME BULL., Summer 2009 at 67; Janette Wilson, *Individual Noncash Contributions, 2005*, STAT. OF INCOME BULL., Spring 2008 at 68. The percentages in column three are derived from INTERNAL REVENUE SERVICE, STATISTICS OF INCOME DIVISION, TAX STATS, Individual Statistical Tables by Size of Adjusted Gross Income, Returns with Itemized Deductions: Itemized Deductions by Type and by Size of Adjusted Gross Income, Tax Year 2009, 2008, 2007, 2006, 2005, available at http://www.irs.gov/taxstats/indtaxstats/article/0,,id=96981,00.html, by

Deductions for Property Contributions

Year	Total Deductions	Deductions Reported on Form 8283	Property as a percentage of all Charitable Deductions
2009	$31.8 billion	$28 billion	20%
2008	$40.4 billion	$34.6 billion	23%
2007	$58.7 billion	$52.8 billion	29%
2006	$52.6 billion	$46.8 billion	27%
2005	$48.1 billion	$41.1 billion	26%

The deduction for property contributions is thus a significant tax expenditure in its own right, but there has not been a sufficient focus on the costs and benefits of these contributions, or on the underlying policy supporting them.

In a forthcoming article,[6] I argue that the ability to take a charitable deduction for property has resulted in treating property contributions better than cash and created a broken system of rules that are overly generous, hard to administer, inequitable, costly, and damaging to the reputation of the section 501(c)(3) sector and the tax system. These costs are incurred, however, for uncertain benefits. Assessing the benefit to donee organizations from property gifts is difficult for a number of reasons, including overvaluation of property, the need of the donee for the particular property contributed, the use of the property by the donee, the net benefit that actually inures to the donee from the gift, and the timing of the realization of the benefit.

In short, I conclude that it is not clear under present law whether the benefits from property contributions outweigh the costs or whether the federal government should continue, as a general rule, to provide an incentive for property contributions. As a principle going forward, to be both administrable and effective, any tax incentive should be based on encouraging contributions of property at reasonable cost that provide a measurable benefit to the donee, and the deduction should be based upon such benefit. These points, developed in the forthcoming article, are summarized briefly below. For purposes of this testimony, I urge the Committee to take a close look at the deduction for noncash contributions and assess whether the benefits exceed the costs.

A. <u>General Rules for Noncash Contributions</u>. The rules for noncash contributions are incredibly complex. The general rule is to allow a deduction for the fair market value of the property contributed. Layered on top are a series of what are in effect separate deductions based on the type of property. The result is at least ten approaches to property contributions (counting the general rule).[7] For example:

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adding total cash and noncash contributions, and dividing noncash contributions by total contributions). A five-year average is then determined.

[6] Roger Colinvaux, *Charitable Contributions of Property: A Broken System Reimagined*, 50 HARV. J. ON LEGIS. __ (2013) (forthcoming).

[7] Note that if the property is depreciated, the deduction may not exceed fair market value.

- **Vehicles**: deduction allowed based on the sales price of the vehicle.
- **Intellectual property**: deduction allowed equal to the donor's cost, but with a promise of additional deductions in the future if the property earns income for the donee.
- **Inventory**: deduction allowed equal to the donor's cost, but if the inventory is food or scientific property, then a deduction of cost plus one-half of the appreciation not to exceed twice basis may be allowed.
- **Clothing and household items**: deduction at fair market value allowed if the property is in good used condition or better.
- **Art**: deduction allowed at fair market value unless the art was created by the donor or the art is not for use by the donee as part of its mission, in which case the deduction is the donor's cost.
- **Tangible personal property not for a related use of the donee**: deduction allowed equal to the donor's cost.
- **Easements**, **taxidermy**, and **fractional gifts** have their own special rules.

Each of these could be viewed as a distinct tax expenditure or deduction, but conveniently falling under the generic umbrella of the "charitable deduction."

In addition, separate from these property specific deduction rules, there is a generally applicable anti-abuse regime for property contributions. This involves separate reporting on IRS Form 8283, distinct substantiation rules, and requirements for appraisals, among other things.[8] Separate percentage limitations also apply for capital gain property.

The complexity, though maddening, is not surprising. It results from the fact that the general rule for deductions of noncash property has been, from the outset, to allow a deduction for the fair market value of the contributed property, as calculated in the absence of a sale. Such a value-based deduction ultimately leaves the determination of a lucrative tax benefit in the hands of the taxpayer, not the IRS. This leads directly to the need for anti-abuse rules.

The complexity of present law has also occurred because fair market value has proved over time to be an overly generous tax benefit. Because it allows a deduction for unrealized gain,[9] Congress created alternative measures for the deduction while nonetheless retaining fair market value as the general rule. This established the multi-faceted approach of present law.

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[8] *See* Ellen P. Aprill, *Reforming the Charitable Contribution Substantiation Rules*, Urban Institute 2013, avail. at http://www.urban.org/publications/412737.html.

[9] The deduction for unrealized gain has been condemned as "inefficient and unfair," a "clear error," "inequitable," and a "mistake." Evelyn Brody, *Charities in Tax Reform: Threats to Subsidies Overt and Covert*, 66 TENN. L. REV. 687, 720 (1999); Richard Schmalbeck, *Gifts and the Income Tax – An Enduring Puzzle*, 73 LAW & CONTEMP. PROBS. 63, 89 (2010); Daniel Halperin, *A Charitable Contribution of Appreciated Property and the Realization of Built-In Gains*, 56 TAX L. REV. 1, 4 (2002); Wendy C. Gerzog, *From the Greedy to the Needy*, 87 OR. L. REV. 1133, 1158 (2008); Calvin H. Johnson, *Ain't Charity: Disallowing Deduction for Kept Resources*, TAX NOTES (Aug. 2, 2010) at 549.

C. <u>Costs Relating to Noncash Contributions</u>. Apart from revenue loss[10] and complexity, there are many costs to maintaining the deduction for property contributions. For one, the deduction is extremely hard to administer. Policing valuation is notoriously difficult. Small value contributions (of which there are several billion dollars in claimed value each year) generally will not be worth enforcement resources and so are largely unenforceable. Larger contributions are separately reported to the IRS on the Form 8283, but if challenged, are resource-intensive.

Accordingly, instead of directly attacking valuation, the IRS often looks for defects in the substantiation and appraisal process as a basis for denying deductions (e.g., whether all the forms were correctly completed, whether an appraisal was "qualified" under the regulations). This approach has had mixed success in the courts. But if the IRS cannot prevail by attacking the appraisal process, the IRS may not seek a challenge. In other words, the administration of the value-based deduction may well be feasible at the level of process, i.e., whether an appraiser is "qualified." But the costs may become too high if the IRS is forced to engage on the question of value. Furthermore, even at the level of process, enforcement efforts have been wanting. As the Treasury Inspector General for Tax Administration recently estimated, "more than 273,000 taxpayers claimed approximately $3.8 billion in potentially unsubstantiated noncash contributions in Tax Year 2010, which resulted in an estimated $1.1 billion reduction in tax."[11]

There are also important systemic costs associated with the deduction for property contributions. For one, the benefits of the deduction for property flow predominantly to the most affluent. In 2009 for example, of all itemized charitable contributions, 20 percent were of property.[12] Of these property contributions, 34 percent were made by individuals earning $1 million or more of adjusted gross income, representing a mere .592 percent of total returns reporting property contributions (or 6/10 of one percent).[13] Because many if not most of these gifts are of appreciated property (with its double benefit), the deduction damages perceptions of the tax system as fair, and further fuels, with greater emphasis, a broader perception that the charitable deduction as a whole is inequitable.

In addition, the deduction for property also impacts fundamental fairness concerns. Because the deduction is so susceptible to abuse, Congress conditioned the deduction on adhering to certain substantiation rules. But there can be harsh outcomes when an

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[10] The revenue cost would depend on the marginal rate of the donor, and should also include the cost of excluding appreciation.
[11] Inspector General for Tax Administration, Dept. of the Treasury, *Many Taxpayers Are Still Not Complying With Noncash Charitable Contribution Reporting Requirements* (TIGTA 2013-40-009), Dec. 20, 2012, 6.
[12] INTERNAL REVENUE SERVICE, STATISTICS OF INCOME DIVISION, TAX STATS, Individual Statistical Tables by Size of Adjusted Gross Income, Returns with Itemized Deductions: Itemized Deductions by Type and by Size of Adjusted Gross Income, Tax Year 2009, 2008, 2007, 2006, 2005 available at http://www.irs.gov/taxstats/indtaxstats/article/0,,id=96981,00.html (calculations in column 1 taken from Table 1, *supra* note 122; calculations in columns 2 and 3 taken by adding amount contributed and returns for AGI group specified and dividing each sum by the total amount claimed, and total returns for noncash contributions, respectively).
[13] *Id.*

otherwise bona-fide deduction is denied for failure to follow the requisite process. In one case, for example, a taxpayer was denied a (likely undervalued) deduction of about $18.5 million because of a clear failure to follow the appraisal rules.[14]

Another cost of the deduction for property contributions is the damage to the integrity and reputation of the section 501(c)(3) sector that often results. Unfortunately, because of this deduction, section 501(c)(3) organizations are party – wittingly or not – to abusive transactions that cheat the Treasury. Valuation abuse, with or without the knowledge of the donee, is a leading offender. Other forms of abuse occur when the deduction primarily benefits donors or other third parties. Indeed, the IRS identifies noncash contributions as one of the most abusive areas in the tax code.[15] These abuses have a cumulative effect and cause sector-wide damage, beyond the particulars of the organizations involved.

In short, the costs of the value-based deduction for property contributions – measured in terms of revenue loss, complexity, administrability, reputational cost, and systemic cost are significant.

D. Assessing the Benefits of Property Contributions. Simply stated, the benefit from (and reason for) property contributions is that the donee receives something of value, which can then be used, directly or indirectly, in furtherance of exempt purposes. This benefit then should exceed the costs of maintaining the deduction. The difficulty is that, unlike cash, there is no readily available measure of the resulting benefit. In other words, although there clearly are benefits from property contributions,[16] they are very difficult to assess.

One possible, and objective, measure of donee benefit is the claimed value of noncash contributions by donors. But this is not a good measure of donee benefit for several reasons. Most importantly, claimed value and donee benefit differ because over (or under) valuation must be taken into account. For instance, a contribution of property with a claimed value of $1 million but an actual value of $500,000 does not yield a donee benefit of $1 million. Valuation errors[17] thus make it hard, if not impossible, to know with any certainty the actual value of donated property to the donee. Valuation errors are

[14] Mohamed v. Commissioner, T.C.M. 2012-152.
[15] IRS Releases the Dirty Dozen Tax Scams for 2012, IRS News Release IR-2012-23 (Feb. 16, 2012) (listing abuse of charitable organizations and deductions as tenth on the list and noting that schemes "involve the donation of non-cash assets . . . . often these donations are highly overvalued"). For additional discussion of abuses relating to noncash property contributions and how abuses led to legislation, *see* Roger Colinvaux, *Charity in the 21st Century: Trending Toward Decay*, 11 Florida Tax Rev 1, 23-28 (2011).
[16] That donee organizations in fact receive value from property contributions is beyond doubt. Universities rely on contributions of investments as an important source of revenue. Museums rely on contributions of cultural property to stock collections. Food banks rely on contributions of food inventory to feed the hungry. But actually accounting for donee benefit is harder than it would seem at first glance.
[17] For example, an IRS study showed a 45 percent error rate on property donations in one year, resulting in about $4.6 billion in lost revenue. GEN. ACCOUNTABILITY OFFICE, GAO-12-608, REP. TO CONGRESSIONAL REQUESTERS, APPRAISED VALUES ON TAX RETURNS: BURDENS ON TAXPAYERS COULD BE REDUCED AND SELECTED PRACTICES IMPROVED 1 (2012). The study reported that for every five errors in favor of the taxpayer (overvaluation) there was one error unfavorable to the taxpayer (undervaluation).

likely common in most categories of noncash property – e.g., privately traded securities, land and real estate, clothing and household items, conservation easements, artwork, and inventory.

In addition, donee benefit in many cases is less, sometimes much less, than the claimed value of the property. Vehicle contributions are a notorious example. Prior to 2004, a donated vehicle produced a deduction based on (often exaggerated) fair market value. The benefit to the donee, however, was not the claimed fair market value (whether or not exaggerated) but a portion of the exchange value once the vehicle was sold by a third party, with the balance going to the third party.[18] Because vehicles would often sell for far less than the claimed value, there was a real difference between claimed value and the exchange value.[19] This problem occurs whether or not the property is correctly valued for tax purposes.

A related issue in determining donee benefit is the difference between the gross benefit to the donee and the net benefit. Vehicles again are a good illustration. The net benefit to the donee is not the exchange value, but the exchange value less the portion paid to the third party managing the car donation program. The net benefit concept can also apply in cases where there are costs associated with managing the contributed property or where a donee accepts five items of property but can use only four. From the donee's perspective, the net benefit is the value of four items, but the donor will claim a deduction for all five.[20]

Considerations of exchange value and net benefit also raise a timing issue as to when to measure the benefit to the donee. Should it be measured at the time of the contribution, as under the general rule of current law, or upon the disposition date of the property by the donee? By way of comparison, cash contributions present no valuation or timing questions relating to donee benefit. So long as the donee has control over the cash, the benefit is realized immediately.[21] Because cash is the benchmark for value and the means of exchange, the benefit is known. By contrast, the benefit of property – e.g., a sweater, a vehicle, an investment, or a computer – is often speculative until it is translated into cash.

Another factor is whether the donee uses the property in its exempt programs. If the property is not for such use, the donee benefit from the property generally is realized at the time of disposition and not at the time of the contribution. If property is held for a

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[18] GEN. ACCOUNTABILITY OFFICE, GAO-04-73, REP. TO S. COMM. ON FIN., VEHICLE DONATIONS: BENEFITS TO CHARITIES AND DONORS, BUT LIMITED PROGRAM OVERSIGHT (2003).

[19] Accordingly, the rules were changed to base the deduction on the exchange value.

[20] That said, the distinction here between gross benefit and net benefit can also be applied to cash that is converted to property, or more broadly to take into account the costs to the donee of securing the contribution. Again, this can be applied to cash and property, as donees typically will have fundraising and other costs to "pay for" the contributions. The measure for the deduction, whether for cash or property, could and perhaps should take into account a net benefit analysis.

[21] The main issues with a cash contribution in terms of donee benefit relate to internal governance and the efficiency of the donee: i.e., questions about how well the money is spent, and how much each contribution costs the organization to raise.

long time before disposition, the realization of the benefit by the donee is delayed well beyond the contribution date, raising the question whether the tax benefits, or their final accounting, should also be delayed.

If property is for a related use, capturing the value of the property at the contribution date generally makes sense. Ideally, however, this fair market value measure should be discounted to account for whether the contributed property is actually property that would have been acquired and used by the donee if cash were given instead of property. In other words, qualitative factors such as the need of the donee for the property should be taken into account in assessing donee benefit for related use contributions.

It is beyond the scope of this testimony to consider in detail the problems of assessing donee benefit on a property-by-property basis. The central point, however, is that the benefits of property contributions, unlike cash, are uncertain. The benefit should not be equated with the amount claimed as deductions, and will vary greatly depending upon the property type. In general, however, the benefits to the donee are often obscured by many factors, including: serious valuation difficulties, the actual net benefit to the donee after taking into account expenses, payments to third parties, the timing of disposition of the property, and the relevance or need of the property to the donee's mission. Because these many issues cloud measuring the benefit to donee organizations, it is far from clear that the benefits from the value-based deduction exceed the considerable costs.

Conclusion

Amid the many claims that the charitable deduction should not be altered, it is worth noting that the charitable deduction has been modified substantially since its inception. Remarkably, because of the many changes, the simple idea of tax-favored giving has now become one of the most complex provisions of a notoriously complex tax code. The changes to the deduction have largely been piecemeal, reactive to abuses, and generally have not directly reflected one or another rationale. What remains is a confusing mix of policies and priorities. The goal of my testimony is to highlight that as future changes are considered, the rationale for the deduction matters to the selection of policy options. In addition, it is important to realize that the charitable deduction is bifurcated into cash and noncash gifts – resulting in what are in effect distinct programs – and that many of the costs associated with present law relate to supporting the deduction for noncash property, which provides uncertain benefits.

Thank you again for inviting me to testify today. I hope that my perspective on these issues helps the Committee as it thinks about whether to make changes to the charitable deduction.