

**CHARITABLE GIFTS FROM
CORPORATIONS
AND THEIR SHAREHOLDERS**

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DONORS LIKE TO CONTRIBUTE APPRECIATED STOCK

DOUBLE-TAX ADVANTAGE

- Charitable Income Tax Deduction for the Full Appreciated Value of the Stock
- Never Pay Income Tax on the Growth of the Value of the Stock
- **Loss Property?** Sell for tax loss; give cash

CLOSELY-HELD STOCK : COMPARE SALE WITH GIFT

	<u>Gift of Cash To PC or PF</u>	<u>Gift of Stock to Pub Charity</u>	<u>Gift of Stock to Priv. Fndtn</u>
Sales Proceeds	\$ 100,000	\$ 90,000	\$ 90,000
Cost of Stock	<u> -0-</u>	<u> -0-</u>	<u> -0-</u>
Gain on Sale	\$ 100,000	\$ 90,000	\$ 90,000
Charit. Deduction	<u>(10,000)</u>	<u>(10,000)</u>	<u> -0- * </u>
Taxable Income	\$ 90,000	\$ 80,000	\$ 90,000

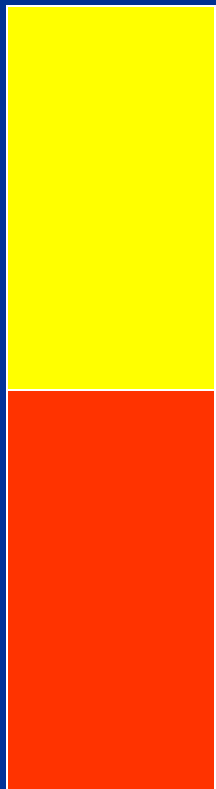
DONORS LIKE TO CONTRIBUTE APPRECIATED STOCK

DOUBLE-TAX ADVANTAGE

- Charitable Income Tax Deduction for the Full Appreciated Value of the Stock
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A C corporation's tax savings from charitable gifts of appreciated property can be significantly greater than that of an individual.

DOUBLE BENEFIT FROM GIFT OF APPRECIATED L.T.C.G. PROPERTY



<< AVOID LONG-TERM CAPITAL GAIN TAX

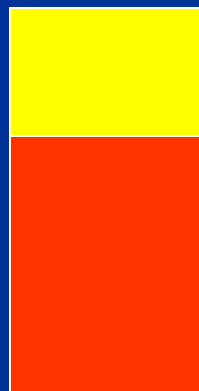
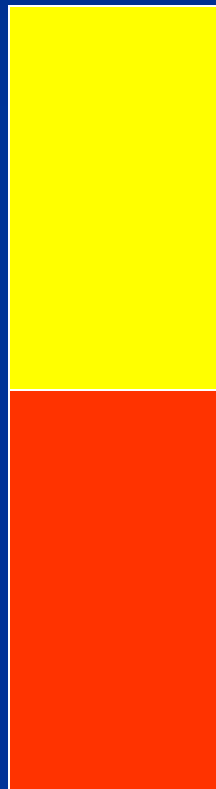
<< CHARITABLE INCOME TAX DEDUCTION

\$ Benefits

Max Federal Taxes Saved

Person

50%



- * 25% RE Dep Recap
- * 28% Collectibles

<< 15%* LTCG Tax Rate

<< 35% Marginal Tax Rate

Federal Corporate Tax Rates

Taxable income

Tax Rate

First \$ 50,000	15%
\$ 50,000 -- \$ 75,000	25%
\$ 75,000 -- \$ 100,000	34%
\$ 100,000 -- \$ 335,000	bubble > 39%
\$ 335,000 -- \$10,000,000	flat tax > 34%
\$10,000,000 --\$15,000,000	35%
\$15,000,000 --\$18,333,333	bubble > 38%
Over \$ 18,333,333	flat tax > 35%

NO REDUCED RATES FOR CAPITAL GAINS

\$ Benefits

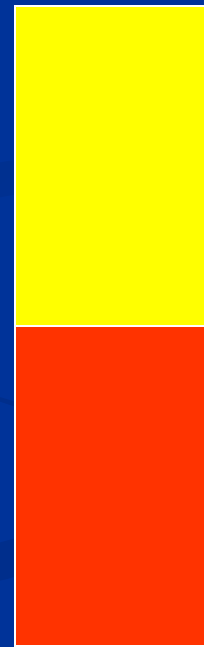
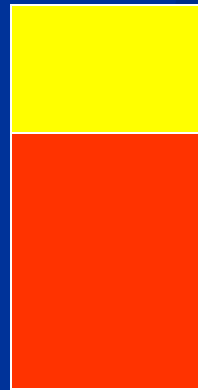
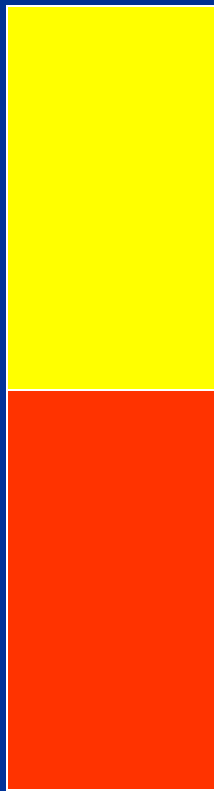
Max Federal Taxes Saved

Person

C Corporation

50%

78%



WHAT CAN GO WRONG?

- * Donor cannot deduct full appreciated value ?
 - Might only be able to deduct cost basis
- * Donor might be taxed on gain if the property was legally sold before it was donated to charity.

REQUIREMENTS TO DEDUCT THE APPRECIATED VALUE

- IF SOLD, WOULD PRODUCE A LONG-TERM CAPITAL GAIN
 - * not short-term
 - * not ordinary income
- TANGIBLE PERSONAL PROPERTY?
 - * must physically use for exempt purpose
- DONATED TO GRANT-MAKING PRIVATE FOUNDATION?
 - * only *publicly-traded* stock gets FMV

WHAT CAN GO WRONG?

#1 - Donor cannot deduct full appreciated value ?

-- Might only be able to deduct cost basis

#2 Donor might be taxed on gain if the property was legally sold before it was donated to charity.

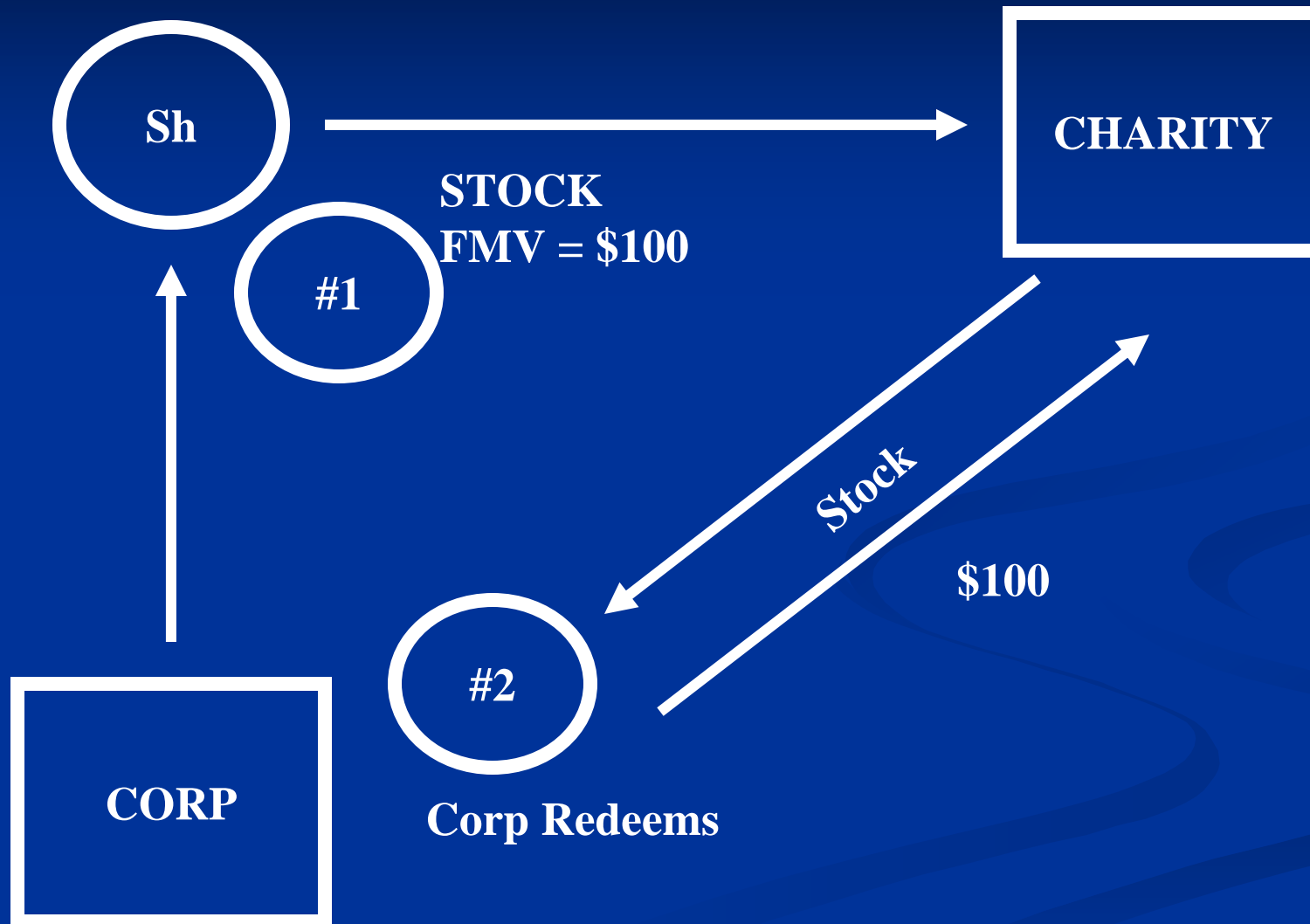
STOCK REDEMPTIONS & “BUYER IN THE WINGS”

If property is donated after the sale is finalized, donor will be taxed on the gain.

GROUND RULES: CHARITIES WANT TO SELL DONATED GIFTS

- Publicly Traded? Sell on stock market
- Closely-held? Corporate redemption
 - *Shareholder* gets tax deduction for stock gift
 - *Corporation* pays cash to redeem

STOCK REDEMPTION



ADVANTAGES OF STOCK REDEMPTION

- Shareholder claims charitable income tax deduction, but charity ultimately receives cash from the corporation.
 - this is a better result than a cash dividend to the shareholder followed by a gift
- Reduces likelihood of “accumulated earnings tax” on C corporation (possible tax when too much cash).

REDEMPTION HAZARDS

#1 -- Pre-Arranged Sale?

- Rev Rul. 78-197 – no income to donor unless the charity “is legally bound, or can be compelled by the corporation, to surrender the shares for redemption.”
- Rauenhorst case in 2002 reaffirms Rev Rul

REDEMPTION HAZARDS

#2 – Self-Dealing / Conflict of Interest

- State laws and internal corporate policies
- “Excess Business Holding” prohibition for private foundations, donor advised funds, SOs.
- “Self Dealing” prohibition for PFs and CRTs
- “Excess Benefit Transaction” – not over FMV
DAFs & SOs: property sales OK; not services

“BUYER IN THE WINGS”

- * Rev Rul. 78-197 – no income to donor unless the charity “is legally bound, or can be compelled by the corporation, to surrender the shares for redemption.”
- * Related party buyer? Self-dealing issues
- * Danger in corporate mergers / tender offers
 - Ferguson* case: stock donated after critical time

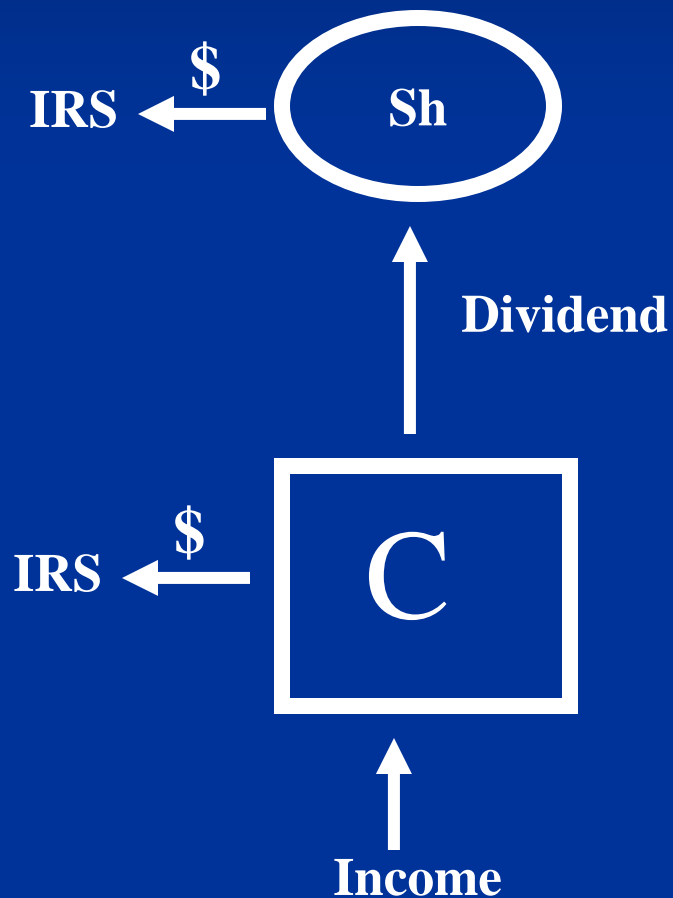
ANNUAL DEDUCTION LIMIT FOR GIFT TO *PUBLIC CHARITY*

<u>Type of Donor</u>	Cash and <u>Ord Inc Prop</u>	LT Capital Gain Property <u>(Stock & Real Estate)</u>
Individual	50% of AGI	30% of AGI
C Corporation	-- 10% of taxable income --	

Amounts that cannot be deducted may be carried forward for five years

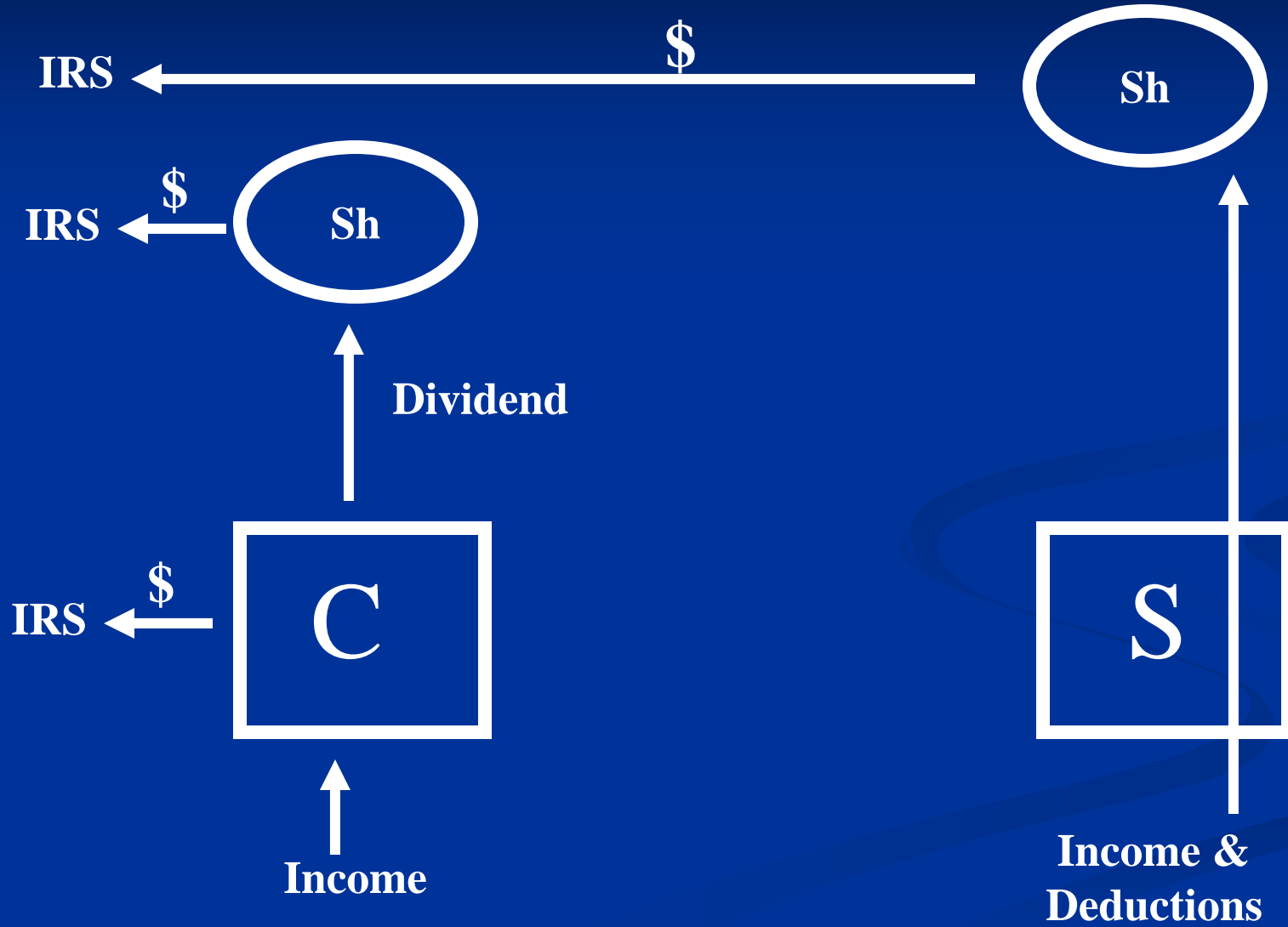
CORPORATE TAXATION

-- Subchapter C & Subchapter S --



C CORP

S CORP



CORPORATE TAXATION

■ SUBCHAPTER C

Corporation

Corporation pays corporate income tax

Shareholder

Shareholder pays tax on dividend distributions

■ SUBCHAPTER S

Corporation

Corporation pays no corporate income tax

Shareholder

No tax on dividends, but shareholder reports corporation's income and deductions

THREE BAD THINGS HAPPEN WITH GIFT OF S CORP STOCK

1. Donor's charitable income tax deduction is less than the appraised value of the stock

100% Owner

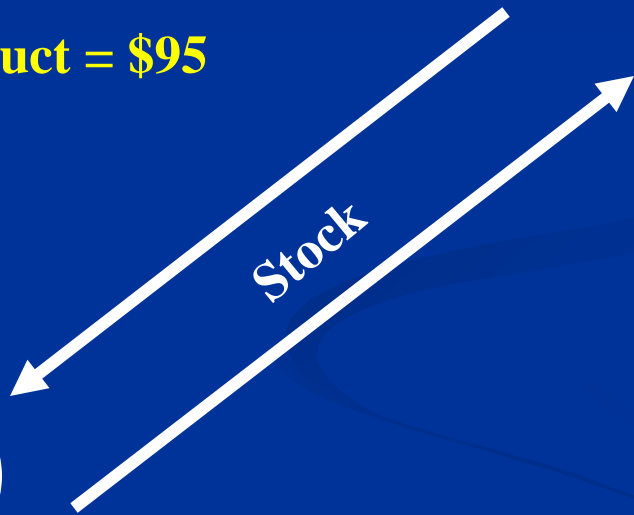


STOCK
FMV = \$100
Tax Deduct = \$95



Corp Redeems

**Pay \$100 to
redeem**



THREE BAD THINGS HAPPEN WITH GIFT OF S CORP STOCK

1. Donor's charitable income tax deduction is less than the appraised value of the stock
2. Charity pays UBIT while it owns the stock
3. Charity pays UBIT when it sells the stock for a gain

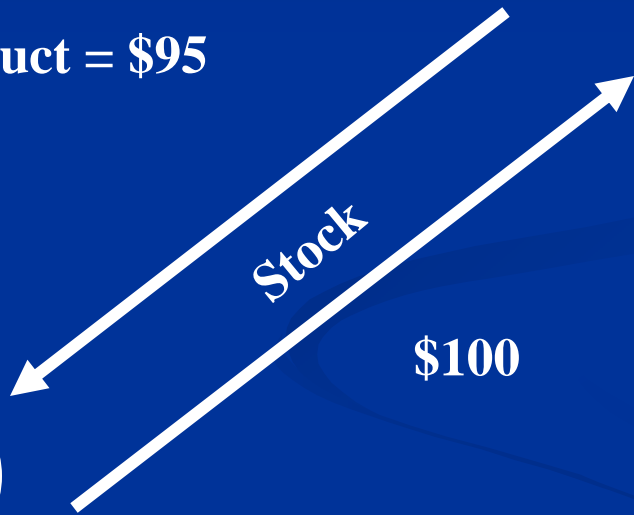
100% Owner



STOCK
FMV = \$100
Tax Deduct = \$95



Corp Redeems



CHARITY MIGHT PAY MORE TAX ON STOCK SALE THAN DONOR

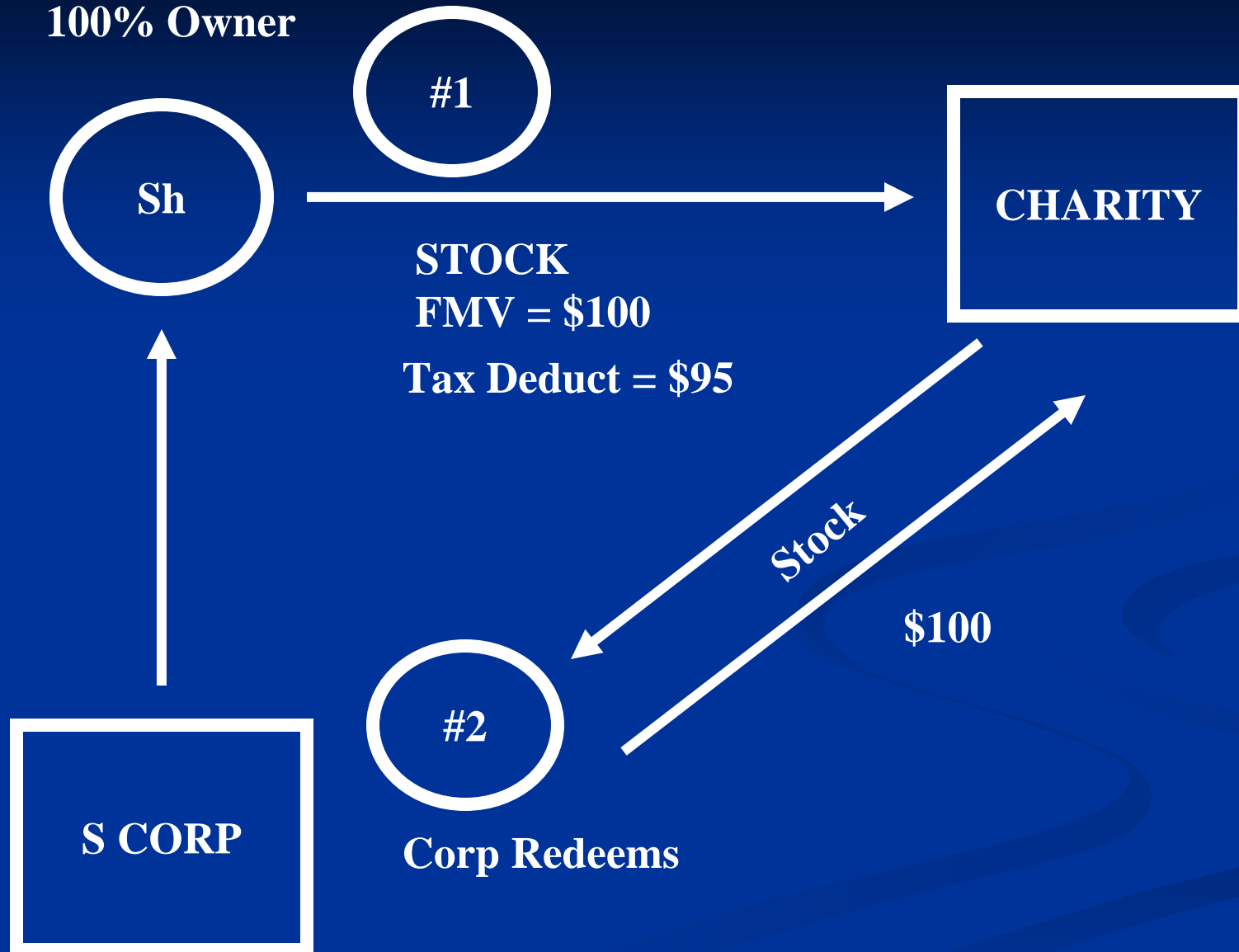
- * Donor's long-term capital gain tax rate: 15%
- * Charity's max UBIT tax rate on capital gains:
 - 35% for incorporated charities
 - 15% for charities that are trusts

WITH A GIFT OF S CORP STOCK, THE
BURDEN OF THE TAX IS MERELY SHIFTED
FROM THE DONOR TO THE CHARITY.

BEST WAY TO STRUCTURE A CHARITABLE GIFT

- *Have the corporation contribute some of its assets rather than have the shareholder contribute stock.*
- *With either type of gift, the tax benefit will be claimed by the shareholder*

100% Owner



#1

Sh

CHARITY

STOCK

FMV = \$100

Tax Deduct = \$95

Stock

\$100

#2

S CORP

Corp Redeems

ADVANTAGES OF A GIFT FROM THE CORPORATION

1. The charitable deduction for a gift of corporate property (e.g., real estate) is not reduced by a lack of marketability discount as a shareholder's gift of stock would be.
2. The income tax deduction for a charitable gift of S corporation stock will usually be less than the appraised value to reflect any "ordinary income" assets that the S corporation might have.

ADVANTAGES OF A GIFT FROM THE CORPORATION

- 3 A charitable gift of property can avoid the *built-in gains tax* of Section 1374.
- 4 A charity doesn't pay UBIT on the income earned from property donated by the corporation, but it does pay UBIT on S Corp stock donated by the shareholder.
- 5 *A charitable remainder trust* cannot hold S corporation stock, but it can receive and hold corporate assets, such as real estate.

2007: SPECIAL TAX INCENTIVE FOR CHARITABLE GIFTS BY S CORPORATIONS

- In 2006 & 2007 (only), if an S Corp donates appreciated property to a charity, the shareholder can deduct the appreciated value of the gift but reduces the basis in his / her stock only by the basis of the donated property.
- Normally the stock basis is reduced by the full value of the donated property.

100% Owner



STOCK

FMV = \$10,000,000

A/B = 1,000,000



\$9,000,000



GIFT

FMV = \$1,000,000

A/B = 100,000



TAX DEDUCTION

\$1,000,000



S CORPORATION GIFT OF APPRECIATED PROPERTY

- *Normally*: Shareholder can't deduct more than basis of *stock* -- Exception: charitable gift
- Special tax break in 2007 (*extend to 2008?*):
Example: Corporation donates land worth \$500 with basis \$200 (and stock basis = \$200), donor can deduct \$500.
- 2008 Revenue Ruling if donated property has tax basis greater than shareholder's stock basis

WHEN A CORPORATE GIFT WON'T WORK

- Other shareholders do not want to make the charitable gift. [[Solution: a corporate *donor advised fund*?]]
- S corporation doesn't have assets that the charity wants.
- Shareholders have such a low basis in their stock that they cannot claim charitable income tax deductions.
- TRAP: If an S Corporation donates "substantially all" of its assets to a charity, the corporation will be treated as if it had liquidated, triggering a sizeable income tax liability.

CHECKLIST FOR OFFERS OF S CORPORATION STOCK

- A. Charitable Purpose OK?
- B. Stock Have Value? What?
- C. How soon can stock be sold?
- D. Cash dividends from company until sell?
- E. UBIT Concerns
 - Save taxes by contribution to a *supporting organization*? Trust? Corporation?

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