

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:IT&A:3-PLR-110705-00

Date:

November 17, 2000

Legend

Taxpayer =
Individual =
Company =
Foundation =

Dear _____ :

This is in reply to your ruling request dated May 19, 2000. Your representative supplemented your request with additional information dated July 18, 2000, August 1, 2000, September 6, 2000, September 20, 2000, October 11, 2000, and October 17, 2000.

Facts

Taxpayer owns shares of voting stock in Company, a closely-held corporation. The shares of Company stock held by Taxpayer are capital assets in the hands of Taxpayer, and Taxpayer has held her shares for more than one year.

In 1992, Taxpayer and other Company shareholders entered into a voting agreement. The purpose of the voting agreement was to facilitate any future negotiations to sell Company. Pursuant to the voting agreement, Taxpayer transferred to Individual her voting rights with respect to corporate events affecting change of ownership or control of Company. The voting agreement required Taxpayer to agree to vote as directed by Individual. Recently, the voting agreement was amended to provide that the votes would be directed by a person who is not Individual and is not related to Taxpayer.

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Taxpayer proposes to contribute her stock in Company to Foundation, an organization described in §§ 170(c), 170(b)(1)(A)(viii), and 501(c)(3) of the Internal Revenue Code. Foundation is a supporting organization described in § 509(a)(3), which, by definition, is not a private foundation. The contributed shares would remain subject to the amended voting agreement.

Issue

Is Taxpayer's contribution of Company stock to a § 170(c) organization deductible under § 170?

Conclusion

Yes. Taxpayer's contribution of Company stock to a § 170(c) organization is deductible under § 170, subject to the percentage limitations of § 170(b), substantiation requirements for any contribution of \$250 or more, and other limitations and requirements of § 170.

Law and Analysis

1. Partial Interest Rule

Section 170(a)(1) allows as a deduction, subject to certain limitations and exceptions, any charitable contribution to an organization described in § 170(c), payment of which is made within the taxable year. Section 170(f)(3)(A) disallows a charitable contribution deduction for the contribution of a partial interest in property. Section 170(f)(3)(B)(ii) provides an exception in the case of a contribution of an undivided portion of the taxpayer's entire interest in the property. Section 1.170A-7(b)(1)(i) of the Income Tax Regulations defines an undivided portion of a taxpayer's entire interest in property as "a fraction or percentage of each and every substantial interest or right owned by the donor in such property" that extends "over the entire term of the donor's interest" in the property. Section 1.170A-7(a)(2)(i) of the Regulations provides, however, that a deduction will not be allowed where the property in which a partial interest exists was divided in order to create such interest and thus avoid § 170(f)(3)(A). Section 1.170A-7(b)(1)(i) of the Regulations further provides that a taxpayer is denied a deduction for "a charitable contribution in perpetuity of an interest in property . . . where the donor transfers some specific rights and retains other substantial rights."

Rev. Rul. 81-282, 1981-2 C.B. 78, holds that a contribution of voting stock to a charitable organization with the donor retaining the right to vote that stock, a substantial right, constitutes a contribution of a partial interest under § 170(f)(3) for which a charitable contribution deduction is not allowed.

When Taxpayer contributes her shares in Company stock to Foundation, she will not

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contribute all interests in the shares. Certain voting rights have already been transferred to a third party. The voting rights are substantial rights. See Rev. Rul. 81-282. However, because those rights had been transferred eight years ago for a business purpose, the interests were not divided in order to avoid § 170(f)(3)(A). Thus, § 1.170A-7(a)(2)(i) of the Regulations does not cause disallowance of the charitable contribution deduction in this case.

2. Reductions to Charitable Contribution Deduction

Section 1.170A-1(c)(1) of the Regulations provides that if a charitable contribution is made in property other than money, then the amount of the contribution is the fair market value of the property at the time of the contribution, reduced as provided in § 170(e) and § 1.170A-4(a) of the Regulations.

Section 170(e)(1)(A) reduces a charitable contribution deduction by the amount of gain that would not be long-term capital gain if the property were sold. Section 170(e)(1)(B) further limits the charitable contribution deduction by the amount of gain that would be long-term capital gain for certain contributions of tangible personal property and contributions to or for the use of certain private foundations.

The shares, if sold by Taxpayer, would result in long-term capital gain. Because the shares are not tangible personal property and will not be contributed to a private foundation, § 170(e)(1)(B) does not apply. Accordingly, the deductible amount is not reduced under § 170(e)(1).

3. Percentage Limitations

Section 170(b) provides percentage limitations on charitable contributions. Section 170(b)(1)(C)(i) provides that, in the case of a contribution of capital gain property to an organization described in § 170(b)(1)(A), to which § 170(e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account for determining the income tax deduction shall not exceed 30 percent of the taxpayer's contribution base for the year.

In the instant case, Taxpayer proposes to contribute shares of Company stock to an organization described in § 170(b)(1)(A). Section 170(e)(1)(B) does not apply. Accordingly, Taxpayer's contribution deduction is subject to the 30 percent limitation of § 170(b)(1)(C)(i).

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4. Substantiation

Section 170(f)(8) requires a contemporaneous written acknowledgment for all contributions of \$250 or more. The acknowledgment must be obtained by the taxpayer on or before the earlier of the date on which the taxpayer files a return for the taxable year in which the contribution was made or the due date (including extensions) for filing such return.

5. Form 8283

When the amount of the deduction for noncash gifts exceeds \$500, the donor must complete the relevant portions of Form 8283. According to § 1.170A-13(c) of the Regulations, a donor who contributes property, other than certain publicly traded securities, and claims a charitable contribution deduction in excess of \$5,000 must satisfy additional substantiation requirements.

6. Effect of this Ruling

No opinion is expressed concerning the Federal income tax consequences of these contributions under any other provision of the Internal Revenue Code. A copy of this ruling should be attached to Taxpayer's Federal income tax return for the tax years affected.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

Associate Chief Counsel
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By: _____
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cc: