

Internal Revenue Code Section 170(f)(16)(D)

Charitable, etc., contributions and gifts.

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(f) Disallowance of deduction in certain cases and special rules.

(1) In general. No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) [IRC Sec. 508(d) or 4948(c)(4)] subject to the conditions specified in such sections.

(2) Contributions of property placed in trust.

(A) Remainder interest. In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664 [IRC Sec. 664]), or a pooled income fund (described in section 642(c)(5) [IRC Sec. 642(c)(5)]).

(B) Income interests, etc. No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671 [IRC Sec. 671]. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671 [IRC Sec. 671], at the time the donor ceases to be so treated, the donor shall for purposes of this chapter [IRC Sections 1 et seq.] be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) Denial of deduction in case of payments by certain trusts. In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) Exception. This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) Denial of deduction in case of certain contributions of partial interests in property.

(A) In general. In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(B) Exceptions. Subparagraph (A) shall not apply to--

- (i) a contribution of a remainder interest in a personal residence or farm,
- (ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and
- (iii) a qualified conservation contribution.

(4) Valuation of remainder interest in real property. For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary may prescribe a different rate.

(5) Reduction for certain interest. If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution--

- (A) shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer,
 - (ii) which is attributable to the liability, and
 - (iii) which is attributable to any period after the making of the contribution, and

(B) in the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) Deductions for out-of-pocket expenditures. No deduction shall be allowed under this section for an out-of-pocket expenditure made by any person on behalf of an organization described in subsection (c) (other than an organization described in section 501(h)(5) [IRC Sec. 501(h)(5)] (relating to churches, etc.)) if the expenditure is made for the purpose of influencing legislation (within the meaning of section 501(c)(3) [IRC Sec. 501(c)(3)]).

(7) Reformation to comply with paragraph (2).

(A) In general. A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B) [26 USCS § 2005(e)(3)(B)]).

(B) Rules similar to section 2055(e)(3) [IRC Sec. 2055(e)(3)] to apply. For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) [IRC Sec. 2055(e)(3)] shall apply.

(8) Substantiation requirement for certain contributions.

(A) General rule. No deduction shall be allowed under subsection (a) for any contribution of \$ 250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

(B) Content of acknowledgement. An acknowledgement meets the requirements of this subparagraph if it includes the following information:

(i) The amount of cash and a description (but not value) of any property other than cash contributed.

(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

For purposes of this subparagraph, the term "intangible religious benefit" means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context.

(C) Contemporaneous. For purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of--

(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or

(ii) the due date (including extensions) for filing such return.

(D) Substantiation not required for contributions reported by the donee organization. Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

(E) Regulations. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

(9) Denial of deduction where contribution for lobbying activities. No deduction shall be allowed under this section for a contribution to an organization which conducts activities to which section 162(e)(1) [IRC Sec. 162(3)(1)] applies on matters of direct financial interest to the donor's trade or business, if a principal purpose of the contribution was to avoid Federal income tax by securing a deduction for such activities under this section which would be disallowed by reason of section 162(e) [IRC Sec. 162(e)] if the donor had conducted such activities directly. No deduction shall be allowed under section 162(a) [IRC Sec. 162(a)] for any amount for which a deduction is disallowed under the preceding sentence.

(10) Split-dollar life insurance, annuity, and endowment contracts.

(A) In general. Nothing in this section or in section 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 [IRC Sec. 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522] shall be construed to allow a deduction, and no deduction shall be allowed, for any transfer to or for the use of an organization described in subsection (c) if in connection with such transfer--

(i) the organization directly or indirectly pays, or has previously paid, any premium on any personal benefit contract with respect to the transferor, or

(ii) there is an understanding or expectation that any person will directly or indirectly pay any premium on any personal benefit contract with respect to the transferor.

(B) Personal benefit contract. For purposes of subparagraph (A), the term "personal benefit contract" means, with respect to the transferor, any life insurance, annuity, or endowment contract if any direct or indirect beneficiary under such contract is the transferor, any member of the transferor's family, or any other person (other than an organization described in subsection (c)) designated by the transferor.

(C) Application to charitable remainder trusts. In the case of a transfer to a trust referred to in subparagraph (E), references in subparagraphs (A) and (F) to an organization described in subsection (c) shall be treated as a reference to such trust.

(D) Exception for certain annuity contracts. If, in connection with a transfer to or for the use of an organization described in subsection (c), such organization incurs an obligation to pay a charitable gift annuity (as defined in section 501(m) [IRC Sec. 501(m)]) and such organization purchases any annuity contract to fund such obligation, persons receiving payments under the charitable gift annuity shall not be treated for purposes of subparagraph (B) as indirect beneficiaries under such contract if--

(i) such organization possesses all of the incidents of ownership under such contract,

(ii) such organization is entitled to all the payments under such contract, and
(iii) the timing and amount of payments under such contract are substantially the same as the timing and amount of payments to each such person under such obligation (as such obligation is in effect at the time of such transfer).

(E) Exception for certain contracts held by charitable remainder trusts. A person shall not be treated for purposes of subparagraph (B) as an indirect beneficiary under any life insurance, annuity, or endowment contract held by a charitable remainder annuity trust or a charitable remainder unitrust (as defined in section 664(d) [IRC Sec. 664(d)]) solely by reason of being entitled to any payment referred to in paragraph (1)(A) or (2)(A) of section 664(d) [IRC Sec. 664(d)] if--

(i) such trust possesses all of the incidents of ownership under such contract, and
(ii) such trust is entitled to all the payments under such contract.

(F) Excise tax on premiums paid.

(i) In general. There is hereby imposed on any organization described in subsection (c) an excise tax equal to the premiums paid by such organization on any life insurance, annuity, or endowment contract if the payment of premiums on such contract is in connection with a transfer for which a deduction is not allowable under subparagraph (A), determined without regard to when such transfer is made.

(ii) Payments by other persons. For purposes of clause (i), payments made by any other person pursuant to an understanding or expectation referred to in subparagraph (A) shall be treated as made by the organization.

(iii) Reporting. Any organization on which tax is imposed by clause (i) with respect to any premium shall file an annual return which includes--

(I) the amount of such premiums paid during the year and the name and TIN of each beneficiary under the contract to which the premium relates, and

(II) such other information as the Secretary may require.

The penalties applicable to returns required under section 6033 [IRC Sec. 6033] shall apply to returns required under this clause. Returns required under this clause shall be furnished at such time and in such manner as the Secretary shall by forms or regulations require.

(iv) Certain rules to apply. The tax imposed by this subparagraph shall be treated as imposed by chapter 42 [IRC Sections 4940 et seq.] for purposes of this title other than subchapter B of chapter 42 [IRC Sections 4951 et seq.].

(G) Special rule where state requires specification of charitable gift annuitant in contract. In the case of an obligation to pay a charitable gift annuity referred to in subparagraph (D) which is entered into under the laws of a State which requires, in order for the charitable gift annuity to be exempt from insurance regulation by such State, that each beneficiary under the charitable gift annuity be named as a beneficiary under an annuity contract issued by an insurance company authorized to transact business in such State, the requirements of clauses (i) and (ii) of subparagraph (D) shall be treated as met if--

(i) such State law requirement was in effect on February 8, 1999,

(ii) each such beneficiary under the charitable gift annuity is a bona fide resident of such State at the time the obligation to pay a charitable gift annuity is entered into, and

(iii) the only persons entitled to payments under such contract are persons entitled to payments as beneficiaries under such obligation on the date such obligation is entered into.

(H) Member of family. For purposes of this paragraph, an individual's family consists of the individual's grandparents, the grandparents of such individual's spouse, the lineal descendants of such grandparents, and any spouse of such a lineal descendant.

(I) Regulations. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations to prevent the avoidance of such purposes.

(11) Qualified appraisal and other documentation for certain contributions.

(A) In general.

(i) Denial of deduction. In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of property for which a deduction of more than \$ 500 is claimed unless such person meets the requirements of subparagraphs (B), (C), and (D), as the case may be, with respect to such contribution.

(ii) Exceptions.

(I) Readily valued property. Subparagraphs (C) and (D) shall not apply to cash, property described in subsection (e)(1)(B)(iii) or section 1221(a)(1) [IRC Sec. 1221(a)(1)], publicly traded securities (as defined in section 6050L(a)(2)(B) [IRC Sec. 6050L(a)(2)(B)]), and any qualified vehicle described in paragraph (12)(A)(ii) for which an acknowledgement under paragraph (12)(B)(iii) is provided.

(II) Reasonable cause. Clause (i) shall not apply if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect.

(B) Property description for contributions of more than \$ 500. In the case of contributions of property for which a deduction of more than \$ 500 is claimed, the requirements of this subparagraph are met if the individual, partnership or corporation includes with the return for the taxable year in which the contribution is made a description of such property and such other information as the Secretary may require. The requirements of this subparagraph shall not apply to a C corporation which is not a personal service corporation or a closely held C corporation.

(C) Qualified appraisal for contributions of more than \$ 5,000. In the case of contributions of property for which a deduction of more than \$ 5,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation obtains a qualified appraisal of such property and attaches to the return for the taxable year in which such contribution is made such information regarding such property and such appraisal as the Secretary may require.

(D) Substantiation for contributions of more than \$ 500,000. In the case of contributions of property for which a deduction of more than \$ 500,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation attaches to the return for the taxable year a qualified appraisal of such property.

(E) Qualified appraisal and appraiser. For purposes of this paragraph--

(i) Qualified appraisal. The term "qualified appraisal" means, with respect to any property, an appraisal of such property which--

(I) is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and

(II) is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I).

(ii) Qualified appraiser. Except as provided in clause (iii), the term 'qualified appraiser' means an individual who--

(I) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,

(II) regularly performs appraisals for which the individual receives compensation, and

(III) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.

(iii) Specific appraisals. An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless--

(I) the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and

(II) the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under section 330(c) of title 31, United States Code [31 USCS § 330(c)], at any time during the 3-year period ending on the date of the appraisal.

(F) Aggregation of similar items of property. For purposes of determining thresholds under this paragraph, property and all similar items of property donated to 1 or more donees shall be treated as 1 property.

(G) Special rule for pass-thru entities. In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

(H) Regulations. The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

(12) Contributions of used motor vehicles, boats, and airplanes.

(A) In general. In the case of a contribution of a qualified vehicle the claimed value of which exceeds \$ 500--

(i) paragraph (8) shall not apply and no deduction shall be allowed under subsection (a) for such contribution unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization that meets the requirements of subparagraph (B) and includes the acknowledgement with the taxpayer's return of tax which includes the deduction, and

(ii) if the organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction allowed under subsection (a) shall not exceed the gross proceeds received from such sale.

(B) Content of acknowledgement. An acknowledgement meets the requirements of this subparagraph if it includes the following information:

(i) The name and taxpayer identification number of the donor.

(ii) The vehicle identification number or similar number.

(iii) In the case of a qualified vehicle to which subparagraph (A)(ii) applies--

(I) a certification that the vehicle was sold in an arm's length transaction between unrelated parties,

(II) the gross proceeds from the sale, and

(III) a statement that the deductible amount may not exceed the amount of such gross proceeds.

(iv) In the case of a qualified vehicle to which subparagraph (A)(ii) does not apply--

(I) a certification of the intended use or material improvement of the vehicle and the intended duration of such use, and

(II) a certification that the vehicle would not be transferred in exchange for money, other property, or services before completion of such use or improvement.

(v) Whether the donee organization provided any goods or services in consideration, in whole or in part, for the qualified vehicle.

(vi) A description and good faith estimate of the value of any goods or services referred to in clause (v) or, if such goods or services consist solely of intangible religious benefits (as defined in paragraph (8)(B)), a statement to that effect.

(C) Contemporaneous. For purposes of subparagraph (A), an acknowledgement shall be considered to be contemporaneous if the donee organization provides it within 30 days of--

(i) the sale of the qualified vehicle, or

(ii) in the case of an acknowledgement including a certification described in subparagraph (B)(iv), the contribution of the qualified vehicle.

(D) Information to Secretary. A donee organization required to provide an acknowledgement under this paragraph shall provide to the Secretary the information contained in the acknowledgement. Such information shall be provided at such time and in such manner as the Secretary may prescribe.

(E) Qualified vehicle. For purposes of this paragraph, the term "qualified vehicle" means any--

- (i) motor vehicle manufactured primarily for use on public streets, roads, and highways,
- (ii) boat, or
- (iii) airplane.

Such term shall not include any property which is described in section 1221(a)(1) [IRC Sec. 1221(a)(1)].

(F) Regulations or other guidance. The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this paragraph. The Secretary may prescribe regulations or other guidance which exempts sales by the donee organization which are in direct furtherance of such organization's charitable purpose from the requirements of subparagraphs (A)(ii) and (B)(iv)(II).

(13) Contributions of certain interests in buildings located in registered historic districts.

(A) In general. No deduction shall be allowed with respect to any contribution described in subparagraph (B) unless the taxpayer includes with the return for the taxable year of the contribution a \$ 500 filing fee.

(B) Contribution described. A contribution is described in this subparagraph if such contribution is a qualified conservation contribution (as defined in subsection (h)) which is a restriction with respect to the exterior of a building described in subsection (h)(4)(C)(ii) and for which a deduction is claimed in excess of \$ 10,000.

(C) Dedication of fee. Any fee collected under this paragraph shall be used for the enforcement of the provisions of subsection (h).

(14) Reduction for amounts attributable to rehabilitation credit. In the case of any qualified conservation contribution (as defined in subsection (h)), the amount of the deduction allowed under this section shall be reduced by an amount which bears the same ratio to the fair market value of the contribution as--

(A) the sum of the credits allowed to the taxpayer under section 47 for the 5 preceding taxable years with respect to any building which is a part of such contribution, bears to

(B) the fair market value of the building on the date of the contribution.

(15) Special rule for taxidermy property.

(A) Basis. For purposes of this section and notwithstanding section 1012 [IRC Sec. 1012], in the case of a charitable contribution of taxidermy property which is made by the person who prepared, stuffed, or mounted the property or by any person who paid or incurred the cost of such preparation, stuffing, or mounting, only the cost of the preparing, stuffing, or mounting shall be included in the basis of such property.

(B) Taxidermy property. For purposes of this section, the term "taxidermy property" means any work of art which--

- (i) is the reproduction or preservation of an animal, in whole or in part,
- (ii) is prepared, stuffed, or mounted for purposes of recreating one or more characteristics of such animal, and
- (iii) contains a part of the body of the dead animal.

(16) Contributions of clothing and household items.

(A) In general. In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of clothing or a household item unless such clothing or household item is in good used condition or better.

(B) Items of minimal value. Notwithstanding subparagraph (A), the Secretary may by regulation deny a deduction under subsection (a) for any contribution of clothing or a household item which has minimal monetary value.

(C) Exception for certain property. Subparagraphs (A) and (B) shall not apply to any contribution of a single item of clothing or a household item for which a deduction of more than \$ 500 is claimed if the taxpayer includes with the taxpayer's return a qualified appraisal with respect to the property.

(D) Household items. For purposes of this paragraph--

(i) In general. The term "household items" includes furniture, furnishings, electronics, appliances, linens, and other similar items.

(ii) Excluded items. Such term does not include--

- (I) food,
- (II) paintings, antiques, and other objects of art,
- (III) jewelry and gems, and
- (IV) collections.

(E) Special rule for pass-thru entities. In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

(17) Recordkeeping. No deduction shall be allowed under subsection (a) for any contribution of a cash, check, or other monetary gift unless the donor maintains as a record of such contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution.

(18) Contributions to donor advised funds. A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2) [IRC Sec. 4966(d)(2)]) shall only be allowed if--

(A) the sponsoring organization (as defined in section 4966(d)(1) [IRC Sec. 4966(d)(1)]) with respect to such donor advised fund is not--

- (i) described in paragraph (3), (4), or (5) of subsection (c), or
- (ii) a type III supporting organization (as defined in section 4943(f)(5)(A) [IRC Sec. 4943(f)(5)(A)]) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B) [IRC Sec. 4943(f)(5)(B)]), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of paragraph (8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

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