



GIANT, IMPORTANT DISCLAIMER: WE AREN'T GIVING LEGAL, TAX OR FINANCIAL ADVICE. PLEASE SEEK YOUR OWN COUNSEL FOR ANY DONATIONS. MANY OF THESE QUESTIONS ARE OPEN TO SOME INTERPRETATION, ARE GENERAL IN NATURE OR ARE UNIQUE TO A PARTICULAR JURISDICTION. ASSUME ALL ANSWERS ARE WRONG UNTIL YOU/YOUR DONOR CONFIRMS WITH HER/HIS ADVISOR.

**Q&A from “Charitable Giving with NFTs:
Tax, Legal and Processing Considerations,”
February 2022**

<p>Hello! Will slides be shared with attendees?</p>	<p>Due to some attribution issues in the past, we’ve not made slides available. However, the webinar is available to view on demand.</p>
<p>What's block chain? I've heard the word many times, but I don't know what it is.</p>	<p>It is a digital transaction ledger for cryptocurrency and NFT transactions - publicly viewable and verifiable. All transactions are securely recorded on the blockchain.</p>
<p>There was an online real estate auction recently as an NFT. Specifically, the real estate was held by an LLC that was auctioned as an NFT. How does that work and could it have a charitable use?</p>	<p>If ownership is determined by buying into the NFT, then presumably the NFT ownership could be transferred and donated. Since the NFT owns the LLC (presumably), donation would look pretty similar to a normal “real estate inside LLC wrapper” donation.</p>
<p>What if a donor donates an NFT that is then displayed in a college art museum?</p>	<p>It is not clear how the IRS would treat this since it appears that NFTs are likely to be treated as intangible assets and generally related-use rules apply to tangible assets. There could be an argument that when the NFT is donated and meets all of the requirements of a related-use asset, that the IRS could permit a fair market value deduction.</p>



<p>An NFT was recently sold in Florida where real estate was transferred. What impact does an NFT classification have on the actual property - is the home treated as a capital asset or ordinary asset? Is the property separated from the NFT?</p>	<p>This would depend on how the state law treated the NFT classification. If it is similar to an LLC, then the NFT's value would be tied to a capital asset and if not in the hands of the creator at the donation and held for longer than a year, it should all fall under capital asset rules. However, it would be tricky if the NFT was created by the donor and/or the state did not recognize the NFT structure like an LLC. In either of those cases, I could see an argument that you would bifurcate the assets and value each one maybe?</p>
<p>Not sure if this is a worthwhile question, but what happens if a charity accepts 'stolen' NFTs or crypto assets? Are there any consequences for the charity?</p>	<p>Charities of course cannot and should not accept assets which they know are stolen. If the stolen crypto assets were unknowingly accepted, the charity would need to return either the asset or proceeds of sale. Same situation as receiving stolen artwork, really.</p>
<p>"Blockchain", "token", "digital stamp"...all of these "assumed we know" concepts are a mystery. Any idea where we can get an actual understanding of these things? Are there NFT "professors" that use metaphors that are understandable?</p>	<p>Try this helpful explainer: https://www.theverge.com/22310188/nft-explainer-what-is-blockchain-crypto-art-faq</p>
<p>Is the IRS taking notice of this in a serious way? Are they motivated to help us characterize NFT and DAO from a tax perspective?</p>	<p>So far there is no guidance on NFTs or DAOs from the IRS. However, with the recent gifts that we have appraised, we suspect that the IRS will be making some determinations soon.</p>
<p>If a university makes an NFT for a special anniversary and gives it as a thank you for X Level Gift to each donor at this level, what are the challenges?</p>	<p>Normal rules regarding quid pro quo donations would apply, so the university should make a disclosure estimating the value of the NFT provided to the donor. Practically, the university should expect to get many questions from donors along the lines of "what is an NFT?" and "how does this NFT thing work?"</p>
<p>What about a buyer in the wings for NFT?</p>	<p>This would likely be treated like any other non-cash asset that has a "buyer in the wings" in that as long as there is no binding agreement, the donation could be made and a charity deduction would be available to the donor.</p>



<p>Some young high-end wealth philanthropists are using DAO for purchasing property and other items and creating businesses.</p>	<p>Yes – and given that the DAOs tend to have lofty goals, the property they purchase may be well suited to charitable giving (think of the DAO trying to purchase the early copy of the U.S. Constitution).</p>
<p>You may have covered this earlier; do you know of NFPs minting NFTs? They can likely get around the UBIT issues. The donor buys the minted NFT and gets the art and some special service or be in a special club of the NFP. This way the NFP gets the royalties every time the NFT is sold again.</p>	<p>Yes, we heard about a case like this. It was a healthcare org. that was going to mint an NFT, which a donor would then buy. Similarly, we have heard about NFT orgs “writing” automatic payments to charities into the smart contract code of their NFT product offerings.</p>
<p>Non profits with an art mission may have a path to avoid UBIT for NFT.</p>	<p>Definitely. Art-focused nonprofits would seem to be the orgs best suited to working with NFTs on an ongoing basis.</p>