DESCRIPTION OF THE CHAIRMAN'S MODIFICATION TO THE PROVISIONS OF THE "TAX RELIEF ACT OF 2005"

Scheduled for Markup
By the
SENATE COMMITTEE ON FINANCE
on November 15, 2005

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

November 14, 2005
JCX-77-05

14. Reform rules relating to charitable contributions of taxidermy and recapture tax benefit on property not used for an exempt use

Present Law

Deductibility of charitable contributions

In general

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to an organization described in section 501(c)(3) or to a Federal, State, or local governmental entity.[172] The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced or limited depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.[173] In general, more generous charitable contribution deduction rules apply to gifts made to public charities than to gifts made to private foundations. Within certain limitations, donors also are entitled to deduct their contributions to section 501(c)(3) organizations for Federal estate and gift tax purposes. By contrast, contributions to nongovernmental, non-charitable tax-exempt organizations generally are not deductible by the donor,[174] though such organizations are eligible for the exemption from Federal income tax with respect to such donations.

Contributions of property

The amount of the deduction for charitable contributions of capital gain property generally equals the fair market value of the contributed property on the date of the contribution. Capital gain property means any capital asset, or property used in the taxpayer's trade or business, the sale of which at its fair market value, at the time of contribution, would have

[172] The deduction also is allowed for purposes of calculating alternative minimum taxable income.

[173] Secs. 170(b) and (e).

[174] Exceptions to the general rule of non-deductibility include certain gifts made to a veterans' organization or to a domestic fraternal society. In addition, contributions to certain nonprofit cemetery companies are deductible for Federal income tax purposes, but generally are not deductible for Federal estate and gift tax purposes. Secs. 170(c)(3), 170(c)(4), 170(c)(5), 2055(a)(3), 2055(a)(4), 2106(a)(2)(A)(iii), 2522(a)(3), and 2522(a)(4).

resulted in gain that would have been long-term capital gain. Contributions of capital gain property are subject to different percentage limitations (i.e., limitations based on the donor's income) than other contributions of property.

For certain contributions of property, the deductible amount is reduced from the fair market value of the contributed property by the amount of any gain, generally resulting in a deduction equal to the taxpayer's basis. This rule applies to contributions of: (1) ordinary income property, e.g., property that, at the time of contribution, would not have resulted in long-term capital gain if the property was sold by the taxpayer on the contribution date;[175] (2) tangible personal property that is used by the donee in a manner unrelated to the donee's exempt (or governmental) purpose; and (3) property to or for the use of a private foundation (other than a foundation defined in section 170(b)(1)(E)).

Charitable contributions of taxidermy are subject to the tangible personal property rule (number (2) above). For example, for appreciated taxidermy, if the property is used to further the donee's exempt purpose, the deduction is fair market value. But if the property is not used to further the donee's exempt purpose, the deduction is the donor's basis. If the taxidermy is depreciated, i.e., the value is less than the taxpayer's basis in such property, taxpayers generally deduct the fair market value of such contributions, regardless of whether the property is used for exempt or unrelated purposes by the donee.

Substantiation

No charitable deduction is allowed for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization.[176] Such acknowledgement must include the amount of cash and a description (but not value) of any property other than cash contributed, whether the donee provided any goods or services in consideration for the contribution (and a good faith estimate of the value of any such goods or services).

In general, if the total charitable deduction claimed for non-cash property is more than $500, the taxpayer must attach a completed Form 8283 (Noncash Charitable Contributions) to the taxpayer's return or the deduction is not allowed.[177] C corporations (other than personal service corporations and closely-held corporations) are required to file Form 8283 only if the deduction claimed is more than $5,000. Information required on the Form 8283 includes, among other things, a description of the property, the appraised fair market value (if an appraisal is required), the donor's basis in the property, how the donor acquired the property, a declaration by the appraiser regarding the appraiser's general qualifications, an acknowledgement by the

[175] For certain contributions of inventory, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (i.e., basis plus one half of fair market value in excess of basis) or (2) two times basis. Sec. 170(e)(3), 170(e)(4), 170(e)(6).

[176] Sec. 170(f)(8).

[177] Sec. 170(f)(11).

donee that it is eligible to receive deductible contributions, and an indication by the donee whether the property is intended for an unrelated use.

Taxpayers are required to obtain a qualified appraisal for donated property with a value of more than $5,000 or more, and to attach an appraisal summary to the tax return.[178] Under Treasury regulations, a qualified appraisal means an appraisal document that, among other things: (1) relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property and not later than the due date (including extensions) of the return on which a deduction is first claimed under section 170;[179] (2) is prepared, signed, and dated by a qualified appraiser; (3) includes (a) a description of the property appraised; (b) the fair market value of such property on the date of contribution and the specific basis for the valuation; (c) a statement that such appraisal was prepared for income tax purposes; (d) the qualifications of the qualified appraiser; and (e) the signature and taxpayer identification number of such appraiser; and (4) does not involve an appraisal fee that violates certain prescribed rules.[180] In the case of contributions of art valued at more than $20,000 and other contributions of more than $500,000, taxpayers are required to attach the appraisal to the tax return. Taxpayers may request a Statement of Value from the Internal Revenue Service in order to substantiate the value of art with an appraised value of $50,000 or more for income, estate, or gift tax purposes.[181] The fee for such a Statement is $2,500 for one, two, or three items or art plus $250 for each additional item.

If a donee organization sells, exchanges, or otherwise disposes of contributed property with a claimed value of $5,000 or more (other than publicly traded securities) within two years of the property's receipt, the donee is required to file a return (Form 8282) with the Secretary, and to furnish a copy of the return to the donor, showing the name, address, and taxpayer identification number of the donor, a description of the property, the date of the contribution, the amount received on the disposition, and the date of the disposition.[182]

Description of Proposal

Donation of taxidermy for an exempt use

For contributions of exempt-use taxidermy property with a claimed value of more than $500 but not more than $5,000, the individual must include on the Form 8283 a photograph of the taxidermy and comparable sales data for similar items within the previous six months. Valuation must be based on comparable sales. The Secretary shall not allow a deduction if sufficient comparable sales are not provided.

---

[178] *Id.*

[179] In the case of a deduction first claimed or reported on an amended return, the deadline is the date on which the amended return is filed.

[180] Treas. Reg. sec. 1.170A-13(c)(3). Sec. 170(f)(11)(E).

[181] Rev. Proc. 96-15, 1996-1 C.B. 627.

[182] Sec. 6050L(a)(1).

For claims of more than $5,000, the taxpayer must request a Statement of Value from the IRS by the time the taxpayer files the return claiming the deduction. The Statement of Value is similar to that available under present law for items of art. The IRS shall assess an average fee of $500 for the Statement of Value.

Determination of basis in taxidermy

For purposes of the charitable contribution deduction, a taxpayer may not include in the taxpayer's basis of the contributed taxidermy any costs attributable to travel.

Recapture of tax benefit upon subsequent disposition of tangible personal property intended for an exempt use

In general, the proposal recovers the tax benefit for charitable contributions of tangible personal property that are not used for exempt purposes. The proposal applies to appreciated tangible personal property that is identified by the donee organization as for a use related to the donee's basis for tax exemption, and for which a deduction of more than $5,000 is claimed ("applicable property").[183] If the donee organization disposes of applicable property within three years of the receipt of the property, the donor is subject to recapture of the tax benefit. If the disposition occurs in the contribution tax year, the donor's deduction generally is basis and not fair market value.[184] If the disposition occurs in a subsequent year, the donor must include as ordinary income for its taxable year in which the disposition occurs an amount equal to the excess (if any) of (i) the amount of the deduction previously claimed by the donor as a charitable contribution with respect to such property, over (ii) the donor's basis in such property at the time of the contribution.

There is no recapture of the tax benefit if the donee organization makes a certification to the Secretary, by written statement signed under penalties of perjury by an officer of the organization (other than the donor or a person related to the donor). The certification must explain either (1) the use of the property and how such use substantially furthered the purpose or function that constitutes the organization's basis for exemption, or (2) that the intended related use of the property became impossible or infeasible to implement. The organization must furnish a copy of the certification to the donor (as part of the present-law requirement to furnish the Form 8282 to the donor).

Reporting of exempt use property contributions

In addition to the present-law requirement that the donee organization identify on the Form 8283 whether property for which an amount of more than $500 is claimed is for a related use, the donee must explain any such intended use of such property. A penalty of $10,000

[183] Present law rules continue to apply to any contribution of exempt use property for which a deduction of $5,000 or less is claimed.

[184] The disposition proceeds are regarded as relevant to a determination of fair market value.

applies to a person that identifies property as related use property knowing that it is not intended for such use.[185]

The proposal modifies the present-law information return requirements that apply upon the disposition of contributed property by a charitable organization (Form 8282, sec. 6050L). For property identified by the donee organization on the Form 8283 as exempt use property, the return requirement is extended to dispositions made within three years after receipt (from two years). The donee organization also must provide, in addition to the information already required to be provided on the return, a description of the donee's use of the property, a statement of whether the property was used to substantially further exempt purposes, a certification of any such use (described above).

Effective Date

With respect to contributions of taxidermy property, the proposal is effective for contributions made after the date of enactment. With respect to exempt use property generally, the proposal is effective for contributions made after June 1, 2006.

[185] Other present-law penalties also may apply, such as the penalty for aiding and abetting the understatement of tax liability under section 6701.