**Title:** The Absence of Symmetry (Part 1 of 2)

**Subtitle:**

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**Raw Content:** “New Jersey and You: Perfect Together”, the <a href="http://www.nj.gov/">State’s</a> tourism slogan, will never be borrowed to describe gifts of S corporation stock. An S corporation, simply put, is a corporation that elects to be taxed under sub chapter "S" of the Internal Revenue Code, and essentially borrows rules from both standard C corporations and partnerships. What is striking is how big of a difference there is between certain transfers of S corporation stock as opposed to C (regular) corporation stock.
<a href="the-absence-of-symmetry-part-1-of-2" rel="attachment wp-att-491"></a>The most notable difference is that the rules are consistent for charitable and non-charitable transfers for partnerships and C corporations, but not so for S corporations.  S corporations were designed for small businesses and to permit income to pass through and be taxed once at the shareholder level.
For example, when one donates S corporation stock to charity, the partnership rules apply rather than the C corporation rules. Yet, if S corporation stock is sold, it is treated in the same manner as a sale of C corporation stock yielding capital gain. Contrast this treatment with the sale of a partnership interest, where a mixture of capital gain and ordinary income result from “hot assets” such as receivables. I am personally grateful that S corporations cannot have foreign shareholders, seeing as I would have to explain all of this to them. Not even the best Microsoft Power Point presentation would save me in that case.
<h4>Wait, A Charity Does Not Want Charity?</h4>
A charity that may receive S corporation stock is unnerved by the complexities that result from such a gift.  Imagine trying to establish a fair return to construct a charitable gift annuity. A charity may not want to receive the stock directly, so what options do we then have?
S corporations restrict shareholders to US citizens and residents and certain trusts.  There are two trusts, Electing Small Business Trust (ESBT) and Qualified Subchapter S Trust (QSST) that are unique to S corporations.  A grantor trust, many times a revocable living trust, is a permitted shareholder.  A grantor trust may remain a shareholder for two years after death as may a testamentary trust that does not otherwise qualify.  A voting trust and a state law trust that is a charity or qualified retirement plan also qualify. <a href="http://en.wikipedia.org/wiki/Charitable\_lead\_trust#charitable\_lead\_trust">Charitable Lead Trusts (CLT)</a> and <a href="http://en.wikipedia.org/wiki/Charitable\_remainder\_trust#charitable\_remainder\_trust">Charitable Remainder Trusts (CRT)</a> are popular, but only a CLT that is a grantor trust can hold S stock. Charities afflicted with Private foundations status or those designated as supporting organizations face excise taxes on business holdings.  The excise taxes are designed to level the playing field between non-exempt taxpayers and charities where the latter engages in a business. There are also prohibitions against self-dealing with related parties, yet another minefield (and not the game). Despite all of these various restrictions, however, there are options that will allow a business entity to avoid cumbersome taxes, excise included.