

**E. DEDUCTIONS OF CONTRIBUTIONS TO IRC 501(c)(3)
ORGANIZATIONS
AND OTHER EXEMPT ORGANIZATIONS**

1. Introduction - Charitable Contributions

A. Itemizing Deductions

Charitable contributions to qualified organizations are deductible by individuals and corporations. Partnership contributions are passed through to the partners under IRC 703(a). Formerly, individuals had to itemize their deductions to take advantage of charitable contributions. However, for tax years beginning in 1982 through 1986 individuals who do not itemize their deductions will be permitted to deduct a portion of their charitable contributions directly from gross income. The portion deductible is a percentage of the amount allowable. For 1982 and 1983 the maximum deduction is 25 percent of the first \$100 (\$50 if married filing separately); in 1984 it is 25 percent of the first \$300 (\$150 if married filing separately); for 1985 the deduction is 50 percent of the amount allowable, and for 1986 it is 100 percent of the amount allowable. This special deduction for nonitemizers shall not apply to contributions made after December 31, 1986. IRC 170(i)(4).

B. Qualifying Organizations

A charitable contribution is defined in IRC 170(c)(1) as a contribution or gift to or for the use of a state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, made exclusively for public purposes, and in IRC 170(c)(2) as a contribution or gift to domestic organizations described in IRC 501(c)(3) except those organized and operated for testing for public safety. Contributions to IRC 501(c)(1) organizations, corporations organized under Acts of Congress that are instrumentalities of the United States, are deductible under IRC 170(c)(1). Contributions to IRC 501(c)(4) organizations are deductible under IRC 170(c)(1) if made to the organization for the use of a state, a possession of the United States, or any political subdivision of the foregoing, the United States, or the District of Columbia, if the contributions are made exclusively for public purposes. Rev. Rul. 71-47 holds that contributions to a volunteer fire company that qualifies for IRC 501(c)(4) exemption are deductible under IRC 170(c)(1) because they are deemed to be for the use of a political subdivision of a state for exclusively public

purposes. Certain volunteer fire companies have been held to qualify for IRC 501(c)(3) exemption because they have a charitable purpose and lessen the burdens of government. See Rev. Rul. 74-361, 1974-2 C.B. 159, clarifying Rev. Rul. 71-47, 1971-1 C.B. 92. Also, contributions are deductible as charitable contributions when paid to a civil defense organization created under federal, state, or local law. Such contributions include unreimbursed expenses of civil defense volunteers that are directly connected with and solely attributable to their volunteer help. I.R.S. News Release No. 372, March 27, 1961.

Contributions to needy individuals are not deductible because individuals are not qualifying organizations under IRC 170. Even though it has been determined that a payment has been made to a qualifying organization, if the amount is earmarked, further investigation may be appropriate to determine whether the payment constitutes a deductible contribution. In S.E. Thomason v. Commissioner, 2 T.C. 441 (1943), the court held that amounts paid to provide special advantages for a particular child in an orphanage were not deductible when earmarked for that child.

C. Limitation on Charitable Deductions

Depending on the donee organization, an individual's deduction for charitable contributions is limited to 50 percent or 30 percent of the taxpayer's contribution base. Prior to the Deficit Reduction Act of 1984 (P.L. 98-369), the 30 percent figure was 20 percent. An individual's contribution base is the adjusted gross income computed without regard to any net operating loss carryback.

Organizations subject to the 50 percent limitation for individuals are those described in IRC 170(b)(1)(A)(i) through (viii), which include churches, schools, hospitals, university endowment foundations, publicly supported organizations, and governmental units. Other organizations subject to this limitation are IRC 509(a)(2) and (3) organizations, private operating foundations, and private nonoperating foundations described in IRC 170(b)(1)(E)(ii) and (iii). The 50 percent limitation also applies to cooperative hospital service organizations and cooperative service organizations of operating educational organizations described in IRC 501(e) and (f).

The 30 percent limitation on the contribution deduction applies to IRC 501(c)(3) private foundations except those described above, and all IRC 170(c) organizations other than IRC 170(c)(1) and 170(c)(2).

D. The Timing of Charitable Deductions

A contribution must be made in cash or property before the close of the tax year in order for it to be deductible in that year. This applies whether the cash or the accrual method of accounting is used. For example, if a taxpayer pledges \$3,000 to a church on October 30, 1985, to be paid by October 30, 1986, the taxpayer may deduct in 1985 only the amount he or she actually pays by December 31, 1985. A contribution charged on a bank credit card is deductible as a charitable contribution under IRC 170(a) in the year the charge is made regardless of when the bank is paid. See Rev. Rul. 78-38, 1978-1 C.B. 67.

2. Definition of Charitable Contribution

To be deductible as a charitable contribution under IRC 170, a payment to or for the use of a qualified charitable organization must be a gift. In order for a gift to exist, there must be, among other requirements, a payment of money or transfer of property without adequate consideration. Under IRC 170, if the donor receives something of value for a payment, all or part of the payment will not be a gift and a deduction in whole or in part will not be allowed. Further, if the payment is a gift, but is not made for charitable purposes, a deduction for the payment will be disallowed.

A. Something of Value Received for a Contribution

When something of value has been received by a donor, there is a presumption that there has been no gift and the burden is on the donor to establish that the amount paid is not the purchase price of the item, privilege, or benefit received and that part of the payment, in fact, does qualify as a gift. To establish that, an essential element of proof is that the portion of the payment claimed as a gift represents the excess of the total amount paid over the value of the consideration received. That may be established by evidence that the payment exceeds the fair market value of the privilege or other benefit received by the amount claimed to have been paid as a gift. See Rev. Rul. 67-246, 1967-2 C.B. 104. When a fundraising event is designed to solicit payments that are intended to be in part the purchase of admission to an event or some other participation in an event, the organization conducting the activity should use procedures that clearly indicate how much of the payments is a gift. This requires a determination by the organization of the amount attributable to the purchase of admission or other privileges and the amount solicited as a gift. The respective amounts should be stated at the time of the solicitation and indicated on the ticket, receipt, or other

evidence issued in connection with the payment. Examples of these requirements are given in Rev. Rul. 67-246. A member of a qualified organization who pays membership dues or fees to the organization may also receive a benefit or privilege for the payment which must be taken into consideration in determining what amount, if any, of the fee or dues payment is deductible.

B. Donations of Property

A donation of property, whether it is used clothing or furniture or something of greater value such as jewelry, paintings, etc., may be deducted only at its fair market value at the time of the gift, with certain reductions provided in IRC 170(e). The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. The cost of the property or the actual selling price may be the best indication of its fair market value. However, because conditions in the market change, the cost or selling price of the property may have less weight if the property were not bought or sold reasonably close to the date of contribution (valuation date). The actual date the contribution was made is important because the value of the donated property must be determined as of that date, and generally the value of the property on that date must be used to arrive at the amount of the contribution. Jewelry, gems, paintings, antiques, and other art objects of considerable value should be supported by a written appraisal from a qualified and reputable source. The weight to be accorded any appraisal made either at or after the valuation date depends largely upon the competence and knowledge of the appraiser with respect to the property and the market for such property. See Publication 561, Determining the Value of Donated Property, and Rev. Proc. 66-49, 1966-2 C.B. 1257. Section 155 of the Deficit Reduction Act of 1984 requires a qualified appraisal for certain contributions of property made after December 31, 1984. See page 25 of this text.

C. Out-of-Pocket Expenses

Unreimbursed out-of-pocket expenses paid in rendering services without compensation to a qualified donee are deductible as a contribution and, if the donee is an IRC 170(b)(1)(A) organization, they are subject to the 50 percent limitation. Rev. Rul. 84-61, 1984-17 I.R.B. 8. These expenses include amounts paid for transportation from the taxpayer's residence to the place of service. Reasonable payments for necessary meals and lodging while away from home donating services may also qualify. Although out-of-pocket automobile expenses for gas, oil, and repairs are deductible, a taxpayer may not deduct a pro-rata portion

of general repair and maintenance expenses. A deduction of 9 cents per mile (12 cents after December 31, 1984) may be claimed as a contribution in place of the actual expenses. Parking fees and tolls may be deducted in addition to the mileage rate.

D. Nondeductible Items

The value of one's time or personal services contributed to a qualified organization is not deductible. See Rev. Rul. 162, 1953-2 C.B. 127. Also, rent-free use of property does not represent a "payment" under IRC 170(a)(1). See Rev. Rul. 70-477, 1970-2 C.B. 62.

Some other nondeductible contributions to qualified organizations are blood donated to the Red Cross or other blood banks, tuition payments for one's child attending private schools, and amounts paid for raffle tickets or to play bingo or other games of chance.

3. Foreign Organizations

Foreign organizations that meet the requirements for exemption under IRC 501(c)(3) may establish exemption from federal income tax, but in the absence of a tax treaty that provides otherwise, contributions to them are not deductible under IRC 170(c)(2) because that provision requires organizations described therein to be created or organized in the United States or a United States possession. Canada is an example of a country that has a treaty with the United States under which donors may, with certain restrictions, deduct contributions to qualifying charities in that country.

A. Foreign Operations of Domestic Charities

Historically, the Internal Revenue Code has implicitly sanctioned the operations of U.S. charities in foreign countries. The Service specifically so held in Rev. Rul. 71-460, 1971-2 C.B. 231. IRC 170(c)(2) provides that a contribution by a corporation to a qualifying organization is deductible, but only if the contribution is used within the United States or any of its possessions exclusively for IRC 170(c)(2)(B) purposes. But there is no similar restriction imposed upon the use of an individual's contribution under IRC 170 and, therefore, contributions by individuals to domestic organizations operating in foreign countries are deductible. (Regarding contributions by corporations, because IRC 170(c)(2)(B) only precludes the deductibility of contributions by taxable domestic corporations to

exempt domestic trusts, community chests, funds or foundations, the Service has held that contributions by corporations to exempt domestic corporations for use in a foreign country are deductible notwithstanding that the contributions will be used abroad. Rev. Rul. 69-80, 1969-1 C.B. 65.)

B. Contributions to Foreign Charities and Domestic Charities with Programs Abroad

Because contributions to foreign organizations are not deductible whether made directly to them or indirectly through domestic organizations, contributions to domestic organizations for the conduct of their charitable activities abroad have to be distinguished from contributions made to a domestic organization established by a foreign organization to solicit contributions on its behalf. Contributions to the domestic organization operating abroad would be deductible and those to the domestic conduit of a foreign organization would not be deductible. For example, contributions will be deductible if made to a domestic charitable organization formed to alleviate hunger in a drought-stricken foreign country by distributing food to hungry people in that country. However, if a foreign charitable organization, established for the same purpose, forms a domestic charitable organization merely to solicit contributions in its behalf, contributions to the domestic charitable organization will not be deductible. See examples in Rev. Rul. 63-252, 1963-2 C.B. 101.

On the other hand, if a domestic charitable organization merely makes payments to an on-site foreign organization to insure that its foreign programs will be carried out effectively, contributions to the domestic organization may be deductible if it can establish that it has full control of the donated funds and discretion as to their use so as to insure that the contributions will be used to carry out its charitable purposes and functions. See Rev. Rul. 66-79, 1966-1 C.B. 48; Rev. Rul. 75-65, 1975-1, C.B. 79; and 1983 EO CPE Textbook, page 230.

4. Advance Assurance of Deductibility

A. Revocation of Exemption

Publication No. 78, Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1954, is a list of organizations to which contributions are deductible. It is published annually by the Service and updated during the year with three quarterly supplements. Rev. Proc. 82-39, 1982-2 C.B. 759, explains the extent to which contributors may rely on the listing. In order for

contributions by donors to be deductible, the organization must qualify at the time of contribution as an organization described in IRC 170(c). When an organization listed in Publication No. 78 ceases to qualify as an IRC 170 organization, and the Service subsequently revokes a ruling or determination letter previously issued to it, contributions made to the organization by persons unaware of the change in the status of the organization generally will be considered allowable if made on or before the date of an appropriate public announcement. Announcement is ordinarily made by publication in the Internal Revenue Bulletin stating that contributions are no longer deductible. However, if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for, or aware of, the activities or deficiencies that gave rise to the loss of qualification, deductibility may be denied. In accordance with IRC 7428(c), if a suit for a declaratory judgment has been timely filed by a listed organization, contributions from individuals and organizations described in IRC 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under IRC 7428(c) will begin on the date of publication of the announcement and end on the date the court determines that the organization is not described in IRC 170(c)(2). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for the revocation.

B. Reclassification from Public Charity to Private Foundation Status

Similar reliance provisions apply with regard to a change in classification from public charity (50% deductibility limit) to private foundation (30% deductibility limit).

5. Contributions to Other Exempt Organizations

In addition to contributions for public purposes to governmental bodies described in IRC 170(c)(1) and to charitable organizations described in IRC 170(c)(2), contributions are deductible if made to organizations described in IRC 170(c)(3), (4), or (5). Contributions to these organizations are also limited to 30 percent of adjusted gross income.

A. Veterans Organizations

IRC 170(c)(3) provides that contributions are deductible if made to a post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization that is organized in the United States or any of its possessions, and has no part of its net earnings inuring to the benefit of any private shareholder or individual. These organizations are generally described in IRC 501(c)(19). The major difference between the requirements of IRC 170(c)(3) and IRC 501(c)(19) is that to qualify for exemption at least 75 percent of the members must be past or present members of the Armed Forces of the United States whereas contributions will be deductible only if at least 90 percent of the members are war veterans of the Armed Forces. Rev. Rul. 84-140, 1984-39 I.R.B. 5, which modified and superseded Rev. Rul. 59-151, 1959-1 C.B. 53, defines "war veterans" as persons, whether or not present members of the United States Armed Forces, who have served in the Armed Forces of the United States during a period of war (including the Korean and Vietnam conflicts). Rev. Rul. 84-140 points out that if an organization is exempt under IRC 501(a) (some veterans organizations qualify for exemption under IRC 501(c)(4)) that does not, of itself, mean that contributions to it are deductible under 170(c)(3). The revenue ruling states that the fact that a small percentage of the members has not served in the Armed Forces will not preclude it from being classified as a war veterans organization under IRC 170(c)(3), provided at least 90 percent of its members are war veterans and substantially all other members are either veterans (but not war veterans), or are cadets, or are spouses, widows or widowers of war veterans, veterans or cadets. Rev. Rul. 84-140 is reproduced at the end of this article.

B. Domestic Fraternal Societies

IRC 170(c)(4) provides that a contribution by an individual is deductible when made to a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. These are organizations of the type described in IRC 501(c)(8) and 501(c)(10). IRC 501(c)(8) describes fraternal beneficiary societies operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such societies or their dependents. A fraternal society exempt under IRC 501(c)(10) is one described in IRC 501(c)(8) except that it does not provide benefits to members and its earnings are devoted to religious, charitable, scientific, literary, educational, and fraternal purposes.

C. Cemetery Companies

IRC 170(c)(5) describes nonprofit cemetery companies owned and operated exclusively for the benefit of members, no part of the net earnings of which inures to the benefit of any private shareholder or individual. These are organizations of the type described in IRC 501(c)(13). To be deductible the contributions must be voluntary and be irrevocably dedicated to the care of the cemetery as a whole. A donor may not deduct a contribution made for the perpetual care of a particular lot or crypt. Also, payments made to a cemetery company as part of the purchase price for a burial lot or crypt, even though irrevocably dedicated to the perpetual care of the cemetery as a whole, are not deductible. Rev. Rul. 58-190, 1958-1 C.B. 15.

6. Referral of Cases to Examination Division

If during the course of an examination of an organization described in IRC 170(c), it appears that some payments to the organization may have been deducted by donors on their income tax returns that do not qualify as contributions because inflated values were given to donated articles, some consideration may have been received by the contributors, or for some other reason, the Exempt Organizations specialist should refer the names of the donors to the Examination Division following the procedures under IRM 7(10)65.3 (extracted as IRM 7(10)63.6 in the 1982 EO CPE Textbook, page 157).

Section 170.--Charitable, Etc., Contributions and Gifts

26 CFR 1 1704.1. Charitable, etc., contributions and gifts, allowance of deduction (Also Section 2522:25.2522(a)-1.)

Charitable contributions; deductions; war veterans' organizations. Contributions to an organization, 90 percent of the membership of which is comprised of war veterans of the Armed Forces of the U.S., are deductible under section 170(c)(3) of the Code. The fact that a small percentage of members have not served in a branch of the Armed Forces will not preclude the organization from being classified as a war veterans organization. Rev. Rul. 59-151 modified and superseded.

Rev. Rul. 84-140

ISSUE

Are contributions made to or for the use of the veterans organization described below deductible as charitable contributions under sections 170 and 2522 of the Internal Revenue Code?

FACTS

Ninety percent of the members of an organization that is exempt from income tax under section 501(a) of the Code are war veterans of the Armed Forces of the United States. Substantially all the other members are individuals who are veterans (but not war veterans), or are cadets, or are spouses, widows, or widowers of war veterans, veterans, or cadets. The organization operates in accordance with the following purposes:

(a) Furthering, encouraging, promoting and maintaining comradeship generally among persons who are or have been members of the Armed Forces.

(b) Honoring and perpetuating the memory of deceased veterans and members of the Armed Forces and aiding and comforting their survivors.

(c) Encouraging public interest in and maintaining the ideals of the Armed Forces by sponsoring and participating in activities of a patriotic nature, and

(d) Aiding hospitalized, disabled and needy war veterans and their dependents. However, the organization does not provide insurance benefits to its members.

LAW AND ANALYSIS

Section 170(a) of the Code provides the general rule that there shall be allowed as a deduction any charitable contribution, as defined in section 170(c), payment of which is made during the taxable year.

Section 170(c)(3) of the Code includes within the term "charitable contribution" as used in section 170 a contribution or gift to or for the use of a post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization that is organized in the United States for any of its possessions, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 2522(a)(4) of the Code allows a gift tax deduction for transfers to or for the use of posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

The term "war veterans" means persons, whether or not present members of the United States Armed Forces, who have served in the Armed Forces of the United States during a period of war (including the Korean and Vietnam conflicts).

The fact that an organization of veterans qualifies as exempt from income tax under section 501(a) of the Code does not, of itself, mean that contributions to such organization are deductible under section 170(c)(3). For contributions to be deductible the organization must qualify as a war veterans organization within the meaning of section 170(c)(3). To qualify as a war veterans organization within the meaning of section 170(c)(3), the organization must satisfy both a membership requirement and a purposes requirement.

With respect to the membership requirement, the fact that a small percentage of the members of an organization formed as a war veterans organization have not served in the Armed Forces will not, of itself, preclude the organization from being classified as a war veterans organization under section 170(c)(3) of the Code, provided at least 90 percent of its members are war veterans and substantially all the other members are either veterans (but not war veterans), or are cadets, or are spouses, widows, or widowers of war veterans, veterans or cadets.

With respect to the purposes requirement, the organization must be organized and operated primarily for purposes that are consistent with its status as a war veterans organization.

The organization in this case has purposes that are consistent with its status as a war veterans organization within the meaning of sections 170(c)(3), and 2522(a)(4) of the Code and operates in accordance with them.

HOLDINGS

Because the organization qualifies as a war veterans organization described in sections 170(c)(3), and 2522(a)(4) of the

Code, any contributions to or for the use of the organization are deductible for purposes of sections 170 and 2522.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 59-151, 1959-1 C.B. 53, holds that if an organization is essentially a war veterans organization, the fact that a small percentage of members who have served in an established branch of the Armed Forces have not served during a period of war will not, of itself, preclude the organization from being classified as a war veterans organization under the provision of section 170(c)(3) of the Code. The positions expressed above conform with those in Rev. Rul. 59-151, except that Rev. Rul. 59-151 could be interpreted as limited the membership of veterans organizations under section 170(c)(3) solely to veterans and war veterans, and it does not quantify the "small percentage" described therein.

Rev. Rul. 59-151 is modified and superseded.