

Charitable Intent



PLANNING NEWS AND IDEAS FOR THE PROFESSIONAL ADVISER

STRIKE TWO, DONOR'S OUT

A food manufacturer gave inventory products that were nearing their “best by” date to food banks and other organizations. The company determined the fair market value of the products by using its cost plus a mark-up equaling the “gross profit percentage.” The deduction for most gifts of inventory is limited to the lesser of fair market value or basis [Code §170(e)(1)(A)], but an enhanced deduction of up to two times basis is available for contributions solely for the care of the ill, needy and infants [Code §170(e)(3)(A)].

The IRS did not dispute that the company made qualifying gifts, but said that no charitable deduction was available because Form 8283 was not attached to its income tax return and because it failed to properly value the inventory in computing the deduction.

In general, all corporations must complete and attach Form 8283 to their returns for contributions of property if the deduction exceeds \$5,000. The failure to attach Form 8283 is not necessarily fatal to the deduction, provided the failure was a good faith omission and the form is supplied within 90 days of a request by the IRS. Because the company did not demonstrate a good faith omission and failed to supply the form following an IRS request, the deduction was denied.

However, even if the deductions weren't denied on those grounds, the IRS said there would still be no deduction because the company improperly valued the inventory property. The company did not use the prices it would normally have received in the marketplace [Reg. §1.170A-1(c)(2)]. The taxpayer could not have reasonably expected to receive full price for the inventory, since the donated products were nearing their “best by” date. The company failed to establish the fair market value and therefore is not entitled to an enhanced deduction.

Field Attorney Advice 20113801F

VOLUNTEER WALKS AWAY MOSTLY EMPTY HANDED

Pamela van der Lee did volunteer work for and made gifts to several charities, which the Tax Court acknowledged. But except for one small contribution, the court disallowed most of her deduction.

A volunteer must maintain reliable written records of unreimbursed expenses incurred on behalf of charity. For gifts of up to \$250, no charitable acknowledgment is required; receipts for purchases are substantially equivalent to written substantiation from the charity. Therefore, the court said she was entitled to a deduction of \$250 for a contribution of kitchen items.

The court disallowed deductions for:

- Expenses for which she had no receipts, no trip log or written acknowledgment from charity. Credit card receipts were insufficient where it was unclear whether any of the expenses were more than \$250.

- One week's use of a Caribbean timeshare. Van der Lee owned a three-week interest, but the court noted that the contribution of the timeshare week constituted a gift of a partial interest not in trust, for which no deduction is allowed [Code §170(f)(3)(A)].

- Donated kitchen items for which no appraisal was obtained. Because the noncash gifts were “similar items of property,” the value was aggregated to determine whether the total value exceeded \$5,000. Because there was no appraisal, she had failed to meet the substantiation requirements [Reg. §1.170A-13(c)(2)].

Van Dusen v. Commissioner, 136 TC No. 25

ANNUITY TRUST CAN OWN ANNUITY

A donor who funded a charitable remainder annuity trust with appreciated securities gave the trustee the discretion to use some trust assets to purchase a commercial annuity.

The commercial annuity, which could only be issued by a top-rated company, would be owned by the trust and would pay an amount equal to or greater than the amount to be paid to the income beneficiary. Once a commercial annuity is obtained, the trustee would have the authority to make distributions of some or all of the principal or income to the charitable remaindermen.

In general, no amount other than the required payment may be made to or for the use of any person, other than charity [Reg. §1.664-2(a)(4)]. The IRS said the use of trust funds to purchase the commercial annuity would be a transfer for full and adequate consideration and the inclusion of the trustee's power would not cause disqualification of the trust.

Letter Ruling 201126007

TIMESHARE, DEDUCTION BOTH GONE

In 2006, Maria Towell contributed her interest in a Florida timeshare to a charity and claimed a deduction for \$12,900. She had bought the timeshare in 2001 for \$12,396. The IRS disallowed the deduction, saying that Towell had not obtained an appraisal, as required by Code §170(f)(11)(A)(i).

In general, donors who claim deductions for noncash contributions of more than \$5,000 (\$10,000 for closely held stock) must obtain a qualified appraisal to accompany the Form 8283, Noncash Charitable

Contributions. The appraisal may be made no sooner than 60 days prior to the date of the gift and no later than the due date of the return on which the deduction is claimed (plus extensions).

Towell argued that she never received an appraisal when she purchased the timeshare. The Tax Court said the lack of an appraisal from the developer did not excuse her failure to obtain an appraisal for deduction purposes.

Towell v. Commissioner, T.C. Summ. Op. 2010-141

DEDUCTION HITS THE AIRWAVES

A charitable deduction is generally not allowed for any contribution of an interest that is less than the donor's entire interest in the property [Code §170(f)(3)(A)]. The IRS ruled that a donor who contributed five of the seven low-power television broadcast station licenses that he owned was entitled to a charitable deduction.

One exception to the partial interest rule is for a gift of a partial interest in property if such interest is the donor's entire interest in the property [Reg. §1.170A-7(a)(1)]. The donor had contributed all rights, title and interest in the station licenses, along with related station equipment. The IRS determined that he had given his entire interest in the property.

Letter Ruling 201132011

KEEP SUBSTANTIATION RULES IN MIND DURING FILING SEASON

Clients planning to claim deductions for 2011 charitable gifts should make sure they have the proper documentation to satisfy the IRS. Donors must have an acknowledgment from charity in hand by the earlier of the date the return is filed or the due date for the return (with extensions) for single cash gifts of \$250 or more [Code §170(f)(8)]. A canceled check is not sufficient to verify a cash gift of \$250 or more. The acknowledgment must describe the gift and indicate whether any goods or services were provided in return, along with a good faith estimate of the value of any goods or services received by the donor. The receipt from the charity need not be attached to the return, but must be in the donor's possession when the deduction is claimed. The IRS does not recognize acknowledgments obtained after the due date of the return. The Salvation Army provides receipts for contributions of any amount and can furnish forms for substantiation and appraisals for noncash gifts. Please feel free to call if you have questions about the substantiation requirements.