

**§ 25.2522(a)-2 Transfers not exclusively for charitable, etc., purposes in the case of gifts made before August 1, 1969.**

(a) *Remainders and similar interests.* If a trust is created or property is transferred for both a charitable and a private purpose, deduction may be taken of the value of the charitable beneficial interest only insofar as that interest is presently ascertainable, and hence severable from the noncharitable interest. The present value of a remainder or other deferred payment to be made for a charitable purpose is to be determined in accordance with the rules stated in § 25.2512-5. Thus, if money or property is placed in trust to pay the income to an individual during his life, or for a term of years, and then to pay the principal to a charitable organization, the present value of the remainder is deductible. If the interest involved is such that its value is to be determined by a special computation, see § 25.2512-5(d)(4). If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present value made in accordance with the principles set forth in the applicable paragraph of § 25.2512-5.

(b) *Transfers subject to a condition or a power.* If, as of the date of the gift, a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an estate or interest passes to or is vested in charity on the date of the gift and the estate or interest would be defeated by the performance of some act or the happening of some event, the occurrence of which appeared to have been highly improbable on the date of the gift, the deduction is allowable. If the donee or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so given by the donor, the deduction will be limited to that portion of the property or fund which is exempt from the exercise of

the power. The deduction is not allowed in the case of a transfer in trust conveying to charity a present interest in income if by reason of all the conditions and circumstances surrounding the transfer it appears that the charity may not receive the beneficial enjoyment of the interest. For example, assume that assets placed in trust by the donor consists of stock in a corporation, the fiscal policies of which are controlled by the donor and his family, that the trustees and remaindermen are likewise members of the donor's family, and that the governing instrument contains no adequate guarantee of the requisite income to the charitable organization. Under such circumstances, no deduction will be allowed. Similarly, if the trustees are not members of the donor's family but have no power to sell or otherwise dispose of closely held stock, or otherwise insure the requisite enjoyment of income to the charitable organization, no deduction will be allowed.

(c) *Effective date.* This section applies only to gifts made before August 1, 1969. In the case of gifts made after July 31, 1969, see § 25.2522(c)-2.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958; 25 FR 14021 Dec. 31, 1960, as amended by T.D. 7318, 39 FR 25457, July 11, 1974; T.D. 8540, 59 FR 30177, June 10, 1994]

**§ 25.2522(b)-1 Charitable and similar gifts; nonresidents not citizens.**

(a) The deduction for charitable and similar gifts, in the case of a nonresident who was not a citizen of the United States at the time he made the gifts, is governed by the same rules as those applying to gifts by citizens or residents, subject, however, to the following exceptions:

(1) If the gifts are made to or for the use of a corporation, the corporation must be one created or organized under the laws of the United States or of any State or Territory thereof.

(2) If the gifts are made to or for the use of a trust, community chest, fund or foundation, or a fraternal society, order or association operating under the lodge system, the gifts must be for use within the United States exclusively for religious, charitable, scientific, literary or educational purposes, including the encouragement of