

Guidance Regarding Qualified Intellectual Property Contributions

Notice 2005-41

PURPOSE

This notice provides guidance regarding § 882 of the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (2004), which adds §§ 170(e)(1)(B)(iii) and 170(m) to the Internal Revenue Code and amends § 6050L. Section 170(e)(1)(B)(iii) provides that the amount of a donor's initial charitable contribution deduction allowed under § 170 for contributions of qualified intellectual property is limited to the lesser of the fair market value of, or the donor's adjusted basis in, the qualified intellectual property. Section 170(m) allows the donor to deduct, as a charitable contribution, certain additional amounts based on a percentage of the qualified donee income received by or accrued to the donee with respect to the qualified intellectual property. To qualify for the additional deductions, the donor must notify the donee at the time of the contribution of the donor's intention to take the additional deductions. As amended, § 6050L(b) requires a donee to make a return in the form and manner prescribed by the Secretary with respect to each qualified intellectual property contribution. Sections 170(e)(1)(B)(iii) and 170(m), and the amendments to § 6050L, are effective for contributions made after June 3, 2004.

BACKGROUND

Section 170(a) allows a deduction for a charitable contribution. Generally, if a donor makes a charitable contribution of property, the amount of the deduction is the fair market value of the property at the time of the contribution, reduced as provided in § 170(e) and § 1.170A-4 of the Income Tax Regulations. For certain types of property, § 170(e)(1)(B) reduces the amount of the deduction by the amount of gain that would have been long-term capital gain if the donor had sold the property at its fair market value,

determined as of the time of the contribution. Under § 170(e)(1)(B)(iii), this reduction applies in determining a donor's initial deduction for a charitable contribution of "any patent, copyright (other than a copyright described in section 1221(a)(3) or 1231(b)(1)(C)), trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property."

Subject to the terms and limitations of § 170, § 170(m) allows a donor of qualified intellectual property to deduct, in the year of contribution or in subsequent taxable years, additional amounts based on a percentage (specified in § 170(m)(7)) of the qualified donee income received by or accrued to the donee with respect to the qualified intellectual property. For this purpose, "qualified intellectual property" is property described in § 170(e)(1)(B)(iii) other than property contributed to or for the use of private foundations as defined in § 509(a) (with certain exceptions as described in § 170(b)(1)(E)). "Qualified donee income" is any net income properly allocable to the qualified intellectual property (as opposed to the activity in which the intellectual property is used) that is received by or accrued to the donee organization during the year. Qualified donee income does not include any income received by or accrued to the donee organization after the earlier of the tenth anniversary of the date of the contribution or the expiration of the legal life of the qualified intellectual property. See § 170(m)(5) and (6). Additional deductions are allowed, however, only to the extent that the aggregate of the specified percentages of qualified donee income exceeds the initial deduction claimed by the donor. See § 170(m)(2).

To qualify for the additional deductions, the donor must inform the donee at the time of the contribution that the donor intends to treat the contribution as a qualified intellectual property contribution (the notification requirement). See § 170(m)(8).

Section 6050L(b), as amended by the Act, requires a donee (which may not be a private foundation described in section

170(e)(1)(B)(ii)) that receives notification from the donor to make a return with respect to a qualified intellectual property contribution for each taxable year of the donee showing the amount of any qualified donee income. Section 6050L(c) requires the donee to provide a copy of the return to the donor. See also § 1.6050L-2T of the Procedure and Administration Regulations (May 23, 2005); Prop. Treas. Reg. § 1.6050L-2 (May 23, 2005). The amount of net income taken into account by the donor may not exceed the amount of qualified donee income reported by the donee under § 6050L.

GUIDANCE ON THE NOTIFICATION REQUIREMENT

General rule

A donor will satisfy the notification requirement under § 170(m)(8) if the donor delivers or mails to the donee, at the time of the contribution, a written statement containing the following information:

1. The name, address, and taxpayer identification number of the donor;
2. A description of the qualified intellectual property in sufficient detail to identify the qualified intellectual property received by the donee;
3. The date of the contribution to the donee; and
4. A statement that the donor intends to treat the contribution as a qualified intellectual property contribution for purposes of §§ 170(m) and 6050L.

Transitional rule for contributions made after June 3, 2004, and on or before June 20, 2005

Section 170(m) was enacted on October 22, 2004, and is effective for contributions made after June 3, 2004. Donors may have made contributions of qualified intellectual property after June 3, 2004, and may not have informed the donee at the time of the contribution that they intended to treat the contribution as a qualified intellectual property contribution.

A donor who contributed qualified intellectual property after June 3, 2004, and on or before June 20, 2005, without notifying the donee that it intended to treat

the contribution as a qualified intellectual property contribution will be regarded as satisfying the notification requirement if, on or before July 20, 2005, the donor delivers or mails to the donee a written statement containing the information described above.

PAPERWORK REDUCTION ACT

The collection of information in this notice has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1937.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this notice is in the GUIDANCE ON THE NOTIFICATION REQUIREMENT section of this notice. The collection of information is required from donors to satisfy the notification requirement of § 170(m). The collection of information is required from donors to obtain a benefit. The likely respondents are individuals, partnerships, and corporations.

The estimated total annual reporting burden is 30 hours.

The estimated annual burden per respondent varies from 0.5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of respondents is 30.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal authors of this notice are Charles V. Dumas and Susan J. Kassell of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Ms. Kassell at 202-622-5020 (not a toll-free call).