

26 CFR § 1.170A-4 - Reduction in amount of charitable contributions of certain appreciated property.

§ 1.170A-4 **Reduction** in **amount** of **charitable contributions** of **certain appreciated property**.

(a) Amount of reduction. Section 170(e)(1) requires that the **amount** of the charitable contribution which would be taken into **account** under section 170(a) without regard to section 170(e) shall be reduced before applying the **percentage limitations** under section 170(b):

(1) In the case of a contribution by an individual or by a **corporation** of **ordinary income property**, as defined in **paragraph (b)(1)** of this section, by the **amount** of gain (hereinafter in this section referred to as ordinary income) which would have been recognized as gain which is not long-term capital gain if the **property** had been sold by the **donor** at its **fair market value** at the time of its contribution to the charitable **organization**,

(2) In the case of a contribution by an individual of section 170(e) capital gain **property**, as defined in **paragraph (b)(2)** of this section, by 50 percent of the **amount** of gain (hereinafter in this section referred to as long-term capital gain) which would have been recognized as long-term capital gain if the **property** had been sold by the **donor** at its **fair market value** at the time of its contribution to the charitable **organization**, and

(3) In the case of a contribution by a **corporation** of section 170(e) capital gain **property**, as defined in **paragraph (b)(2)** of this section, by 62 1/2 percent of the **amount** of gain (hereinafter in this section referred to as long-term capital gain) which would have been recognized as long-term capital gain if the **property** had been sold by the **donor** at its **fair market value** at the time of its contribution to the charitable **organization**.

Section 170(e)(1) and this paragraph do not apply to reduce the amount of the charitable contribution where, by reason of the transfer of the contributed property, ordinary income or capital gain is recognized by the donor in the same taxable year in which the contribution is made. Thus, where income or gain is recognized under section 453(d) upon the transfer of an installment obligation to a charitable organization, or under section 454(b) upon the transfer of an obligation issued at a discount to such an organization, or upon the assignment of income to such an organization, section 170(e)(1) and this paragraph do not apply if recognition of the income or gain occurs in the same taxable year in which the contribution is made. Section 170(e)(1) and this paragraph apply to a charitable contribution of an interest in ordinary income property or section 170(e) capital gain property which is described in paragraph (b) of § 1.170A-6, or paragraph (b) of § 1.170A-7. For purposes of applying section 170(e)(1) and this paragraph it is immaterial whether the charitable contribution is made "to" the charitable organization or whether it is made "for the use of" the charitable organization. See § 1.170A-8(a)(2).

(b) Definitions and other rules. For purposes of this section:

(1) Ordinary income property. The term *ordinary income property* means property any portion of the gain on which would not have been long term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization. Such term includes, for example, property held by the donor primarily for sale to customers in the ordinary course of his trade or business, a work of art created by the donor, a manuscript prepared by the donor, letters and memorandums prepared by or for the donor, a capital asset held by the donor for not more than 1 year (6 months for taxable years beginning before 1977; 9 months for taxable years beginning in 1977), and stock described in section 306(a), 341(a), or 1248(a) to the extent that, after applying such section, gain on its disposition would not have been long-term capital gain. The term does not include an income interest in respect of which a deduction is allowed under section 170(f)(2)(B) and paragraph (c) of § 1.170A-6.

(2) Section 170(e) capital gain property. The term *section 170(e) capital gain property* means property any portion of the gain on which would have been treated as long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization and which:

(i) Is contributed to or for the use of a private foundation, as defined in section 509(a) and the regulations thereunder, other than a private foundation described in section 170(b)(1)(E),

(ii) Constitutes tangible personal **property** contributed to or for the use of a charitable **organization**, other than a private foundation to which subdivision (i) of this subparagraph applies, which is put to an **unrelated** use by the charitable **organization** within the meaning of subparagraph (3) of this paragraph, or

(iii) Constitutes **property** not described in subdivision (i) or (ii) of this subparagraph which is 30-percent capital gain **property** to which an **election** under paragraph (d)(2) of § 1.170A-8 applies.

For purposes of this subparagraph a fixture which is intended to be severed from **real property** shall be treated as tangible personal **property**.

(3) Unrelated use—(i) *In general.* The term *unrelated use* means a use which is **unrelated** to the purpose or function constituting the basis of the charitable **organization's** exemption under section 501 or, in the case of a contribution of **property** to a **governmental unit**, the use of such **property** by such unit for other than exclusively **public** purposes. For **example**, if a painting contributed to an **educational institution** is used by that **organization** for educational purposes by being placed in its library for display and study by art students, the use is not an **unrelated** use; but if the painting is sold and the **proceeds** used by the **organization** for educational purposes, the use of the **property** is an **unrelated** use. If furnishings contributed to a charitable **organization** are used by it in its offices and **buildings** in the course of carrying out its functions, the use of the **property** is not an **unrelated** use. If a set or collection of **items** of tangible personal **property** is contributed to a charitable **organization** or **governmental unit**, the use of the set or collection is not an **unrelated** use if the donee sells or otherwise disposes of only an insubstantial portion of the set or collection. The use by a **trust** of tangible personal **property** contributed to it for the **benefit** of a charitable **organization** is an **unrelated** use if the use by the **trust** is one which would have been **unrelated** if made by the charitable **organization**.

(ii) Proof of use. For purposes of applying subparagraph (2)(ii) of this paragraph, a **taxpayer** who makes a charitable contribution of tangible personal **property** to or for the use of a charitable **organization** or **governmental unit** may treat such **property** as not being put to an **unrelated** use by the donee if:

(a) He establishes that the [property](#) is not in fact put to an [unrelated](#) use by the donee, or

(b) At the time of the contribution or at the time the contribution is treated as made, it is reasonable to anticipate that the [property](#) will not be put to an [unrelated](#) use by the donee. In the case of a contribution of tangible personal [property](#) to or for the use of a museum, if the object donated is of a general type normally retained by such museum or other museums for museum purposes, it will be reasonable for the [donor](#) to anticipate, unless he has actual knowledge to the contrary, that the object will not be put to an [unrelated](#) use by the donee, whether or not the object is later sold or [exchanged](#) by the donee.

(4) *Property used in trade or business.* For purposes of applying subparagraphs (1) and (2) of this paragraph, [property](#) which is used in the [trade or business](#), as defined in section 1231(b), shall be treated as a [capital asset](#), except that any gain in respect of such [property](#) which would have been recognized if the [property](#) had been sold by the [donor](#) at its [fair market value](#) at the time of its contribution to the charitable [organization](#) shall be treated as ordinary [income](#) to the extent that such gain would have constituted ordinary [income by reason](#) of the [application](#) of section 617 (d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a).

(5) *Nonresident alien individuals and foreign corporations.* The [reduction](#) in the case of a [nonresident alien](#) individual or a [foreign corporation](#) shall be determined by taking into [account](#) the gain which would have been recognized and [subject to tax](#) under chapter 1 of the Code if the [property](#) had been sold or disposed of within the [United States](#) by the [donor](#) at its [fair market value](#) at the time of its contribution to the charitable [organization](#). However, the [amount](#) of such gain which would have been [subject to tax](#) under section 871(a) or 881 (relating to gain not effectively connected with the conduct of a [trade or business](#) within the United States) if there had been a sale or other [disposition](#) within the [United States](#) shall be treated as long-term capital gain. Thus, a charitable contribution by a [nonresident alien](#) individual or a [foreign corporation](#) of [property](#) the sale or other [disposition](#) of which within the [United States](#) would have [resulted](#) in gain [subject to tax](#) under section 871(a) or 881 will be reduced only as provided in section 170(e)(1)(B) and paragraph (a) (2) or (3) of this section, but only if the [property](#) contributed is described in subdivision (i), (ii), or (iii) of subparagraph (2) of this paragraph. A charitable contribution by a [nonresident alien](#) individual or a [foreign corporation](#) of [property](#) the sale or other [disposition](#) of which within the [United States](#) would have [resulted](#) in

gain [subject to tax](#) under section 871(a) or 881 will in no case be reduced under section 170(e)(1)(A) and [paragraph \(a\)\(1\)](#) of this section.

(c) Allocation of basis and gain—(1) *In general.* Except as provided in subparagraph (2) of this paragraph:

(i) If a [taxpayer](#) makes a charitable contribution of less than his [entire interest](#) in appreciated [property](#), whether or not the [transfer](#) is made in [trust](#), as, for [example](#), in the case of a [transfer](#) of appreciated [property](#) to a pooled [income](#) fund described in section 642(c)(5) and [§ 1.642\(c\)-5](#), and is [allowed](#) a deduction under section 170 for a portion of the [fair market value](#) of such [property](#), then for purposes of applying the [reduction](#) rules of section 170(e)(1) and this section to the contributed portion of the [property](#) the [taxpayer's adjusted basis](#) in such [property](#) at the time of the contribution shall be allocated under section 170(e)(2) between the contributed portion of the [property](#) and the noncontributed portion.

(ii) The [adjusted basis](#) of the contributed portion of the [property](#) shall be that portion of the [adjusted basis](#) of the entire [property](#) which bears the same ratio to the total [adjusted basis](#) as the [fair market value](#) of the contributed portion of the [property](#) bears to the [fair market value](#) of the entire [property](#).

(iii) The ordinary [income](#) and the long-term capital gain which shall be taken into [account](#) in applying section 170(e)(1) and [paragraph \(a\)](#) of this section to the contributed portion of the [property](#) shall be the [amount](#) of gain which would have been recognized as ordinary [income](#) and long-term capital gain if such contributed portion had been sold by the [donor](#) at its [fair market value](#) at the time of its contribution to the charitable [organization](#).

(2) Bargain sale.

(i) Section 1011(b) and [§ 1.1011-2](#) apply to bargain [sales](#) of [property](#) to charitable organizations. For purposes of applying the [reduction](#) rules of section 170(e)(1) and this section to the contributed portion of the [property](#) in the case of a bargain sale, there shall be allocated under section 1011(b) to the contributed portion of the [property](#) that portion of the [adjusted basis](#) of the entire [property](#) that bears the same ratio to the total [adjusted basis](#) as the [fair market value](#) of the contributed portion of the [property](#) bears to the [fair market value](#) of the entire [property](#). For purposes of applying section 170(e)(1) and [paragraph \(a\)](#) of this section to the contributed portion of the [property](#) in such a case, there shall be allocated to the contributed portion the [amount](#) of gain that is not recognized on the bargain sale but that would have been

recognized if such contributed portion had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

(ii) The term **bargain sale**, as used in this subparagraph, means a transfer of property which is in part a sale or exchange of the property and in part a charitable contribution, as defined in section 170(c), of the property.

(3) Ratio of ordinary income and capital gain. For purposes of applying subparagraphs (1)(iii) and (2)(i) of this paragraph, the amount of ordinary income (or long-term capital gain) which would have been recognized if the contributed portion of the property had been sold by the donor at its fair market value at the time of its contribution shall be that amount which bears the same ratio to the ordinary income (or long-term capital gain) which would have been recognized if the entire property had been sold by the donor at its fair market value at the time of its contribution as (i) the fair market value of the contributed portion at such time bears to (ii) the fair market value of the entire property at such time. In the case of a bargain sale, the fair market value of the contributed portion for purposes of subdivision (i) is the amount determined by subtracting from the fair market value of the entire property the amount realized on the sale.

(4) Donee's basis of property acquired. The adjusted basis of the contributed portion of the property, as determined under subparagraph (1) or (2) of this paragraph, shall be used by the donee in applying to the contributed portion such provisions as section 514(a)(1), relating to adjusted basis of debt-financed property; section 1015(a), relating to basis of property acquired by gift; section 4940(c)(4), relating to capital gains and losses in determination of net investment income; and section 4942(f)(2)(B), relating to net short-term capital gain in determination of tax on failure to distribute income. The fair market value of the contributed portion of the property at the time of the contribution shall not be used by the donee as the basis of such contributed portion.

(d) Illustrations. The application of this section may be illustrated by the following examples:

EXAMPLE 1.

(a) On July 1, 1970, C, an individual, makes the following charitable contributions, all of which are made to a church except in the case of the stock (as indicated):

Property	Fair market value	Adjusted basis	Recognized gain sold
Ordinary income property	\$50,000	\$35,000	\$15,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock held more than 6 months contributed to—			
(i) A church	25,000	21,000	4,000
(ii) A private foundation not described in section 170(b)(1)(E)	15,000	10,000	5,000
(2) Tangible personal property held more than 6 months (put to unrelated use by church)	12,000	6,000	6,000
Total	102,000	72,000	30,000

(b) After making the reductions required by [paragraph \(a\)](#) of this section, the amount of charitable contributions allowed (before application of section 170(b) limitations) is as follows:

Property	Fair market value	Reduction	Contribution allowed
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Ordinary income property	\$50,000	\$15,000	\$35,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock contributed to:			
(i) The church	25,000		25,000
(ii) The private foundation	15,000	2,500	12,500
(2) Tangible personal property	12,000	3,000	9,000
Total	102,000	20,500	81,500

(c) If C were a corporation, rather than an individual, the amount of charitable contributions allowed (before application of section 170(b) limitation) would be as follows:

Property	Fair market value	Reduction	Contribution allowed
Ordinary income property	\$50,000	\$15,000	\$35,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock contributed to:			

(i) The church	25,000		25,000
(ii) The private foundation	15,000	3,125	11,875
(2) Tangible personal property	12,000	3,750	8,250
Total	102,000	21,875	80,125

EXAMPLE 2.

On March 1, 1970, D, an individual, contributes to a church intangible property to which section 1245 applies which has a fair market value of \$60,000 and an adjusted basis of \$10,000. At the time of the contribution D has used the property in his business for more than 6 months. If the property had been sold by D at its fair market value at the time of its contribution, it is assumed that under section 1245 \$20,000 of the gain of \$50,000 would have been treated as ordinary income and \$30,000 would have been long-term capital gain. Under [paragraph \(a\)\(1\)](#) of this section, D's contribution of \$60,000 is reduced by \$20,000.

EXAMPLE 3.

The facts are the same as in *Example 2* except that the property is contributed to a private foundation not described in section 170(b)(1)(E). Under paragraph (a) (1) and (2) of this section, D's contribution is reduced by \$35,000 (100 percent of the ordinary income of \$20,000 and 50 percent of the long-term capital gain of \$30,000).

EXAMPLE 4.

(a) In 1971, E, an individual calendar-year taxpayer, contributes to a church stock held for more than 6 months which has a fair market value of \$90,000 and an adjusted basis of \$10,000. In 1972, E also contributes to a church stock held for more than 6 months which has a fair market value of \$20,000 and an adjusted basis of \$10,000. E's contribution base for 1971 is \$200,000; and for 1972, is \$150,000. E makes no other charitable contributions for these 2 taxable years.

(b) For 1971 the [amount](#) of the contribution which may be taken into [account](#) under section 170(a) is limited by section 170(b)(1)(D)(i) to \$60,000 (\$200,000 × 30%), and A is [allowed](#) a deduction for \$60,000. Under section 170(b)(1)(D)(ii), E has a \$30,000 [carryover](#) to 1972 of 30-percent capital gain [property](#), as defined in paragraph (d)(3) of [§ 1.170A-8](#). For 1972 the [amount](#) of

the **charitable contributions deduction** is \$45,000 (total contributions of \$50,000 [\$30,000 + \$20,000] but not to exceed 30% of \$150,000).

(c) Assuming, however, that in 1972 E elects under section 170(b)(1)(D)(iii) and paragraph (d)(2) of **§ 1.170A-8** to have section 170(e)(1)(B) apply to his contributions and **carryovers** of 30-percent capital gain **property**, he must apply section 170(d)(1) as if section 170(e)(1)(B) had applied to the contribution for 1971. If section 170(e)(1)(B) had applied in 1971 to his contributions of 30-percent capital gain **property**, E's contribution would have been reduced from \$90,000 to \$50,000, the **reduction** of \$40,000 being 50 percent of the gain of \$80,000 (\$90,000–\$10,000) which would have been recognized as long-term capital gain if the **property** had been sold by E at its **fair market value** at the time of its contribution to the **church**. Accordingly, by taking the **election** into **account**, E has no **carryover** of 30-percent capital gain **property** to 1972 since the **charitable contributions deduction** of \$60,000 **allowed** for 1971 in respect of that **property** exceeds the reduced contribution of \$50,000 for 1971 which may be taken into **account by reason of the election**. The **charitable contributions deduction** of \$60,000 **allowed** for 1971 is not reduced **by reason of the election**.

(d) Since **by reason of the election** E is **allowed** under paragraph (a)(2) of this section a **charitable contributions deduction** for 1972 of \$15,000 (\$20,000–[(\$20,000– \$10,000) × 50%]) and since the \$30,000 **carryover** from 1971 is eliminated, it would not be to E's advantage to make the **election** under section 170(b)(1)(D)(iii) in 1972.

EXAMPLE 5.

In 1970, F, an individual calendar-year taxpayer, sells to a church for \$4,000 ordinary income property with a fair market value of \$10,000 and an adjusted basis of \$4,000. F's contribution base for 1970 is \$20,000, and F makes no other charitable contributions in 1970. Thus, F makes a charitable contribution to the church of \$6,000 (\$10,000–\$4,000 amount realized), which is 60% of the value of the property. The amount realized on the bargain sale is 40% (\$4,000/\$10,000) of the value of the property. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of \$1,600 (\$4,000 adjusted basis × 40%) is allocated under **§ 1.1011-2(b)** to the noncontributed portion of the property, and F recognizes \$2,400 (\$4,000 amount realized less \$1,600 adjusted basis) of ordinary income. Under paragraphs (a)(1) and (c)(2)(i) of this section, F's contribution of \$6,000 is reduced by \$3,600 (\$6,000 – [\$4,000 adjusted basis × 60%]) (*i.e.*, the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of \$2,400 consists of the portion (\$4,000 × 60%) of the adjusted basis not allocated to the noncontributed portion of the property. That

is, the reduced contribution consists of the portion of the adjusted basis allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is \$6,400 (\$4,000 + \$2,400).

EXAMPLE 6.

In 1970, G, an individual calendar-year taxpayer, sells to a church for \$6,000 ordinary income property with a fair market value of \$10,000 and an adjusted basis of \$4,000. G's contribution base for 1970 is \$20,000, and G makes no other charitable contributions in 1970. Thus, G makes a charitable contribution to the church of \$4,000 (\$10,000 – \$6,000 amount realized), which is 40% of the value of the property. The amount realized on the bargain sale is 60% (\$6,000 / \$10,000) of the value of the property. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of \$2,400 (\$4,000 adjusted basis × 60%) is allocated under [§ 1.1011-2\(b\)](#) to the noncontributed portion of the property, and G recognizes \$3,600 (\$6,000 amount realized less \$2,400 adjusted basis) of ordinary income. Under paragraphs (a)(1) and (c)(2)(i) of this section, G's contribution of \$4,000 is reduced by \$2,400 (\$4,000 – [\$4,000 adjusted basis × 40%]) (*i.e.*, the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of \$1,600 consist of the portion (\$4,000 × 40%) of the adjusted basis not allocated to the noncontributed portion of the property. That is, the reduced contribution consists of the portion of the adjusted basis allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is \$7,600 (\$6,000 + \$1,600).

EXAMPLE 7.

In 1970, H, an individual calendar-year taxpayer, sells to a church for \$2,000 stock held for not more than 6 months which has an adjusted basis of \$4,000 and a fair market value of \$10,000. H's contribution base for 1970 is \$20,000, and H makes no other charitable contributions in 1970. Thus, H makes a charitable contribution to the church of \$8,000 (\$10,000 – \$2,000 amount realized), which is 80% of the value of the property. The amount realized on the bargain sale is 20% (\$2,000 / \$10,000) of the value of the property. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of \$800 (\$4,000 adjusted basis × 20%) is allocated under [§ 1.1011-2\(b\)](#) to the noncontributed portion of the property, and H recognizes \$1,200 (\$2,000 amount realized less \$800 adjusted basis) of ordinary income. Under paragraphs (a)(1) and (c)(2)(i) of this section, H's contribution of \$8,000 is reduced by \$4,800 (\$8,000 – [\$4,000 adjusted basis × 80%]) (*i.e.*, the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of \$3,200 consists of the portion (\$4,000 × 80%) of the adjusted basis not allocated to the noncontributed portion of the property. That is, the reduced contribution consists

of the portion of the adjusted basis allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is \$5,200 (\$2,000 + \$3,200).

EXAMPLE 8.

In 1970, F, an individual calendar-year taxpayer, sells for \$4,000 to a private foundation not described in section 170(b)(1)(E) property to which section 1245 applies which has a fair market value of \$10,000 and an adjusted basis of \$4,000. F's contribution base for 1970 is \$20,000, and F makes no other charitable contributions in 1970. At the time of the bargain sale, F has used the property in his business for more than 6 months. Thus F makes a charitable contribution of \$6,000 (\$10,000 – \$4,000 amount realized), which is 60% of the value of the property. The amount realized on the bargain sale is 40% (\$4,000/\$10,000) of the value of the property. If the property had been sold by F at its fair market value at the time of its contribution, it is assumed that under section 1245 \$4,000 of the gain of \$6,000 (\$10,000 – \$4,000 adjusted basis) would have been treated as ordinary income and \$2,000 would have been long-term capital gain. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of \$1,600 (\$4,000 adjusted basis × 40%) is allocated under [§ 1.1011-2\(b\)](#) to the noncontributed portion of the property, and F's recognized gain of \$2,400 (\$4,000 amount realized less \$1,600 adjusted basis) consists of \$1,600 (\$4,000 × 40%) of ordinary income and \$800 (\$2,000 × 40%) of long-term capital gain. Under paragraphs (a) and (c)(2)(i) of this section, F's contribution of \$6,000 is reduced by \$3,000 (the sum of \$2,400 (\$4,000 × 60%) of ordinary income and \$600 ([\$2,000 × 60%] × 50%) of long-term capital gain) (*i.e.*, the amount of gain that would have been recognized on the contributed portion had the property been sold). The reduced contribution of \$3,000 consists of \$2,400 (\$4,000 × 60%) of adjusted basis and \$600 ([\$2,000 × 60%] × 50%) of long-term capital gain not used as a reduction under [paragraph \(a\)\(2\)](#) of this section. Under sections 1012 and 1015(a) the basis of the property to the private foundation is \$6,400 (\$4,000 + \$2,400).

EXAMPLE 9.

On January 1, 1970, A, an individual, transfers to a charitable remainder annuity trust described in section 664 (d)(1) stock which he has held for more than 6 months and which has a fair market value of \$250,000 and an adjusted basis of \$50,000, an irrevocable remainder interest in the property being contributed to a private foundation not described in section 170(b)(1)(E). The trusts provides that an annuity of \$12,500 a year is payable to A at the end of each year for 20 years. By reference to [§ 20.2031-7A\(c\)](#) of this chapter (Estate Tax Regulations) the figure in column (2) opposite 20 years is 11.4699. Therefore, under [§ 1.664-2](#) the fair market value of the gift of the remainder interest to charity is \$106,626.25 (\$250,000 –

[$\$12,500 \times 11.4699$]). Under paragraph (c)(1)(ii) of this section, the adjusted basis allocated to the contributed portion of the property is $\$21,325.25$ ($\$50,000 \times \$106,626.25/\$250,000$). Under paragraphs (a)(2) and (c)(1) of this section, A's contribution is reduced by $\$42,650.50$ (50 percent \times [$\$106,626.25 - \$21,325.25$]) to $\$63,975.75$ ($\$106,626.25 - \$42,650.50$). If, however, the irrevocable remainder interest in the property had been contributed to a section 170(b)(1)(A) organization, A's contribution of $\$106,626.25$ would not be reduced under [paragraph \(a\)](#) of this section.

EXAMPLE 10.

(a) On July 1, 1970, B, a calendar-year individual taxpayer, sells to a church for $\$75,000$ intangible property to which section 1245 applies which has a fair market value of $\$250,000$ and an adjusted basis of $\$75,000$. Thus, B makes a charitable contribution to the church of $\$175,000$ ($\$250,000 - \$75,000$ amount realized), which is 70% ($\$175,000/\$250,000$) of the value of the property, the amount realized on the bargain sale is 30% ($\$75,000/\$250,000$) of the value of the property. At the time of the bargain sale, B has used the property in his business for more than 6 months. B's contribution base for 1970 is $\$500,000$, and B makes no other charitable contributions in 1970. If the property had been sold by B at its fair market value at the time of its contribution, it is assumed that under section 1245 $\$105,000$ of the gain of $\$175,000$ ($\$250,000 - \$75,000$ adjusted basis) would have been treated as ordinary income and $\$70,000$ would have been long-term capital gain. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of $\$22,500$ ($\$75,000$ adjusted basis \times 30%) is allocated under [§ 1.1011-2\(b\)](#) to the noncontributed portion of the property and B's recognized gain of $\$52,500$ ($\$75,000$ amount realized less $\$22,500$ adjusted basis) consists of $\$31,500$ ($\$105,000 \times 30\%$) of ordinary income and $\$21,000$ ($\$70,000 \times 30\%$) of long term capital gain.

(b) Under paragraphs (a)(1) and (c)(2)(i) of this section B's contribution of $\$175,000$ is reduced by $\$73,500$ ($\$105,000 \times 70\%$) (*i.e.*, the [amount](#) of ordinary [income](#) that would have been recognized on the contributed portion had the [property](#) been sold). The reduced contribution of $\$101,500$ consists of $\$52,500$ [$\$75,000 \times 70\%$] of [adjusted basis](#) allocated to the contributed portion of the [property](#) and $\$49,000$ [$\$70,000 \times 70\%$] of long-term capital gain allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the [property](#) to the [church](#) is $\$127,500$ ($\$75,000 + \$52,500$).

(e) Effective date. This section applies only to contributions paid after December 31, 1969, except that, in the case of a charitable contribution of a letter, memorandum, or [property](#) similar to a letter or memorandum, it applies to contributions paid after July 25, 1969.

[T.D. 7207, 37 FR 20776, Oct. 4, 1972; 37 FR 22982, Oct. 27, 1972, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980; T.D. 7807, 47 FR 4510, Feb. 1, 1982; T.D. 8176, 53 FR 5569, Feb. 25, 1988; T.D. 8540, 59 FR 30102, June 10, 1994]

26 CFR § 1.170A-4A - Special rule for the deduction of certain charitable contributions of inventory and other property.

§ 1.170A-4A Special rule for the deduction of certain charitable contributions of inventory and other property.

(a) Introduction. Section 170(e)(3) provides a special rule for the deduction of certain qualified contributions of inventory and certain other property. To be treated as a “qualified contribution”, a contribution must meet the restrictions and requirements of section 170(e)(3)(A) and paragraph (b) of this section. Paragraph (b)(1) of this section describes the corporations whose contributions may be subject to this section, the exempt organizations to which these contributions may be made, and the kinds of property which may be contributed. Under paragraph (b)(2) of this section, the use of the property must be related to the purpose or function constituting the ground for the exemption of the organization to which the contribution is made. Also, the property must be used for the care of the ill, needy, or infants. Under paragraph (b)(3) of this section, the recipient organization may not, except as there provided, require or receive in exchange money, property, or services for the transfer or use of property contributed under section 170(e)(3). Under paragraph (b)(4) of this section, the recipient organization must provide the contributing taxpayer with a written statement representing that the organization intends to comply with the restrictions set forth in paragraph (b) (2) and (3) of this section on the use and transfer of the property. Under paragraph (b)(5) of this section, the contributed property must conform to any applicable provisions of the Federal Food, Drug, and Cosmetic Act (as amended), and the regulations thereunder, at the date of contribution and for the immediately preceding 180 days. Paragraph (c) of this section provides the rules for determining the amount of reduction of the

charitable contribution under section 170(e)(3). In general, the **amount** of the **reduction** is equal to one-half of the **amount** of gain (other than gain described in **paragraph (d)** of this section) which would not have been long-term capital gain if the **property** had been sold by the **donor-taxpayer** at **fair market value** at the date of contribution. If, after this **reduction**, the **amount** of the deduction would be more than twice the basis of the contributed **property**, the **amount** of the deduction is accordingly further reduced under **paragraph (c)(1)** of this section. The basis of contributed **property** which is inventory is determined under **paragraph (c)(2)** of this section, and the **donor's cost** of goods sold for the **year** of contribution must be adjusted under **paragraph (c)(3)** of this section. Under **paragraph (d)** of this section, a deduction is not **allowed** for any **amount** which, if the **property** had been sold by the **donor-taxpayer**, would have been gain to which the **recapture** provisions of section 617, 1245, 1250, 1251, or 1252 would have applied. For purposes of section 170(e)(3) the rules of § 1.170A-4 apply where not inconsistent with the rules of this section.

(b) Qualified contributions—(1) *In general.* A contribution of **property** qualifies under section 170(e)(3) of this section only if it is a charitable contribution:

- (i) By a **corporation**, other than a **corporation** which is an electing **small business corporation** within the meaning of section 1371(b);
- (ii) To an **organization** described in section 501(c)(3) and exempt under section 501(a), other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(e);
- (iii) Of **property** described in section 1221 (1) or (2);
- (iv) Which contribution meets the restrictions and **requirements** of **paragraph (b) (2) through (5)** of this section.

(2) Restrictions on use of contributed property. In order for the contribution to qualify under this section, the contributed **property** is subject to the following restrictions in use. If the transferred **property** is used or **transferred** by the donee **organization** (or by any subsequent **transferee** that furnished to the donee **organization** the **written statement** described in **paragraph (b)(4)(ii)** of this section) in a manner inconsistent with the **requirements** of subdivision (i) or (ii) of this **paragraph (b)(2)** or the **requirements** of **paragraph (b)(3)** of this section, the **donor's** deduction is reduced to the **amount** allowable under section 170 of the regulations thereunder, determined without regard to section 170(e)(3) of this section. If, however, the **donor** establishes that, at the time of the contribution, the **donor** reasonably anticipated that the **property** would be used

in a manner consistent with those requirements, then the donor's deduction is not reduced.

(i) Requirement of use for exempt purpose. The use of the property must be related to the purpose or function constituting the ground for exemption under section 501(c)(3) of the organization to which the contribution is made. The property may not be used in connection with any activity which gives rise to unrelated trade or business income, as defined in sections 512 and 513 and the regulations thereunder.

(ii) Requirement of use for care of the ill, needy, or infants—(A) *In general.* The property must be used for the care of the ill, needy, or infants, as defined in this subdivision (ii). The property itself must ultimately either be transferred to (or for the use of) the ill, needy, or infants for their care or be retained for their care. No other person may use the contributed property except as incidental to primary use in the care of the ill, needy, or infants. The organization may satisfy the requirement of this subdivision by transferring the property to a relative, custodian, parent or guardian of the ill or needy individual or infant, or to any other individual if it makes a reasonable effort to ascertain that the property will ultimately be used primarily for the care of the ill or needy individual, or infant, and not for the primary benefit of any other person. The recipient organization may transfer the property to another exempt organization within the jurisdiction of the United States which meets the description contained in paragraph (b)(1)(ii) of this section, or to an organization not within the jurisdiction of the United States that, but for the fact that it is not within the jurisdiction of the United States, would be described in paragraph (b)(1)(ii) of this section. If an organization transfers the property to another organization, the transferring organization must obtain a written statement from the transferee organization as set forth in paragraph (b)(4) of this section. If the property is ultimately transferred to, or used for the benefit of, ill or needy persons, or infants, not within the jurisdiction of the United States, the organization which so transfers the property outside the jurisdiction of the United States must necessarily be a corporation. See section 170(c)(2) and § 1.170A-11(a). For purposes of this subdivision, if the donee-organization charges for its transfer of contributed property (other than a fee allowed by paragraph (b)(3)(ii) of this section), the requirement of this subdivision is not met. See paragraph (b)(3) of this section.

(B) Definition of the ill. An ill person is a person who requires medical care within the meaning of § 1.213-1(e). Examples of ill persons include a person suffering from physical injury, a person with a significant impairment of a bodily organ, a person with an existing handicap, whether from birth or later injury, a person suffering from malnutrition, a person with a disease, sickness, or infection which significantly impairs physical health, a person partially or totally incapable of self-care (including incapacity due to old age). A person suffering from mental illness is included if the person is hospitalized or institutionalized for the mental disorder, or, although the person is nonhospitalized or noninstitutionalized, if the person's mental illness constitutes a significant health impairment.

(C) Definition of care of the ill. Care of the ill means alleviation or cure of an existing illness and includes care of the physical, mental, or emotional needs of the ill.

(D) Definition of the needy. A needy person is a person who lacks the necessities of life, involving physical, mental, or emotional well-being, as a result of poverty or temporary distress. Examples of needy persons include a person who is financially impoverished as a result of low income and lack of financial resources, a person who temporarily lacks food or shelter (and the means to provide for it), a person who is the victim of a natural disaster (such as fire or flood), a person who is the victim of a civil disaster (such as a civil disturbance), a person who is temporarily not self-sufficient as a result of a sudden and severe personal or family crisis (such as a person who is the victim of a crime of violence or who has been physically abused), a person who is a refugee or immigrant and who is experiencing language, cultural, or financial difficulties, a minor child who is not self-sufficient and who is not cared for by a parent or guardian, and a person who is not self-sufficient as a result of previous institutionalization (such as a former prisoner or a former patient in a mental institution).

(E) Definition of care of the needy. Care of the needy means alleviation or satisfaction of an existing need. Since a person may be needy in some respects and not needy in other respects, care of the needy must relate to the particular need which causes the person to be needy. For example, a person whose temporary need arises from a natural disaster may need temporary shelter and food but not recreational facilities.

(F) Definition of infant. An infant is a minor child (as determined under the laws of the jurisdiction in which the child resides).

(G) Definition of care of an infant. Care of an infant means performance of parental functions and provision for the physical, mental, and emotional needs of the infant.

(3) Restrictions on Transfer of contributed property—(i) *In general.* Except as otherwise provided in subdivision (ii) of this paragraph (b)(3), a contribution will not qualify under this section, if the donee-organization or any transferee of the donee-organization requires or receives any money, property, or services for the transfer or use of property contributed under section 170(e)(3). For example, if an organization provides temporary shelter for a fee, and also provides free meals to ill or needy individuals, or infants using food contributed under this section the contribution of food is subject to this section (if the other requirements of this section are met). However, the fee charged by the organization for the shelter may not be increased merely because meals are served to the ill or needy individuals or infants.

(ii) Exception. A contribution may qualify under this section if the donee-organization charges a fee to another organization in connection with its transfer of the donated property, if:

(A) The fee is small or nominal in relation to the value of the transferred property and is not determined by this value; and

(B) The fee is designed to reimburse the donee-organization for its administrative, warehousing, or other similar costs.

For example, if a charitable organization (such as a food bank) accepts surplus food to distribute to other charities which give the food to needy persons, a small fee may be charged to cover administrative, warehousing, and other similar costs. This fee may be charged on the basis of the total number of pounds of food distributed to the transferee charity but not on the basis of the value of the food distributed. The provisions of this subdivision (ii) do not apply to a transfer of donated property directly from an organization to ill or needy individuals, or infants.

(4) Requirement of a written statement—(i) *Furnished to taxpayer.* In the case of any contribution made on or after March 3, 1982, the donee-organization must furnish to the taxpayer a written statement which:

(A) Describes the contributed property, stating the date of its receipt;

(B) Represents that the property will be used in compliance with section 170(e)(3) and paragraphs (b) (2) and (3) of this section;

(C) Represents that the donee-organization meets the requirements of paragraph (b)(1)(ii) of this section; and

(D) Represents that adequate books and records will be maintained, and made available to the Internal Revenue Service upon request.

The written statement must be furnished within a reasonable period after the contribution, but not later than the date (including extensions) by which the donor is required to file a United States corporate income tax return for the year in which the contribution was made. The books and records described in (D) of this subdivision (i) need not trace the receipt and disposition of specific items of donated property if they disclose compliance with the requirements by reference to aggregate quantities of donated property. The books and records are adequate if they reflect total amounts received and distributed (or used), and outline the procedure used for determining that the ultimate recipient of the property is an ill or needy individual, or infant. However, the books and records need not reflect the names of the ultimate individual recipients or the property distributed to (or used by) each one.

(ii) Furnished to transferring organization. If an organization that received a contribution under this section transfers the contributed property to another organization on or after March 3, 1982, the transferee organization must furnish to the transferring organization a written statement which contains the information required in paragraph (b)(4)(i) (A), (B) and (D) of this section.

The statement must also represent that the transferee organization meets the requirements of paragraph (b)(1)(ii) of this section (or, in the case of a transferee organization which is a foreign organization not within the jurisdiction of the United States, that, but for such fact, the organization would meet the requirements of paragraph (b)(1)(ii) of this section). The written statement must be furnished within a reasonable period after the transfer.

(5) Requirement of compliance with the Federal Food, Drug, and Cosmetic Act—

(i) *In general.* With respect to property contributed under this section which is subject to the Federal Food, Drug, and Cosmetic Act (as amended), and regulations thereunder, the contributed property must comply with the applicable provisions of that Act and regulations thereunder at the date of the contribution and for the immediately preceding 180 days. In the case of specific items of contributed property not in existence for the entire period of 180 days immediately preceding the date of contribution, the requirement of this paragraph (b)(5) is considered met if the contributed property complied with that Act and the regulations thereunder during the period of its existence and at the

date of contribution and if, for the 180 day period prior to contribution **other property** (if any) held by the **taxpayer** at any time during that period, which **property** was fungible with the contributed **property**, complied with that Act and the regulations thereunder during the period held by the **taxpayer**.

(ii) Example. The rule of this paragraph (b)(5) may be illustrated by the following **example**.

EXAMPLE.

Corporation X a grocery store, contributes 12 crates of navel oranges. The oranges were picked and placed in the grocery store's stock two weeks prior to the date of contribution. The contribution satisfies the requirements of this paragraph (b)(5) if X complied with the Act and regulations thereunder for 180 days prior to the date of contribution with respect to all navel oranges in stock during that period.

(c) Amount of reduction—(1) *In general.* Section 170(e)(3)(B) requires that the **amount** of the charitable contribution subject to this section which would be taken into **account** under section 170(a), without regard to section 170(e), must be reduced before applying the **percentage limitations** under section 170(b). The **amount** of the first **reduction** is equal to one-half of the **amount** of gain which would not have been long-term capital gain if the **property** had been sold by the **donor-taxpayer** at its **fair market value** on the date of its contribution, excluding, however, any **amount** described in **paragraph (d)** of this section. If the **amount** of the charitable contribution which remains after this **reduction** exceeds twice the basis of the contributed **property**, then the **amount** of the charitable contribution is reduced a second time to an **amount** which is equal to twice the **amount** of the basis of the **property**.

(2) Basis of contributed property which is inventory. For the purposes of this section, notwithstanding the rules of § 1.170A-1(c)(4), the basis of contributed **property** which is inventory must be determined under the **donor's method of accounting** for inventory for purposes of **United States income tax**. The **donor** must use as the basis of the contributed **item** the inventoriable carrying **cost** assigned to any similar **item** not included in closing inventory. For **example**, under the LIFO dollar **value method of accounting** for inventory, where there has been an invasion of a prior **year's** layer, the **donor** may choose to treat the **item** contributed as having a basis of the unit's **cost** with reference to the layer(s) of prior year(s) **cost** or with reference to the current **year cost**.

(3) Adjustment to cost of goods sold. Notwithstanding the rules of § 1.170A-1(c)(4), the **donor** of the **property** which is inventory contributed under this

section must make a corresponding adjustment to **cost** of goods sold by decreasing the **cost** of goods sold by the lesser of the **fair market value** of the contributed **item** or the **amount** of basis determined under **paragraph (c)(2)** of this section.

(4) Examples. The rules of this paragraph **(c)** may be illustrated by the following examples:

EXAMPLE 1.

During 1978 corporation X, a calendar year taxpayer, makes a qualified contribution of women's coats which were section 1221(1) property. The fair market value of the property at the date of contribution is \$1,000, and the basis of the property is \$200. The amount of the charitable contribution which would be taken into account under section 170(a) is the fair market value (\$1,000). The amount of gain which would not have been long-term capital gain if the property had been sold is \$800 (\$1,000-\$200). The amount of the contribution is reduced by one-half the amount which would not have been capital gain if the property had been sold (\$800/2=\$400).

After this **reduction**, the **amount** of the contribution which may be taken into **account** is \$600 (\$1,000-\$400). A second **reduction** is made in the **amount** of the charitable contribution because this **amount** (as first reduced to \$600) is more than \$400 which is an **amount** equal to twice the basis of the **property**.

The **amount** of the further **reduction** is \$200 [\$600-(2 × \$200)], and the **amount** of the contribution as finally reduced is \$400 [\$1,000-(\$400 + \$200)]. X would also have to decrease its **cost** of goods sold for the **year** of contribution by \$200.

EXAMPLE 2.

Assume the same facts as set forth in *Example 1* except that the basis of the property is \$600. The amount of the first reduction is \$200 ((\$1,000-\$600)/2). As reduced, the **amount** of the contribution which may be taken into **account** is \$800 (\$1,000-\$200). There is no second **reduction** because \$800 is less than \$1,200 which is twice the basis of the **property**. However, X would have to decrease its **cost** of goods sold for the **year** of contribution by \$600.

(d) Recapture excluded. A deduction is not **allowed** under section 170(e)(3) or this section for any **amount** which, if the **property** had been sold by the **donor**-taxpayer on the date of its contribution for an **amount** equal to its **fair market value**, would have been treated as ordinary **income** under section 617, 1245, 1250, 1251, or 1252. Thus, before making either **reduction** required by section 170(e)(3)(B) and **paragraph (c)** of this section, the **fair market value** of the contributed **property** must be reduced by the **amount** of gain that would have been

recognized (if the [property](#) had been sold) as ordinary [income](#) under section 617, 1245, 1250, 1251, or 1252.

(e) *Effective date.* This section applies to qualified contributions made after October 4, 1976.

[T.D. 7807, [47 FR 4510](#), Feb. 1, 1982, as amended by T.D. 7962, [49 FR 27317](#), July 3, 1984]

26 CFR § 1.170A-5 - Future interests in tangible personal property.

§ 1.170A-5 Future [interests](#) in tangible personal [property](#).

(a) *In general.*

(1) A contribution consisting of a [transfer](#) of a future [interest](#) in tangible personal [property](#) shall be treated as made only when all intervening [interests](#) in, and rights to the actual possession or enjoyment of, the property:

(i) Have expired, or

(ii) Are held by [persons](#) other than the [taxpayer](#) or those standing in a relationship to the [taxpayer](#) described in section 267(b) and the regulations thereunder, relating to losses, expenses, and [interest](#) with respect to [transactions](#) between [related taxpayers](#).

(2) Section 170(a)(3) and this section have no [application](#) in respect of a [transfer](#) of an undivided present [interest](#) in [property](#). For [example](#), a contribution of an undivided one-quarter [interest](#) in a painting with respect to which the donee is entitled to possession during 3 months of each [year](#) shall be treated as made upon the [receipt](#) by the donee of a formally executed and acknowledged deed of gift. However, the period of initial possession by the donee may not be deferred in time for more than 1 [year](#).

(3) Section 170(a)(3) and this section have no [application](#) in respect of a [transfer](#) of a future [interest](#) in intangible personal [property](#) or in [real property](#). However, a fixture which is intended to be severed from [real property](#) shall be treated as tangible personal [property](#). For [example](#), a contribution of a future [interest](#) in a chandelier which is attached to a [building](#) is considered a

contribution which consists of a future [interest](#) in tangible personal [property](#) if the transferor intends that it be detached from the [building](#) at or prior to the time when the charitable [organization](#)'s right to possession or enjoyment of the chandelier is to commence.

(4) For purposes of section 170(a)(3) and this section, the term ***future interest*** has generally the same meaning as it has when used in section 2503 and [§ 25.2503-3](#) of this chapter (Gift Tax Regulations); it includes reversions, remainders, and other [interests](#) or estates, whether [vested](#) or contingent, and whether or not [supported](#) by a particular [interest](#) or estate, which are limited to commence in use, possession, or enjoyment at some future date or time. The term *future interest* includes situations in which a [donor](#) purports to give tangible personal [property](#) to a charitable [organization](#), but has an understanding, arrangement, [agreement](#), [etc.](#), whether written or oral, with the charitable [organization](#) which has the effect of reserving to, or retaining in, such [donor](#) a right to the use, possession, or enjoyment of the [property](#).

(5) In the case of a charitable contribution of a future [interest](#) to which section 170(a)(3) and this section apply the other provisions of section 170 and the regulations thereunder are inapplicable to the contribution until such time as the contribution is treated as made under section 170(a)(3).

(b) Illustrations. The [application of this section](#) may be illustrated by the following examples:

EXAMPLE 1.

On December 31, 1970, A, an individual who reports his income on the calendar year basis, conveys by deed of gift to a museum title to a painting, but reserves to himself the right to the use, possession, and enjoyment of the painting during his lifetime. It is assumed that there was no intention to avoid the application of section 170(f)(3)(A) by the conveyance. At the time of the gift the value of the painting is \$90,000. Since the contribution consists of a future interest in tangible personal property in which the donor has retained an intervening interest, no contribution is considered to have been made in 1970.

EXAMPLE 2.

Assume the same facts as in *Example 1* except that on December 31, 1971, A relinquishes all of his right to the use, possession, and enjoyment of the painting and delivers the painting to the museum. Assuming that the value of the painting has increased to \$95,000, A is treated as having made a charitable contribution of \$95,000 in 1971 for which a deduction is allowable without regard to section 170(f)(3)(A).

EXAMPLE 3.

Assume the same facts as in *Example 1* except A dies without relinquishing his right to the use, possession, and enjoyment of the painting. Since A did not relinquish his right to the use, possession, and enjoyment of the property during his life, A is treated as not having made a charitable contribution of the painting for income tax purposes.

EXAMPLE 4.

Assume the same facts as in *Example 1* except A, on December 31, 1971, transfers his interest in the painting to his son, B, who reports his income on the calendar year basis. Since the relationship between A and B is one described in section 267(b), no contribution of the remainder interest in the painting is considered to have been made in 1971.

EXAMPLE 5.

Assume the same facts as in *Example 4*. Also assume that on December 31, 1972, B conveys to the museum the interest measured by A's life. B has made a charitable contribution of the present interest in the painting conveyed to the museum. In addition, since all intervening interests in, and rights to the actual possession or enjoyment of the property, have expired, a charitable contribution of the remainder interest is treated as having been made by A in 1972 for which a deduction is allowable without regard to section 170(f)(3)(A). Such remainder interest is valued according to [§ 20.2031-7A\(c\)](#) of this chapter (estate tax regulations), determined by subtracting the value of B's interest measured by A's life expectancy in 1972, and B receives a deduction in 1972 for the life interest measured by A's life expectancy and valued according to Table A(1) in such section.

EXAMPLE 6.

On December 31, 1970, C, an individual who reports his income on the calendar year basis, transfers a valuable painting to a pooled income fund described in section 642(c)(5), which is maintained by a university. C retains for himself for life an income interest in the painting, the remainder interest in the painting being contributed to the university. Since the contribution consists of a future interest in tangible personal property in which the donor has retained an intervening interest, no charitable contribution is considered to have been made in 1970.

EXAMPLE 7.

On January 15, 1972, D, an individual who reports his income on the calendar year basis, transfers a capital asset held for more than 6 months consisting of a valuable painting to a pooled income fund described in section 642(c)(5), which is maintained by a university, and creates an income interest in such painting for E for life. E is an individual not standing in a relationship to D described in section 267(b). The remainder interest in the property is contributed by D to the university. The

trustee of the pooled income fund puts the painting to an unrelated use within the meaning of paragraph (b)(3) of [§ 1.170A-4](#). Accordingly, D is allowed a deduction under section 170 in 1972 for the present value of the remainder interest in the painting, after reducing such amount under section 170 (e)(1)(B)(i) and paragraph (a)(2) of [§ 1.170A-4](#). This reduction in the amount of the contribution is required since under paragraph (b)(3) of that section the use by the pooled income fund of the painting is a use which would have been an unrelated use if it had been made by the university.

(c) *Effective date.* This section applies only to contributions paid in [taxable years](#) beginning after December 31, 1969.

[T.D. 7207, [37 FR 20779](#), Oct. 4, 1972, as amended by T.D. 8540, [59 FR 30102](#), June 10, 1994]

26 CFR § 1.170A-6 - Charitable contributions in trust.

§ 1.170A-6 Charitable contributions in trust.

(a) *In general.*

(1) No deduction is [allowed](#) under section 170 for the [fair market value](#) of a charitable contribution of any [interest](#) in [property](#) which is less than the [donor's entire interest](#) in the [property](#) and which is [transferred](#) in [trust](#) unless the [transfer](#) meets the [requirements](#) of paragraph (b) or (c) of this section. If the [donor's entire interest](#) in the [property](#) is [transferred](#) in [trust](#) and is contributed to a charitable [organization](#) described in section 170(c), a deduction is [allowed](#) under section 170. Thus, if on July 1, 1972, [property](#) is [transferred](#) in [trust](#) with the [requirement](#) that the [income](#) of the [trust](#) be paid for a term of 20 [years](#) to a [church](#) and thereafter the remainder be paid to an [educational organization](#) described in section 170(b)(1)(A), a deduction is [allowed](#) for the [value](#) of such [property](#). See section 170(f)(2) and (3)(B), and paragraph (b)(1) of [§ 1.170A-7](#).

(2) A deduction is [allowed](#) without regard to this section for a contribution of a partial [interest](#) in [property](#) if such [interest](#) is the [taxpayer's entire interest](#) in the [property](#), such as an [income interest](#) or a remainder [interest](#). If, however, the [property](#) in which such partial [interest](#) exists was divided in order to create

such interest and thus avoid section 170(f)(2), the deduction will not be allowed. Thus, for example, assume that a taxpayer desires to contribute to a charitable organization the reversionary interest in certain stocks and bonds which he owns. If the taxpayer transfers such property in trust with the requirement that the income of the trust be paid to his son for life and that the reversionary interest be paid to himself and immediately after creating the trust contributes the reversionary interest to a charitable organization, no deduction will be allowed under section 170 for the contribution of the taxpayer's entire interest consisting of the reversionary interest in the trust.

(b) Charitable contribution of a remainder interest in trust—(1) *In general.* No deduction is allowed under section 170 for the fair market value of a charitable contribution of a remainder interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust unless the trust is:

- (i) A pooled income fund described in section 642(c)(5) and § 1.642(c)-5,
- (ii) A charitable remainder annuity trust described in section 664(d)(1) and § 1.664-2, or
- (iii) A charitable remainder unitrust described in section 664(d)(2) and § 1.664-3.

(2) Value of a remainder interest. The fair market value of a remainder interest in a pooled income fund shall be computed under § 1.642(c)-6. The fair market value of a remainder interest in a charitable remainder annuity trust shall be computed under § 1.664-2. The fair market value of a remainder interest in a charitable remainder unitrust shall be computed under § 1.664-4. However, in some cases a reduction in the amount of a charitable contribution of the remainder interest may be required. See section 170(e) and § 1.170A-4.

(c) Charitable contribution of an income interest in trust—(1) *In general.* No deduction is allowed under section 170 for the fair market value of a charitable contribution of an income interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust unless the income interest is either a guaranteed annuity interest or a unitrust interest, as defined in paragraph (c)(2) of this section, and the grantor is treated as the owner of such interest for purposes of applying section 671, relating to grantors and others treated as substantial owners. See section 4947(a)(2) for the application to such income interests in trust of the provisions relating to private

foundations and section 508(e) for rules relating to provisions required in the governing instruments.

(2) Definitions. For purposes of this paragraph:

(i) *Guaranteed annuity interest.*

(A) An **income interest** is a “guaranteed annuity interest” only if it is an irrevocable right pursuant to the governing instrument of the **trust** to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable **amount** is paid periodically, but not less often than annually, for a specified term of **years** or for the life or lives of certain **individuals**, each of whom must be living at the date of **transfer** and can be ascertained at such date. Only one or more of the following **individuals** may be used as measuring lives: the **donor**, the **donor's spouse**, and an individual who, with respect to all remainder beneficiaries (other than charitable **organizations** described in section 170, 2055, or 2522), is either a lineal ancestor or the **spouse** of a lineal ancestor of those beneficiaries. A **trust** will satisfy the **requirement** that all noncharitable remainder beneficiaries are lineal descendants of the individual who is the measuring life, or that individual's **spouse**, if there is less than a 15% probability that **individuals** who are not lineal descendants will receive any **trust** corpus. This probability must be computed, based on the current applicable Life Table contained in § 20.2031-7, at the time **property** is **transferred** to the **trust** taking into **account** the **interests** of all primary and contingent remainder beneficiaries who are living at that time. An **interest** payable for a specified term of **years** can qualify as a guaranteed annuity **interest** even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for **vesting** of 21 **years** after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the **trust**. The rule in this paragraph that a charitable **interest** may be payable for the life or lives of only certain **specified individuals** does not apply in the case of a charitable guaranteed annuity **interest** payable under a charitable remainder **trust** described in section 664. An **amount** is determinable if the exact **amount** which must be paid under the **conditions** specified in the governing instrument of the **trust** can be ascertained as of the date of **transfer**. For **example**, the **amount** to be paid may be a **stated** sum for a term of years, or for the life of the **donor**, at the expiration of which it may be changed by a specified **amount**, but it may not be redetermined by reference to a fluctuating index such as the **cost** of living index. In further **illustration**,

the **amount** to be paid may be expressed in **terms** of a fraction or percentage of the **cost** of living index on the date of **transfer**.

(B) An **income interest** is a guaranteed annuity **interest** only if it is a guaranteed annuity **interest** in every respect. For **example**, if the **income interest** is the right to receive from a **trust** each **year** a **payment** equal to the lesser of a sum certain or a fixed percentage of the net **fair market value** of the **trust** assets, determined annually, such **interest** is not a guaranteed annuity **interest**.

(C) Where a charitable **interest** is in the form of a guaranteed annuity **interest**, the governing instrument of the **trust** may provide that **income** of the **trust** which is in excess of the **amount** required to pay the guaranteed annuity **interest** shall be paid to or for the use of a charitable **organization**. Nevertheless, the **amount** of the deduction under section 170(f)(2)(B) shall be limited to the **fair market value** of the guaranteed annuity **interest** as determined under **paragraph (c)(3)** of this section. For a rule relating to **treatment** by the grantor of any contribution made by the **trust** in excess of the **amount** required to pay the guaranteed annuity **interest**, see **paragraph (d)(2)(ii)** of this section.

(D) If the **present value** on the date of **transfer** of all the **income interests** for a charitable purpose exceeds 60 percent of the aggregate **fair market value** of all **amounts** in the **trust** (after the **payment** of liabilities), the **income interest** will not be considered a guaranteed annuity **interest** unless the governing instrument of the **trust** prohibits both the **acquisition** and the retention of assets which would give rise to a tax under section 4944 if the **trustee** had **acquired** such assets. The **requirement** in this subdivision **(D)** for a prohibition in the governing instrument against the retention of assets which would give rise to a tax under section 4944 if the **trustee** had **acquired** the assets shall not apply to a **transfer** in **trust** made on or before May 21, 1972.

(E) Where a charitable **interest** in the form of a guaranteed annuity **interest** is **transferred** after May 21, 1972, the charitable **interest** generally is not a guaranteed annuity **interest** if any **amount** may be paid by the **trust** for a private purpose before the expiration of all the charitable annuity interests. There are two **exceptions** to this **general rule**. First, the charitable **interest** is a guaranteed annuity **interest** if the **amount** payable for a private purpose is in the form of a guaranteed annuity **interest** and the **trust's** governing instrument does not

provide for any preference or priority in the [payment](#) of the private annuity as opposed to the charitable annuity. Second, the charitable [interest](#) is a guaranteed annuity [interest](#) if under the [trust](#)'s governing instrument the [amount](#) that may be paid for a private purpose is payable only from a [group](#) of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable [by reason of](#) section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(i)(E), an [amount](#) is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See [§ 53.4947-1\(c\)](#) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated [amounts](#) in a split-interest [trust](#).

(F) For rules relating to certain governing instrument [requirements](#) and to the imposition of certain excise [taxes](#) where the guaranteed annuity [interest](#) is in [trust](#) and for rules governing [payment](#) of private [income interests](#) by a split-interest [trust](#), see section 4947(a)(2) and (b)(3)(A), and the regulations thereunder.

(ii) *Unitrust interest.*

(A) An [income interest](#) is a “unitrust interest” only if it is an irrevocable right pursuant to the governing instrument of the [trust](#) to receive [payment](#), not less often than annually of a fixed percentage of the net [fair market value](#) of the [trust](#) assets, determined annually. In computing the net [fair market value](#) of the [trust](#) assets, all assets and liabilities shall be taken into [account](#) without regard to whether particular [items](#) are taken into [account](#) in determining the [income](#) of the [trust](#). The net [fair market value](#) of the [trust](#) assets may be determined on any one date during the [year](#) or by taking the average of [valuations](#) made on more than one date during the [year](#), provided that the same [valuation date](#) or dates and [valuation](#) methods are used each [year](#). Where the governing instrument of the [trust](#) does not specify the [valuation date](#) or dates, the [trustee](#) shall select such date or dates and shall indicate his selection on the first return on Form 1041 which the [trust](#) is required to file. [Payments](#) under a unitrust [interest](#) may be paid for a specified term of [years](#) or for the life or lives of certain [individuals](#), each of whom must be living at the date of [transfer](#) and can be ascertained at such date. Only one or more of the following [individuals](#) may be used as measuring lives: the [donor](#), the [donor's spouse](#), and an individual who, with respect to all remainder beneficiaries (other than charitable [organizations](#) described in section 170, 2055, or 2522), is either a lineal ancestor or the [spouse](#) of a lineal ancestor of

those beneficiaries. A trust will satisfy the requirement that all noncharitable remainder beneficiaries are lineal descendants of the individual who is the measuring life, or that individual's spouse, if there is less than a 15% probability that individuals who are not lineal descendants will receive any trust corpus. This probability must be computed, based on the current applicable Life Table contained in § 20.2031-7, at the time property is transferred to the trust taking into account the interests of all primary and contingent remainder beneficiaries who are living at that time. An interest payable for a specified term of years can qualify as a unitrust interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. The rule in this paragraph that a charitable interest may be payable for the life or lives of only certain specified individuals does not apply in the case of a charitable unitrust interest payable under a charitable remainder trust described in section 664.

(B) An income interest is a unitrust interest only if it is a unitrust interest in every respect. For example, if the income interest is the right to receive from a trust each year a payment equal to the lesser of a sum certain or a fixed percentage of the net fair market value of the trust assets, determined annually, such interest is not a unitrust interest.

(C) Where a charitable interest is in the form of a unitrust interest, the governing instrument of the trust may provide that income of the trust which is in excess of the amount required to pay the unitrust interest shall be paid to or for the use of a charitable organization. Nevertheless, the amount of the deduction under section 170(f)(2)(B) shall be limited to the fair market value of the unitrust interest as determined under paragraph (c)(3) of this section. For a rule relating to treatment by the grantor of any contribution made by the trust in excess of the amount required to pay the unitrust interest, see paragraph (d)(2)(ii) of this section.

(D) Where a charitable interest is in the form of a unitrust interest, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of

the private unitrust **interest** as opposed to the charitable unitrust **interest**. Second, the charitable **interest** is a unitrust **interest** if under the **trust's** governing instrument the **amount** that may be paid for a private purpose is payable only from a **group** of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable **by reason of** section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(ii)(D), an **amount** is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated **amounts** in a split-interest **trust**.

(E) For rules relating to certain governing instrument **requirements** and to the imposition of certain excise **taxes** where the unitrust **interest** is in **trust** and for rules governing **payment** of private **income interests** by a split-interest **trust**, see section 4947(a)(2) and (b)(3)(A), and the regulations thereunder.

(3) Valuation of income interest.

(i) The deduction **allowed** by section 170(f)(2)(B) for a charitable contribution of a guaranteed annuity **interest** is limited to the **fair market value** of such **interest** on the date of contribution, as computed under § 20.2031-7 or, for certain **prior periods**, 20.2031-7A of this chapter (Estate Tax Regulations).

(ii) The deduction **allowed** under section 170(f)(2)(B) for a charitable contribution of a unitrust **interest** is limited to the **fair market value** of the unitrust **interest** on the date of contribution. The **fair market value** of the unitrust **interest** shall be determined by subtracting the **present value** of all **interests** in the transferred **property** other than the unitrust **interest** from the **fair market value** of the transferred **property**.

(iii) If **by reason of** all the **conditions** and circumstances surrounding a **transfer** of an **income interest** in **property** in **trust** it appears that the charity may not receive the beneficial enjoyment of the **interest**, a deduction will be **allowed** under paragraph (c)(1) of this section only for the minimum **amount** it is evident the charity will receive. The **application** of this subdivision may be illustrated by the following examples:

EXAMPLE 1.

In 1972, B transfers \$20,000 in trust with the requirement that M Church be paid a guaranteed annuity interest (as defined in subparagraph (2)(i) of this paragraph) of \$4,000, payable annually at the end of each year for 9 years, and that the residue

revert to himself. Since the fair market value of an annuity of \$4,000 a year for a period of 9 years, as determined under [§ 20.2031-7A\(c\)](#) of this chapter, is \$27,206.80 ($\$4,000 \times 6.8017$), it appears that M will not receive the beneficial enjoyment of the income interest. Accordingly, even though B is treated as the owner of the trust under section 673, he is allowed a deduction under subparagraph (1) of this paragraph for only \$20,000, which is the minimum amount it is evident M will receive.

EXAMPLE 2.

In 1975, C transfers \$40,000 in trust with the requirement that D, an individual, and X Charity be paid simultaneously guaranteed annuity interests (as defined in subparagraph (2)(i) of this paragraph) of \$5,000 a year each, payable annually at the end of each year, for a period of 5 years and that the remainder be paid to C's children. The fair market value of two annuities of \$5,000 each a year for a period of 5 years is \$42,124 ($[\$5,000 \times 4.2124] \times 2$), as determined under [§ 20.2031-7A\(c\)](#) of this chapter. The trust instrument provides that in the event the trust fund is insufficient to pay both annuities in a given year, the trust fund will be evenly divided between the charitable and private annuitants. The deduction under subparagraph (1) of this paragraph with respect to the charitable annuity will be limited to \$20,000, which is the minimum amount it is evident X will receive.

EXAMPLE 3.

In 1975, D transfers \$65,000 in trust with the requirement that a guaranteed annuity interest (as defined in subparagraph (2)(i) of this paragraph) of \$5,000 a year, payable annually at the end of each year, be paid to Y Charity for a period of 10 years and that a guaranteed annuity interest (as defined in subparagraph (2)(i) of this paragraph) of \$5,000 a year, payable annually at the end of each year, be paid to W, his wife, aged 62, for 10 years or until her prior death. The annuities are to be paid simultaneously, and the remainder is to be paid to D's children. The fair market value of the private annuity is \$33,877 ($\$5,000 \times 6.7754$), as determined pursuant to [§ 20.2031-7A\(c\)](#) of this chapter and by the use of factors involving one life and a term of years as published in Publication 723A (12-70). The fair market value of the charitable annuity is \$36,800.50 ($\$5,000 \times 7.3601$), as determined under [§ 20.2031-7A\(c\)](#) of this chapter. It is not evident from the governing instrument of the trust or from local law that the trustee would be required to apportion the trust fund between the wife and charity in the event the fund were insufficient to pay both annuities in a given year. Accordingly, the deduction under subparagraph (1) of this paragraph with respect to the charitable annuity will be limited to \$31,123 ($\$65,000$ less $\$33,877$ [the value of the private annuity]), which is the minimum amount it is evident Y will receive.

(iv) See paragraph (b)(1) of § 1.170A-4 for rule that the term *ordinary income property* for purposes of section 170(e) does not include an **income interest** in respect of which a deduction is **allowed** under section 170(f)(2)(B) and this paragraph.

(4) Recapture upon termination of treatment as owner. If for any reason the **donor** of an **income interest** in **property** ceases at any time before the **termination** of such **interest** to be treated as the **owner** of such **interest** for purposes of applying section 671, as for **example**, where he dies before the **termination** of such **interest**, he shall for purposes of this chapter be considered as having received, on the date he ceases to be so treated, an **amount** of **income** equal to (i) the **amount** of any deduction he was **allowed** under section 170 for the contribution of such **interest** reduced by (ii) the discounted **value** of all **amounts** which were required to be, and actually were, paid with respect to such **interest** under the **terms** of **trust** to the charitable **organization** before the time at which he ceases to be treated as the **owner** of the **interest**. The discounted **value** of the **amounts** described in subdivision (ii) of this subparagraph shall be computed by treating each such **amount** as a contribution of a remainder **interest** after a term of **years** and valuing such **amount** as of the date of contribution of the **income interest** by the **donor**, such **value** to be determined under § 20.2031-7 of this chapter consistently with the manner in which the **fair market value** of the **income interest** was determined pursuant to subparagraph (3)(i) of this paragraph. The **application** of this subparagraph will not be construed to disallow a deduction to the **trust** for **amounts** paid by the **trust** to the charitable **organization** after the time at which the **donor** ceased to be treated as the **owner** of the **trust**.

(5) Illustrations. The **application** of this paragraph may be illustrated by the following examples:

EXAMPLE 1.

On January 1, 1971, A contributes to a church in trust a 9-year irrevocable income interest in property. Both A and the trust report income on a calendar year basis. The fair market value of the property placed in trust is \$10,000. The trust instrument provides that the church will receive an annuity of \$500, payable annually at the end of each year for 9 years. The income interest is a guaranteed annuity interest as defined in subparagraph (2)(i) of this paragraph; upon termination of such interest the residue of the trust is to revert to A. By reference to § 20.2031-7A(c) of this chapter, it is found that the figure in column (2) opposite 9 years is 6.8017. The present value of the annuity is therefore \$3,400.85 (\$500 ×

6.8017). The present value of the income interest and A's charitable contribution for 1971 is \$3,400.85.

EXAMPLE 2.

(a) On January 1, B contributes to a church in trust a 9-year irrevocable income interest in property. Both B and the trust report income on a calendar year basis. The fair market value of the property placed in trust is \$10,000. The trust instrument provides that the trust will pay to the church at the end of each year for 9 years 5 percent of the fair market value of all property in the trust at the beginning of the year. The income interest is a unitrust interest as defined in subparagraph (2)(ii) of this paragraph; upon termination of such interest the residue of the trust is to revert to B.

(b) The section 7520 rate at the time of the [transfer](#) was 6.0 percent. By reference to [Table F\(6.0\)](#) in [§ 1.664-4\(e\)\(6\)](#), the adjusted payout rate is 4.717% ($5\% \times 0.943396$). The [present value](#) of the reversion is \$6,473.75, computed by reference to [Table D](#) in [§ 1.664-4\(e\)\(6\)](#), as follows:

Factor at 4.6 percent for 9 years	0.654539
Factor at 4.8 percent for 9 years	.642292
Difference	.012247
Interpolation adjustment:	
$4.717\% - 4.6\% / 0.2\% = x / 0.012247$	
$x = 0.007164$	
Factor at 4.6 percent for 9 years	.654539
Less: Interpolation adjustment	.007164
Interpolated factor	.647375

Present value of reversion ($\$10,000 \times 0.647375$)

\$6,473.75

(c) The present value of the income interest and B's charitable contribution is \$3,526.25 ($\$10,000 - \$6,473.75$).

EXAMPLE 3.

(a) On January 1, 1971, C contributes to a church in trust a 9-year irrevocable income interest in property. Both C and the trust report income on a calendar year basis. The fair market value of the property placed in trust is \$10,000. The trust instrument provides that the church will receive an annuity of \$500, payable annually at the end of each year for 9 years. The income interest is a guaranteed annuity interest as defined in subparagraph (2)(i) of this paragraph; upon termination of such interest the residue of the trust is to revert to C. C's charitable contribution for 1971 is \$3,400.85, determined as provided in **Example 1**. The trust earns income of \$600 in 1971, \$400 in 1972, and \$500 in 1973, all of which is taxable to C under section 671. The church is paid \$500 at the end of 1971, 1972, and 1973, respectively. On December 31, 1973, C dies and ceases to be treated as the owner of the income interest under section 673.

(b) Pursuant to subparagraph (4) of this paragraph, the discounted value as of January 1, 1971, of the amounts paid to the church by the trust is \$1,336.51, determined by reference to column (4) of § 20.2031-7A(c) of this chapter, as follows:

Annuity	Amount paid	Years from Jan. 1, 1971, to payment date	Discount factor	Discount value as of Jan. 1, 1971
Payment date				
Dec. 31, 1971	\$500	1	0.943396	\$471.70
Dec. 31, 1972	500	2	.889996	445.00
Dec. 31, 1973	500	3	.839619	419.81

Total discounted value				1,336.51
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(c) Pursuant to subparagraph (4) of this paragraph, there must be included in C's gross income for 1973 the amount of \$2,064.34 (\$3,400.85 less \$1,336.51).

(d) For deduction by the trust for amounts paid to the church after December 31, 1973, see section 642(c)(1) and the regulations thereunder.

(d) Denial of deduction for certain contributions by a trust.

(1) If by reason of section 170(f)(2)(B) and paragraph (c) of this section a charitable contributions deduction is allowed under section 170 for the fair market value of an income interest transferred in trust, neither the grantor of the income interest, the trust, nor any other person shall be allowed a deduction under section 170 or any other section for the amount of any charitable contribution made by the trust with respect to, or in fulfillment of, such income interest.

(2) Section 170(f)(2)(C) and subparagraph (1) of this paragraph shall not be construed, however, to:

(i) Disallow a deduction to the trust, pursuant to section 642(c)(1) and the regulations thereunder, for amounts paid by the trust after the grantor ceases to be treated as the owner of the income interest for purposes of applying section 671 and which are not taken into account in determining the amount of recapture under paragraph (c)(4) of this section, or

(ii) Disallow a deduction to the grantor under section 671 and § 1.671-2(c) for a charitable contribution made by the trust in excess of the contribution required to be made by the trust under the terms of the trust instrument with respect to, or in fulfillment of, the income interest.

(3) Although a deduction for the fair market value of an income interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust is disallowed under section 170 because such interest is not a guaranteed annuity interest, or a unitrust interest, as defined in paragraph (c)(2) of this section, the donor may be entitled to a deduction under section 671 and § 1.671-2(c) for any charitable contributions made by the trust if he is treated as the owner of such interest for purposes of applying section 671.

(e) Effective date. This section applies only to transfers in trust made after July 31, 1969. In addition, the rule in paragraphs (c)(2)(i)(A) and (ii)(A) of this section that guaranteed annuity interests and unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals applies to transfers made on or after April 4, 2000. If a transfer is made to a trust on or after April 4, 2000 that uses an individual other than one permitted in paragraphs (c)(2)(i)(A) and (ii)(A) of this section, the trust may be reformed to satisfy this rule. As an alternative to reformation, rescission may be available for a transfer made on or before March 6, 2001. See § 25.2522(c)-3(e) of this chapter for the requirements concerning reformation or possible rescission of these interests.

[T.D. 7207, 37 FR 20780, Oct. 5, 1972; 37 FR 22982, Oct. 27, 1972, as amended by T.D. 7340, 40 FR 1238, Jan. 7, 1975; T.D. 7955, 49 FR 19975, May 11, 1984; T.D. 8540, 59 FR 30102, June 10, 1994; T.D. 8819, 64 FR 23189, 23228, Apr. 30, 1999; 64 FR 33196, June 22, 1999; T.D. 8923, 66 FR 1041, Jan. 5, 2001; T.D. 9068, 68 FR 40131, July 7, 2003]

26 CFR § 1.1011-2 - Bargain sale to a charitable organization.

§ 1.1011-2 Bargain sale to a charitable organization.

(a) In general.

(1) If for the taxable year a charitable contributions deduction is allowable under section 170 by reason of a sale or exchange of property, the taxpayer's adjusted basis of such property for purposes of determining gain from such sale or exchange must be computed as provided in section 1011(b) and paragraph (b) of this section. If after applying the provisions of section 170 for the taxable year, including the percentage limitations of section 170(b), no deduction is allowable under that section by reason of the sale or exchange of the property, section 1011(b) does not apply and the adjusted basis of the property is not required to be apportioned pursuant to paragraph (b) of this section. In such case the entire adjusted basis of the property is to be taken into account in determining gain from the sale or exchange, as provided in § 1.1011-1(e). In ascertaining whether or not a charitable contributions deduction is allowable under section 170 for the taxable year for such purposes, that section is to be applied without regard to this section and the amount by which the contributed portion of

the **property** must be reduced under section 170(e)(1) is the **amount** determined by taking into **account** the **amount** of gain which would have been ordinary **income** or long-term capital gain if the contributed portion of the **property** had been sold by the **donor** at its **fair market value** at the time of the **sale or exchange**.

(2) If in the **taxable year** there is a **sale or exchange** of **property** which gives rise to a charitable contribution which is carried over under section 170(b)(1)(D)(ii) or section 170(d) to a subsequent **taxable year** or is postponed under section 170(a)(3) to a subsequent **taxable year**, section 1011(b) and **paragraph (b)** of this section must be applied for purposes of apportioning the **adjusted basis** of the **property** for the **year** of the **sale or exchange**, whether or not such contribution is allowable as a deduction under section 170 in such subsequent **year**.

(3) If **property** is **transferred** subject to an indebtedness, the **amount** of the indebtedness must be treated as an **amount** realized for purposes of determining whether there is a **sale or exchange** to which section 1011(b) and this section apply, even though the **transferee** does not agree to assume or pay the indebtedness.

(4)

(i) Section 1011(b) and this section apply where **property** is sold or **exchanged** in return for an **obligation** to pay an annuity and a **charitable contributions deduction** is allowable under section 170 **by reason of** such **sale or exchange**.

(ii) If in such case the annuity received in **exchange** for the **property** is nonassignable, or is assignable but only to the charitable **organization** to which the **property** is sold or exchanged, and if the transferor is the only **annuitant** or the transferor and a designated survivor **annuitant** or **annuitants** are the only **annuitants**, any gain on such **exchange** is to be reported as provided in **example (8)** in **paragraph (c)** of this section. In determining the period over which gain may be reported as provided in such **example**, the **life expectancy** of the survivor **annuitant** may not be taken into **account**. The fact that the transferor may retain the right to revoke the survivor's annuity or relinquish his own right to the annuity will not be considered, for purposes of this subdivision, to make the annuity assignable to someone other than the charitable **organization**. Gain on an **exchange** of the type described in this subdivision pursuant to an **agreement** which is entered into after December

19, 1969, and before May 3, 1971, may be reported as provided in [example \(8\)](#) in [paragraph \(c\)](#) of this section, even though the annuity is assignable.

(iii) In the case of an annuity to which subdivision [\(ii\)](#) of this subparagraph applies, the gain unreported by the transferor with respect to annuity [payments](#) not yet due when the following events occur is not required to be included in [gross income](#) of any [person](#) where—

(a) The transferor dies before the entire [amount](#) of gain has been reported and there is no surviving [annuitant](#), or

(b) The transferor relinquishes the annuity to the charitable [organization](#).

If the transferor dies before the entire [amount](#) of gain on a two-life annuity has been reported, the unreported gain is required to be reported by the surviving [annuitant](#) or [annuitants](#) with respect to the annuity [payments](#) received by them.

(b) Apportionment of adjusted basis. For purposes of determining gain on a [sale or exchange](#) to which this paragraph applies, the [adjusted basis](#) of the [property](#) which is sold or [exchanged](#) shall be that portion of the [adjusted basis](#) of the entire [property](#) which bears the same ratio to the [adjusted basis](#) as the [amount](#) realized bears to the [fair market value](#) of the entire [property](#).

The [amount](#) of such gain which shall be treated as ordinary [income](#) (or long-term capital gain) shall be that [amount](#) which bears the same ratio to the ordinary [income](#) (or long-term capital gain) which would have been recognized if the entire [property](#) had been sold by the [donor](#) at its [fair market value](#) at the time of the [sale or exchange](#) as the [amount](#) realized on the [sale or exchange](#) bears to the [fair market value](#) of the entire [property](#) at such time. The *terms ordinary income and long-term capital gain*, as used in this section, have the same meaning as they have in paragraph [\(a\)](#) of [§ 1.170A-4](#). For determining the portion of the [adjusted basis](#), ordinary [income](#), and long-term capital gain allocated to the contributed portion of the [property](#) for purposes of applying section 170(e)(1) and paragraph [\(a\)](#) of [§ 1.170A-4](#) to the contributed portion of the [property](#), and for determining the donee's basis in such contributed portion, see paragraph [\(c\)](#) (2) and (4) of [§ 1.170A-4](#). For determining the holding period of such contributed portion, see section 1223(2) and the regulations thereunder.

(c) Illustrations. The [application of this section](#) may be illustrated by the following [examples](#), which are supplemented by [other examples](#) in paragraph [\(d\)](#) of [§ 1.170A-4](#):

EXAMPLE 1.

In 1970, A, a calendar-year individual taxpayer, sells to a church for \$4,000 stock held for more than 6 months which has an adjusted basis of \$4,000 and a fair market value of \$10,000. A's contribution base for 1970, as defined in section 170(b)(1)(F), is \$100,000, and during that year he makes no other charitable contributions. Thus, A makes a charitable contribution to the church of \$6,000 (\$10,000 value – \$4,000 amount realized). Without regard to this section, A is allowed a deduction under section 170 of \$6,000 for his charitable contribution to the church, since there is no reduction under section 170(e)(1) with respect to the long-term capital gain. Accordingly, under [paragraph \(b\)](#) of this section the adjusted basis for determining gain on the bargain sale is \$1,600 ($\$4,000 \text{ adjusted basis} \times \$4,000 \text{ amount realized} / \$10,000 \text{ value of property}$). A has recognized long-term capital gain of \$2,400 ($\$4,000 \text{ amount realized} - \$1,600 \text{ adjusted basis}$) on the bargain sale.

EXAMPLE 2.

The facts are the same as in example (1) except that A also makes a charitable contribution in 1970 of \$50,000 cash to the church. By reason of section 170(b)(1)(A), the deduction allowed under section 170 for 1970 is \$50,000 for the amount of cash contributed to the church; however, the \$6,000 contribution of property is carried over to 1971 under section 170(d). Under paragraphs (a)(2) and (b) of this section the adjusted basis for determining gain for 1970 on the bargain sale in that year is \$1,600 ($\$4,000 \times \$4,000 / \$10,000$). A has a recognized long-term capital gain for 1970 of \$2,400 ($\$4,000 - \$1,600$) on the sale.

EXAMPLE 3.

In 1970, C, a calendar-year individual taxpayer, makes a charitable contribution of \$50,000 cash to a church. In addition, he sells for \$4,000 to a private foundation not described in section 170(b)(1)(E) stock held for more than 6 months which has an adjusted basis of \$4,000 and a fair market value of \$10,000. Thus, C makes a charitable contribution of \$6,000 of such property to the private foundation (\$10,000 value – \$4,000 amount realized). C's contribution base for 1970, as defined in section 170(b)(1)(F), is \$100,000, and during that year he makes no other charitable contributions. By reason of section 170(b)(1)(A), the deduction allowed under section 170 for 1970 is \$50,000 for the amount of cash contributed to the church. Under section 170(e)(1)(B)(ii) and paragraphs (a)(1) and (c)(2)(i) of [§ 1.170A-4](#), the \$6,000 contribution of stock is reduced to \$4,800 ($\$6,000 - [50\% \times (\$6,000 \text{ value of contributed portion of stock} - \$3,600 \text{ adjusted basis})]$). However, by reason of section 170(b)(1)(B)(ii), applied without regard to section 1011(b), no deduction is allowed under section 170 for 1970 or any other year for the reduced contribution of \$4,800 to the private foundation. Accordingly, [paragraph \(b\)](#) of this section does not apply for purposes of apportioning the adjusted basis of the stock sold to the

private foundation, and under section 1.1011-1(e) the recognized gain on the bargain sale is \$0 (\$4,000 amount realized – \$4,000 adjusted basis).

EXAMPLE 4.

In 1970, B, a calendar-year individual taxpayer, sells to a church for \$2,000 stock held for not more than 6 months which has an adjusted basis of \$4,000 and a fair market value of \$10,000. B's contribution base for 1970, as defined in section 170(b)(1)(F), is \$20,000 and during such year B makes no other charitable contributions. Thus, he makes a charitable contribution to the church of \$8,000 (\$10,000 value – \$2,000 amount realized). Under [paragraph \(b\)](#) of this section the adjusted basis for determining gain on the bargain sale is \$800 ($\$4,000 \text{ adjusted basis} \times \$2,000 \text{ amount realized} / \$10,000 \text{ value of stock}$). Accordingly, B, has a recognized short-term capital gain of \$1,200 ($\$2,000 \text{ amount realized} - \$800 \text{ adjusted basis}$) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A-4, B is allowed a charitable contributions deduction for 1970 of \$3,200 ($\$8,000 \text{ value of gift} - [\$8,000 - (\$4,000 \text{ adjusted basis of property} \times \$8,000 \text{ value of gift} / \$10,000 \text{ value of property})]$).

EXAMPLE 5.

The facts are the same as in Example 4 except that B sells the property to the church for \$4,000. Thus, B makes a charitable contribution to the church of \$6,000 (\$10,000 value – \$4,000 amount realized). Under [paragraph \(b\)](#) of this section the adjusted basis for determining gain on the bargain sale is \$1,600 ($\$4,000 \text{ adjusted basis} \times \$4,000 \text{ amount realized} / \$10,000 \text{ value of stock}$). Accordingly, B has a recognized short-term capital gain of \$2,400 ($\$4,000 \text{ amount realized} - \$1,600 \text{ adjusted basis}$) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A-4, B is allowed a charitable contributions deduction for 1970 of \$2,400 ($\$6,000 \text{ value of gift} - [\$6,000 - (\$4,000 \text{ adjusted basis of property} \times \$6,000 \text{ value of gifts} / \$10,000 \text{ value of property})]$).

EXAMPLE 6.

The facts are the same as in Example 4 except that B sells the property to the church for \$6,000. Thus, B makes a charitable contribution to the church of \$4,000 (\$10,000 value – \$6,000 amount realized). Under [paragraph \(b\)](#) of this section the adjusted basis for determining gain on the bargain sale is \$2,400 ($\$4,000 \text{ adjusted basis} \times \$6,000 \text{ amount realized} / \$10,000 \text{ value of stock}$). Accordingly, B has a recognized short-term capital gain of \$3,600 ($\$6,000 \text{ amount realized} - \$2,400 \text{ adjusted basis}$) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A-4, B is allowed a charitable contributions deduction for 1970 of \$1,600 ($\$4,000 \text{ value of gift} - [\$4,000 - (\$4,000 \text{ adjusted basis of property} \times \$4,000 \text{ value of gift} / \$10,000 \text{ value of property})]$).

EXAMPLE 7.

In 1970, C, a calendar-year individual taxpayer, sells to a church for \$4,000 tangible personal property used in his business for more than 6 months which has an adjusted basis of \$4,000 and a fair market value of \$10,000. Thus, C makes a charitable contribution to the church of \$6,000 (\$10,000 value – \$4,000 adjusted basis). C's contribution base for 1970, as defined in section 170(b)(1)(F) is \$100,000 and during such year he makes no other charitable contributions. If C had sold the property at its fair market value at the time of its contribution, it is assumed that under section 1245 \$4,000 of the gain of \$6,000 (\$10,000 value – \$4,000 adjusted basis) would have been treated as ordinary income. Thus, there would have been long-term capital gain of \$2,000. It is also assumed that the church does not put the property to an unrelated use, as defined in paragraph (b)(3) of § 1.170A-4.

Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is \$1,600 (\$4,000 adjusted basis × \$4,000 amount realized/\$10,000 value of property). Accordingly, C has a recognized gain of \$2,400 (\$4,000 amount realized – \$1,600 adjusted basis) on the bargain sale, consisting of ordinary income of \$1,600 (\$4,000 ordinary income × \$4,000 amount realized/\$10,000 value of property) and of long-term capital gain of \$800 (\$2,000 long-term gain × \$4,000 amount realized/\$10,000 value of property). After applying section 1011(b) and paragraphs (a) and (c)(2)(i) of § 1.170A-4, C is allowed a charitable contributions deduction for 1970 of \$3,600 (\$6,000 gift – [\$4,000 ordinary income × \$6,000 value of gift/\$10,000 value of property]).

EXAMPLE 8.

(a) On January 1, 1970, A, a male of age 65, transfers capital assets consisting of securities held for more than 6 months to a church in exchange for a promise by the church to pay A a nonassignable annuity of \$5,000 per year for life. The annuity is payable monthly with the first payment to be made on February 1, 1970. A's contribution base for 1970, as defined in section 170(b)(1)(F), is \$200,000, and during that year he makes no other charitable contributions. On the date of transfer the securities have a fair market value of \$100,000 and an adjusted basis to A of \$20,000.

(b) The present value of the right of a male age 65 to receive a life annuity of \$5,000 per annum, payable in equal installments at the end of each monthly period, is \$59,755 (\$5,000 × [11.469 + 0.482]), determined in accordance with section 101(b) of the Code, paragraph (e)(1)(iii)(b)(2) of § 1.101-2, and section 3 of Rev. Rul. 62-216, C.B. 1962-2, 30. Thus, A makes a charitable contribution to the church of \$40,245 (\$100,000 – \$59,755). See Rev. Rul. 84-162, 1984-2 C.B. 200, for transfers for which the valuation date falls after November 23, 1984. (See § 601.601(d)(2)(ii)(b) of this chapter). For the applicable valuation tables in connection therewith, see § 20.2031-

7(d)(6) of this chapter. See, however, § 1.7520-3(b) (relating to exceptions to the use of standard actuarial factors in certain circumstances).

(c) Under paragraph (b) of this section, the adjusted basis for determining gain on the bargain sale is \$11,951 ($\$20,000 \times \$59,755 / \$100,000$). Accordingly, A has a recognized long-term capital gain of \$47,804 ($\$59,755 - \$11,951$) on the bargain sale. Such gain is to be reported by A ratably over the period of years measured by the expected return multiple under the contract, but only from that portion of the annual payments which is a return of his investment in the contract under section 72 of the Code. For such purposes, the investment in the contract is \$59,755, that is, the present value of the annuity.

(d) The computation and application of the exclusion ratio, the gain, and the ordinary annuity income are as follows, determined by using the expected return multiple of 15.0 applicable under table I of § 1.72-9:

A's expected return (annual payments of \$5,000 × 15)	\$75,000.00
Exclusion ratio (\$59,755 investment in contract divided by expected return of \$75,000)	79.7%
Annual exclusion (annual payments of \$5,000 × 79.7%)	\$3,985.00
Ordinary annuity income (\$5,000–\$3,985)	\$1,015.00
Long-term capital gain per year (\$47,804/15) with respect to the annual exclusion	\$3,186.93

(e) The exclusion ratio of 79.7 percent applies throughout the life of the contract. During the first 15 years of the annuity, A is required to report ordinary income of \$1,015 and long-term capital gain of \$3,186.93 with respect to the annuity payments he receives. After the total long-term capital gain of \$47,804 has been reported by A, he is required to report only ordinary income of \$1,015.00 per annum with respect to the annuity payments he receives.

(d) **Effective date.** This section applies only to sales and exchanges made after December 19, 1969.

(e) *Cross reference.* For rules relating to the [treatment](#) of liabilities on the sale or other [disposition](#) or encumbered [property](#), see [§ 1.1001-2](#).

[T.D. 7207, [37 FR 20798](#), Oct. 5, 1972, as amended by T.D. 7741, [45 FR 81745](#), Dec. 12, 1980; T.D. 8176, [53 FR 5570](#), Feb. 25, 1988; [53 FR 11002](#), Apr. 4, 1988; T.D. 8540, [59 FR 30148](#), June 10, 1994]