

Internal Revenue Code Section 170(e)(5)

Charitable, etc., contributions and gifts.

(e) Certain contributions of ordinary income and capital gain property.

(1) General rule. The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) the amount of gain which would not have been long-term capital gain (determined without regard to section 1221(b)(3)) if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) in the case of a charitable contribution—

(i) of tangible personal property—

(I) if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(II) which is applicable property (as defined in paragraph (7)(C) but without regard to clause (ii) thereof) which is sold, exchanged, or otherwise disposed of by the donee before the last day of the taxable year in which the contribution was made and with respect to which the donee has not made a certification in accordance with paragraph (7)(D),

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(F),

(iii) 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, or

(iv) of any taxidermy property which is contributed 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, the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1252(a), or 1254(a) applies), property which

is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset. For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer. For purposes of this paragraph, the determination of whether property is a capital asset shall be made without regard to the exception contained in section 1221(a)(3)(C) for basis determined under section 1022.

(2) Allocation of basis. For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary.

(3) Special rule for certain contributions of inventory and other property.

(A) Qualified contributions. For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in paragraph (1) or (2) of section 1221(a), by a corporation (other than a corporation which is an S corporation) to an organization which is described in section 501(c)(3) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), but only if—

(i) the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under section 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

(ii) the property is not transferred by the donee in exchange for money, other property, or services;

(iii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (i) and (ii); and

(iv) in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, as amended, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hundred and eighty days prior thereto.

(B) Amount of reduction. The reduction under paragraph (1)(A) for any qualified contribution (as defined in subparagraph (A)) shall be no greater than the sum of—

(i) one-half of the amount computed under paragraph (1)(A) (computed without regard to this paragraph), and

(ii) the amount (if any) by which the charitable contribution deduction under this section for any qualified contribution (computed by taking into account the amount determined in clause (i), but without regard to this clause) exceeds twice the basis of such property.

(C) Special rule for contributions of food inventory.

- (i) General rule. In the case of a charitable contribution of food from any trade or business of the taxpayer, this paragraph shall be applied—
 - (I) without regard to whether the contribution is made by a C corporation, and
 - (II) only to food that is apparently wholesome food.
- (ii) Limitation. In the case of a taxpayer other than a C corporation, the aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed 10 percent of the taxpayer's aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year, computed without regard to this section.
- (iii) Apparently wholesome food. For purposes of this subparagraph, the term "apparently wholesome food" has the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.
- (iv) Termination. This subparagraph shall not apply to contributions made after December 31, 2009.

(D) Special rule for contributions of book inventory to public schools.

- (i) Contributions of book inventory. In determining whether a qualified book contribution is a qualified contribution, subparagraph (A) shall be applied without regard to whether the donee is an organization described in the matter preceding clause (i) of subparagraph (A).
- (ii) Qualified book contribution. For purposes of this paragraph, the term "qualified book contribution" means a charitable contribution of books to a public school which is an educational organization described in subsection (b)(1)(A)(ii) and which provides elementary education or secondary education (kindergarten through grade 12).
- (iii) Certification by donee. Subparagraph (A) shall not apply to any contribution of books unless (in addition to the certifications required by subparagraph (A) (as modified by this subparagraph)), the donee certifies in writing that—
 - (I) the books are suitable, in terms of currency, content, and quantity, for use in the donee's educational programs, and
 - (II) the donee will use the books in its educational programs.
- (iv) Termination. This subparagraph shall not apply to contributions made after December 31, 2009.

(E) This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250, or 1252.

(4) Special rule for contributions of scientific property used for research.

(A) Limit on reduction. In the case of a qualified research contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified research contributions. For purposes of this paragraph, the term "qualified research contribution" means a charitable contribution by a corporation of tangible personal property described in paragraph (1) of section 1221(a), but only if—

(i) the contribution is to an organization described in subparagraph (A) or subparagraph (B) of section 41(e)(6),

(ii) the property is constructed or assembled by the taxpayer,

(iii) the contribution is made not later than 2 years after the date the construction or assembly of the property is substantially completed,

(iv) the original use of the property is by the donee,

(v) the property is scientific equipment or apparatus substantially all of the use of which by the donee is for research or experimentation (within the meaning of section 174), or for research training, in the United States in physical or biological sciences,

(vi) the property is not transferred by the donee in exchange for money, other property, or services, and

(vii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (v) and (vi).

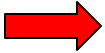
(C) Construction of property by taxpayer. For purposes of this paragraph, property shall be treated as constructed by the taxpayer only if the cost of the parts used in the construction of such property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in such property.

(D) Corporation. For purposes of this paragraph, the term "corporation" shall not include

(i) an S corporation,

(ii) a personal holding company (as defined in section 542), and

(iii) a service organization (as defined in section 414(m)(3)).



(5) Special rule for contributions of stock for which market quotations are readily available.

(A) In general. Subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.

(B) Qualified appreciated stock. Except as provided in subparagraph (C), for purposes of this paragraph, the term "qualified appreciated stock" means any stock of a corporation—

(i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and

(ii) which is capital gain property (as defined in subsection (b)(1)(C)(iv)).

(C) Donor may not contribute more than 10 percent of stock of corporation.

(i) In general. In the case of any donor, the term "qualified appreciated stock" shall not include any stock of a corporation contributed by the donor in a contribution to which paragraph (1)(B)(ii) applies (determined without regard to this paragraph) to the extent that the amount of the stock so contributed (when increased by the aggregate amount of all prior such contributions by the donor of stock in such corporation) exceeds 10 percent (in value) of all of the outstanding stock of such corporation.

(ii) Special rule. For purposes of clause (i), an individual shall be treated as making all contributions made by any member of his family (as defined in section 267(c)(4)).

(6) Special rule for contributions of computer technology and equipment for educational purposes.

(A) Limit on reduction. In the case of a qualified computer contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified computer contribution. For purposes of this paragraph, the term "qualified computer contribution" means a charitable contribution by a corporation of any computer technology or equipment, but only if—

(i) the contribution is to—

(I) an educational organization described in subsection (b)(1)(A)(ii),

(II) an entity described in section 501(c)(3) and exempt from tax under section 501(a) (other than an entity described in subclause (I)) that is organized primarily for purposes of supporting elementary and secondary education, or

(III) a public library (within the meaning of section 213(1)(A) of the Library Services and Technology Act (20 U.S.C. 9122(1)(A))), as in effect on the date

of the enactment of the Community Renewal Tax Relief Act of 2000), established and maintained by an entity described in subsection (c)(1),

- (ii) the contribution is made not later than 3 years after the date the taxpayer acquired the property (or in the case of property constructed or assembled by the taxpayer, the date the construction or assembly of the property is substantially completed),
- (iii) the original use of the property is by the donor or the donee,
- (iv) substantially all of the use of the property by the donee is for use within the United States for educational purposes that are related to the purpose or function of the donee,
- (v) the property is not transferred by the donee in exchange for money, other property, or services, except for shipping, installation and transfer costs,
- (vi) the property will fit productively into the donee's education plan,
- (vii) the donee's use and disposition of the property will be in accordance with the provisions of clauses (iv) and (v), and
- (viii) the property meets such standards, if any, as the Secretary may prescribe by regulation to assure that the property meets minimum functionality and suitability standards for educational purposes.

(C) Contribution to private foundation. A contribution by a corporation of any computer technology or equipment to a private foundation (as defined in section 509) shall be treated as a qualified computer contribution for purposes of this paragraph if—

- (i) the contribution to the private foundation satisfies the requirements of clauses (ii) and (v) of subparagraph (B), and
- (ii) within 30 days after such contribution, the private foundation—
 - (I) contributes the property to a donee described in clause (i) of subparagraph (B) that satisfies the requirements of clauses (iv) through (vii) of subparagraph (B), and
 - (II) notifies the donor of such contribution.

(D) Donations of property reacquired by manufacturer. In the case of property which is reacquired by the person who constructed or assembled the property—

- (i) subparagraph (B)(ii) shall be applied to a contribution of such property by such person by taking into account the date that the original construction or assembly of the property was substantially completed, and
- (ii) subparagraph (B)(iii) shall not apply to such contribution.

(E) Special rule relating to construction of property. For the purposes of this paragraph, the rules of paragraph (4)(C) shall apply.

(F) Definitions. For the purposes of this paragraph—

(i) Computer technology or equipment. The term "computer technology or equipment" means computer software (as defined by section 197(e)(3)(B)), computer or peripheral equipment (as defined by section 168(i)(2)(B)), and fiber optic cable related to computer use.

(ii) Corporation. The term "corporation" has the meaning given to such term by paragraph (4)(D).

(G) Termination. This paragraph shall not apply to any contribution made during any taxable year beginning after December 31, 2009.

(7) Recapture of deduction on certain dispositions of exempt use property.

(A) In general. In the case of an applicable disposition of applicable property, there shall be included in the income of the donor of such property for the taxable year of such donor in which the applicable disposition occurs an amount equal to the excess (if any) of—

(i) the amount of the deduction allowed to the donor under this section with respect to such property, over

(ii) the donor's basis in such property at the time such property was contributed.

(B) Applicable disposition. For purposes of this paragraph, the term "applicable disposition" means any sale, exchange, or other disposition by the donee of applicable property—

(i) after the last day of the taxable year of the donor in which such property was contributed, and

(ii) before the last day of the 3-year period beginning on the date of the contribution of such property, unless the donee makes a certification in accordance with subparagraph (D).

(C) Applicable property. For purposes of this paragraph, the term "applicable property" means charitable deduction property (as defined in section 6050L(a)(2)(A))—

(i) which is tangible personal property the use of which is identified by the donee as related to the purpose or function constituting the basis of the donee's exemption under section 501, and

(ii) for which a deduction in excess of the donor's basis is allowed.

(D) Certification. A certification meets the requirements of this subparagraph if it is a written statement which is signed under penalty of perjury by an officer of the donee organization and—

(i) which—

(I) certifies that the use of the property by the donee was substantial and related to the purpose or function constituting the basis for the donee's exemption under section 501, and

(II) describes how the property was used and how such use furthered such purpose or function, or

(ii) which—

(I) states the intended use of the property by the donee at the time of the contribution, and

(II) certifies that such intended use has become impossible or infeasible to implement.

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