

Internal Revenue Service**Department of the Treasury**

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Washington, DC 20224

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Refer Reply To:
CC:ITA:1 – PLR-129088-00

Date: 11/28/01

LEGEND:

Taxpayer =
Charity =
Society =
State =

Dear _____ :

This responds to your letter dated November 30, 2000, and other supplemental material, in which you request a ruling related to a transfer of a life insurance policy to a charitable organization.

RULING REQUESTED

Taxpayer asks us to rule that he will be allowed a charitable contribution deduction under § 170 of the Internal Revenue Code for the amount of the premium paid on a single-premium whole life insurance policy, the rights, privileges, and benefits of which he plans to transfer to Charity while retaining legal title.

FACTS

Taxpayer, who resides in State and itemizes his deductions, plans to purchase from Society a single-premium whole life insurance policy on his life. Taxpayer at the time of purchase will name Charity as the irrevocable beneficiary of the policy and in addition will transfer to Charity any and all privileges under, and rights or interests in, the policy, retaining only bare legal title to the policy. Charity is an organization described in § 170(c) of the Code. Taxpayer represents that, under State law, Charity has an insurable interest in Taxpayer's life. As permitted under the policy, if Taxpayer elects to pay any additional unscheduled premiums, the resulting increase in the value, death benefit, and other interests in the policy will inure solely to the benefit of Charity.

Taxpayer will transfer to Charity all of the policy benefits -- but not the title -- because of certain State insurance licensing regulations governing the sale of an insurance policy where the purchaser intends to transfer title to a third party. Taxpayer represents that these regulations require an insurance agent who sells such a policy to be licensed in the state of both the residence of the donor and the residence or principal location of the anticipated transferee. However, Taxpayer represents that, so long as the

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transferee does not take title, State regulations do not require the agent to be licensed in the state of the transferee.

The policy allows Taxpayer to cancel the policy at any time within 30 days of purchase and does not require Taxpayer to provide reasons for cancellation.

LAW AND ANALYSIS:

Under § 170(a) of the Code, a deduction is allowed for charitable contributions made to or for the use of an organization described in § 170(c).

Under § 170(f)(3) of the Code, a charitable gift of property generally is not deductible if it constitutes a partial interest in the property. A partial interest is defined as “an interest in property which consists of less than the taxpayer’s entire interest” in the property.

Section 1.170A-7(a)(3) of the Income Tax Regulations provides that a deduction is not disallowed under the partial interest rule merely because the interest passing to the charity might be defeated by some event, if on the date of the gift such an event is so remote as to be negligible. A cross reference is given to section 1.170A-1(e) of the Regulations, which provides that, if as of the date of a gift a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an interest in property passes to, or is vested in, a charity on the date of the gift, and the interest would be defeated by the subsequent performance of some act or the happening of some event, the possibility of occurrence of which appears on the date of the gift to be so remote as to be negligible, the deduction is allowable. For example, a taxpayer transfers land to a city government for as long as the land is used by the city for a public park. If on the date of the gift the city does plan to use the land for a park and the possibility that the city will not use the land for a public park is so remote as to be negligible, the taxpayer is entitled to a deduction under § 170 of the Code for a charitable contribution.

In this case, Taxpayer represents that Charity will have an insurable interest in Taxpayer’s life under State law. If this is a correct interpretation of State law, the possibility that the gift might be defeated by Society refusing to pay the death benefit to Charity is so remote as to be negligible within the meaning of the Regulations. However, the policy allows Taxpayer to cancel any time within 30 days of purchase. Therefore, until the end of the 30-day cancellation period, the charitable gift is dependent upon Taxpayer’s non-cancellation of the policy. The transfer effectively will not occur until the first day following the expiration of that period, when Taxpayer will no longer be able to cancel.

The partial interest rule precludes a deduction for the donor’s retention of substantial rights. In Rev. Rul. 75-66, 1975-1 C.B. 85, the Service held that a charitable

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contribution of a tract of land by an individual who retained the right during his lifetime to train his personal hunting dog on the trails extending over the entire tract did not violate the partial interest rule because the retained right was not substantial enough to prevent the deduction. Taxpayer represents that he will transfer to Charity all of the policy benefits but will retain legal title to the policy. Because Taxpayer will transfer to Charity each and every substantial right and interest in the policy, the proposed transfer will be essentially equivalent to Taxpayer's transfer of the policy to Charity. Taxpayer's retention of legal title on the facts of this case is not retention of a substantial interest for purposes of the partial interest rule. Therefore, Taxpayer will not violate the partial interest rule.

We conclude that, if Taxpayer complies with all of the other requirements under § 170 of the Code, he may be allowed a deduction for the charitable contribution of the policy on the first day following the expiration of the 30-day cancellation period, to the extent provided under § 170.

Taxpayer also asks us to rule that the amount of the deduction will be equal to the amount of the premium paid on the policy. If a charitable contribution is made in property other than money, the amount of the contribution generally is the fair market value of the property at the time of the contribution. Section 1.170A-1(c)(1) of the Regulations. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither of which is under a compulsion to buy or sell, and both of which have reasonable knowledge of relevant facts. Section 1.170A-1(c)(2) of the Regulations. The fair market value of an insurance policy, all of the rights to which are assigned to a charity on the day when the initial premium is paid is the price that any person of the same age, sex, and condition of health as the insured would have to pay for a similar life insurance policy with the same insurance company on the date the assignment takes place. Rev. Rul. 58-372, 1958-2 C.B. 99.

The price another person would have to pay for the same policy in the same circumstances as Taxpayer is the same as the premium Taxpayer will pay. See Rev. Rul. 58-372. Accordingly, the amount of Taxpayer's charitable contribution will be equal to the amount of the premium paid on the policy.

CONCLUSION:

If Taxpayer complies with all of the other requirements under § 170 of the Code, he will be allowed a charitable contribution deduction under § 170 for the amount of the premium paid on a single-premium whole life insurance policy, all of the substantial benefits of which he will transfer to Charity on the first day following the expiration of the 30-day cancellation period.

A copy of this letter ruling must be attached to any income tax return to which it is relevant. We enclose a copy of the letter ruling for this purpose. Also enclosed is a

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copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110 of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter ruling.

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

Sincerely,
KARIN G. GROSS
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: