

apply. See section 201(g)(1)(D) of the Tax Reform Act of 1969 (83 Stat. 564).

[T.D. 7207, 37 FR 20793, Oct. 4, 1972, as amended by T.D. 7807, 47 FR 4512, Feb. 1, 1982; T.D. 9100, 68 FR 70704, Dec. 19, 2003]

§ 1.170A-11T Limitation on, and carry-over of, contributions by corporations (temporary).

(a) [Reserved]. For further guidance, see § 1.170A-11(a).

(b) Election by corporations on an accrual method—(1) [Reserved]. For further guidance, see § 1.170A-11(b)(1).

(2) The election must be made at the time the return for the taxable year is filed, by reporting the contribution on the return. There shall be attached to the return when filed a written declaration stating that the resolution authorizing the contribution was adopted by the board of directors during the taxable year. For taxable years beginning before January 1, 2003, the declaration shall be verified by a statement signed by an officer authorized to sign the return that it is made under penalties of perjury, and there shall also be attached to the return when filed a copy of the resolution of the board of directors authorizing the contribution. For taxable years beginning after December 31, 2002, the declaration must also include the date of the resolution, the declaration shall be verified by signing the return, and a copy of the resolution of the board of directors authorizing the contribution is a record that the taxpayer must retain and keep available for inspection in the manner required by § 1.6001-1(e).

(c) through (d) [Reserved]. For further guidance, see § 1.170A-11(c) through (d).

[T.D. 9100, 68 FR 70704, Dec. 19, 2003]

§ 1.170A-12 Valuation of a remainder interest in real property for contributions made after July 31, 1969.

(a) *In general.* (1) Section 170(f)(4) provides that, in determining the value of a remainder interest in real property for purposes of section 170, depreciation and depletion of such property shall be taken into account. Depreciation shall be computed by the straight line method and depletion shall be computed by the cost depletion method. Section 170(f)(4) and this section apply only in

the case of a contribution, not made in trust, of a remainder interest in real property made after July 31, 1969, for which a deduction is otherwise allowable under section 170.

(2) In the case of the contribution of a remainder interest in real property consisting of a combination of both depreciable and nondepreciable property, or of both depletable and nondepletable property, and allocation of the fair market value of the property at the time of the contribution shall be made between the depreciable and nondepreciable property, or the depletable and nondepletable property, and depreciation or depletion shall be taken into account only with respect to the depreciable or depletable property. The expected value at the end of its “estimated useful life” (as defined in paragraph (d) of this section) of that part of the remainder interest consisting of depreciable property shall be considered to be nondepreciable property for purposes of the required allocation. In the case of the contribution of a remainder interest in stock in a cooperative housing corporation (as defined in section 216(b)(1)), an allocation of the fair market value of the stock at the time of the contribution shall be made to reflect the respective values of the depreciable and nondepreciable property underlying such stock, and depreciation on the depreciable part shall be taken into account for purposes of valuing the remainder interest in such stock.

(3) If the remainder interest that has been contributed follows only one life, the value of the remainder interest shall be computed under the rules contained in paragraph (b) of this section. If the remainder interest that has been contributed follows a term for years, the value of the remainder interest shall be computed under the rules contained in paragraph (c) of this section. If the remainder interest that has been contributed is dependent upon the continuation or the termination of more than one life or upon a term certain concurrent with one or more lives, the provisions of paragraph (e) of this section shall apply. In every case where it is provided in this section that the rules contained in § 25.2512-5 (or, for certain prior periods, § 25.2512-5A) of this chapter (Gift Tax Regulations)

apply, such rules shall apply notwithstanding the general effective date for such rules contained in paragraph (a) of such section. Except as provided in § 1.7520-3(b) of this chapter, for transfers of remainder interests after April 30, 1989, the present value of the remainder interest is determined under § 25.2512-5 of this chapter by use of the interest rate component on the date the interest is transferred unless an election is made under section 7520 and § 1.7520-2 of this chapter to compute the present value of the interest transferred by use of the interest rate component for either of the 2 months preceding the month in which the interest is transferred. In some cases, a reduction in the amount of a charitable contribution of a remainder interest, after the computation of its value under section 170(f)(4) and this section, may be required. See section 170(e) and § 1.170A-4.

(b) *Valuation of a remainder interest following only one life*—(1) *General rule.* The value of a remainder interest in real property following only one life is determined under the rules provided in § 20.2031-7 (or for certain prior periods, § 20.2031-7A) of this chapter (Estate Tax Regulations), using the interest rate and life contingencies prescribed for the date of the gift. See, however, § 1.7520-3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). However, if any part of the real property is subject to exhaustion, wear and tear, or obsolescence, the special factor determined under paragraph (b)(2) of this section shall be used in valuing the remainder interest in that part. Further, if any part of the property is subject to depletion of its natural resources, such depletion is taken into account in determining the value of the remainder interest.

(2) *Computation of depreciation factor.* If the valuation of the remainder inter-

est in depreciable property is dependent upon the continuation of one life, a special factor must be used. The factor determined under this paragraph (b)(2) is carried to the fifth decimal place. The special factor is to be computed on the basis of the interest rate and life contingencies prescribed in § 20.2031-7 of this chapter (or for periods before May 1, 1999, § 20.2031-7A) and on the assumption that the property depreciates on a straight-line basis over its estimated useful life. For transfers for which the valuation date is after April 30, 1999, special factors for determining the present value of a remainder interest following one life and an example describing the computation is contained in Internal Revenue Service Publication 1459, “Actuarial Values, Book Gimel,” (7-1999). A copy of this publication is available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. For transfers for which the valuation date is after April 30, 1989, and before May 1, 1999, special factors for determining the present value of a remainder interest following one life and an example describing the computation is contained in Internal Revenue Service Publication 1459, “Actuarial Values, Gamma Volume,” (8-89). This publication is no longer available for purchase from the Superintendent of Documents. However, it may be obtained by requesting a copy from: CC:DOM:CORP:R (IRS Publication 1459), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. See, however, § 1.7520-3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). Otherwise, in the case of the valuation of a remainder interest following one life, the special factor may be obtained through use of the following formula:

$$\left(1 + \frac{i}{2}\right) \sum_{t=0}^{n-1} v^{(t+1)} \left[\left(1 - \frac{1_{x+t+1}}{1_x}\right) - \left(1 - \frac{1_{x+t}}{1_x}\right) \right] \left(1 - \frac{1}{2n} - \frac{t}{n}\right)$$

Where:

n = the estimated number of years of useful life,

i = the applicable interest rate under section 7520 of the Internal Revenue Code,

v = 1 divided by the sum of 1 plus the applicable interest rate under section 7520 of the Internal Revenue Code,

x = the age of the life tenant, and

lx = number of persons living at age x as set forth in Table 90CM of § 20.2031-7 (or, for periods before May 1, 1999, the tables set forth under § 20.2031-7A) of this chapter.

(3) *Example.* The following example illustrates the provisions of this paragraph (b):

Example. A, who is 62, donates to Y University a remainder interest in a personal residence, consisting of a house and land, subject to a reserved life estate in A. At the time of the gift, the land has a value of \$30,000 and the house has a value of \$100,000 with an estimated useful life of 45 years, at the end of which the value of the house is expected to be \$20,000. The portion of the property considered to be depreciable is \$80,000 (the value of the house (\$100,000) less its expected value at the end of 45 years (\$20,000)). The portion of the property considered to be nondepreciable is \$50,000 (the value of the land at the time of the gift (\$30,000) plus the expected value of the house at the end of 45 years (\$20,000)). At the time of the gift, the interest rate prescribed under section 7520 is 8.4 percent. Based on an interest rate of 8.4 percent, the remainder factor for \$1.00 prescribed in § 20.2031-7(d) of this chapter for a person age 62 is 0.27925. The value of the nondepreciable remainder interest is \$13,962.50 (0.27925 times \$50,000). The value of the depreciable remainder interest is \$16,148.80 (0.20186, computed under the formula described in paragraph (b)(2) of this section, times \$80,000). Therefore, the value of the remainder interest is \$30,111.30.

(c) *Valuation of a remainder interest following a term for years.* The value of a remainder interest in real property following a term for years shall be determined under the rules provided in § 25.2512-5 (or, for certain prior periods, § 25.2512-5A) of this chapter (Gift Tax Regulations) using Table B provided in § 20.2031-7(d)(6) of this chapter. However, if any part of the real property is subject to exhaustion, wear and tear, or obsolescence, in valuing the remainder interest in that part the value of such part is adjusted by subtracting from the value of such part the amount determined by multiplying such value by a fraction, the numerator of which

is the number of years in the term or, if less, the estimated useful life of the property, and the denominator of which is the estimated useful life of the property. The resultant figure is the value of the property to be used in § 25.2512-5 (or, for certain prior periods, § 25.2512-5A) of this chapter (Gift Tax Regulations). Further, if any part of the property is subject to depletion of its natural resources, such depletion shall be taken into account in determining the value of the remainder interest. The provisions of this paragraph as it relates to depreciation are illustrated by the following example:

Example. In 1972, B donates to Z University a remainder interest in his personal residence, consisting of a house and land, subject to a 20 year term interest provided for his sister. At such time the house has a value of \$60,000, and an expected useful life of 45 years, at the end of which time it is expected to have a value of \$10,000, and the land has a value of \$8,000. The value of the portion of the property considered to be depreciable is \$50,000 (the value of the house (\$60,000) less its expected value at the end of 45 years (\$10,000)), and this is multiplied by the fraction 20/45. The product, \$22,222.22, is subtracted from \$68,000, the value of the entire property, and the balance, \$45,777.78, is multiplied by the factor .311805 (see § 25.2512-5A(c)). The result, \$14,273.74, is the value of the remainder interest in the property.

(d) *Definition of estimated useful life.* For the purposes of this section, the determination of the estimated useful life of depreciable property shall take account of the expected use of such property during the period of the life estate or term for years. The term "estimated useful life" means the estimated period (beginning with the date of the contribution) over which such property may reasonably be expected to be useful for such expected use. This period shall be determined by reference to the experience based on any prior use of the property for such purposes if such prior experience is adequate. If such prior experience is inadequate or if the property has not been previously used for such purposes, the estimated useful life shall be determined by reference to the general experience of persons normally holding similar property for such expected use, taking into account present conditions and probable future developments. The estimated

§ 1.170A-12

26 CFR Ch. I (4-1-04 Edition)

useful life of such depreciable property is not limited to the period of the life estate or term for years preceding the remainder interest. In determining the expected use and the estimated useful life of the property, consideration is to be given to the provisions of the governing instrument creating the life estate or term for years or applicable local law, if any, relating to use, preservation, and maintenance of the property during the life estate or term for years. In arriving at the estimated useful life of the property, estimates, if available, of engineers or other persons skilled in estimating the useful life of similar property may be taken into account. At the option of the taxpayer, the estimated useful life of property contributed after December 31, 1970, for purposes of this section, shall be an asset depreciation period selected by the taxpayer that is within the permissible asset depreciation range for the relevant asset guideline class established pursuant to § 1.167(a)-11(b) (4)(ii). For purposes of the preceding sentence, such period, range, and class shall be those which are in effect at the time that the contribution of the remainder interest was made. At the option of the taxpayer, in the case of property contributed before January 1, 1971, the estimated useful life, for purposes of this section, shall be the guideline life pro-

vided in Revenue Procedure 62-21 for the relevant asset guideline class.

(e) *Valuation of a remainder interest following more than one life or a term certain concurrent with one or more lives.*

(1)(i) If the valuation of the remainder interest in the real property is dependent upon the continuation or the termination of more than one life or upon a term certain concurrent with one or more lives, a special factor must be used.

(ii) The special factor is to be computed on the basis of—

(A) Interest at the rate prescribed under § 25.2512-5 (or, for certain prior periods, § 25.2512-5A) of this chapter, compounded annually;

(B) Life contingencies determined from the values that are set forth in the mortality table in § 20.2031-7 (or, for certain prior periods, § 20.2031-7A) of this chapter; and

(C) If depreciation is involved, the assumption that the property depreciates on a straight-line basis over its estimated useful life.

(iii) If any part of the property is subject to depletion of its natural resources, such depletion must be taken into account in determining the value of the remainder interest.

(2) In the case of the valuation of a remainder interest following two lives, the special factor may be obtained through use of the following formula:

$$\left(1 + \frac{i}{2}\right) \sum_{t=0}^{n-1} V^{(t+1)} \left[\left(1 - \frac{l_{x+t+1}}{l_x}\right) \left(1 - \frac{l_{y+t+1}}{l_y}\right) - \left(1 - \frac{l_{x+t}}{l_x}\right) \left(1 - \frac{l_{y+t}}{l_y}\right) \right] \left(1 - \frac{1}{2n} - \frac{t}{n}\right)$$

Where:

n=the estimated number of years of useful life,

i=the applicable interest rate under section 7520 of the Internal Revenue Code,

v=1 divided by the sum of 1 plus the applicable interest rate under section 7520 of the Internal Revenue Code,

x and y=the ages of the life tenants, and

lx and ly=the number of persons living at ages x and y as set forth in Table 90 CM in § 20.2031-7 (or, for prior periods, in § 20.2031-7A) of this chapter.

(3) Notwithstanding that the taxpayer may be able to compute the special factor in certain cases under paragraph (2), if a special factor is required in the case of an actual contribution, the Commissioner will furnish the factor to the donor upon request. The request must be accompanied by a statement of the sex and date of birth of each person the duration of whose life may affect the value of the remainder interest, copies of the relevant instruments, and, if depreciation is involved, a statement of the estimated useful life

of the depreciable property. However, since remainder interests in that part of any property which is depletable cannot be valued on a purely actuarial basis, special factors will not be furnished with respect to such part. Requests should be forwarded to the Commissioner of Internal Revenue, Attention: OP:E:EP:A:1, Washington, DC 20224.

[T.D. 7370, 40 FR 34337, Aug. 15, 1975, as amended by T.D. 7955, 49 FR 19975, May 11, 1984; T.D. 8540, 59 FR 30102, 30104, June 10, 1994; T.D. 8819, 64 FR 23228, Apr. 30, 1999; T.D. 8886, 65 FR 36909, 36943, June 12, 2000]

§ 1.170A-13 Recordkeeping and return requirements for deductions for charitable contributions.

(a) *Charitable contributions of money made in taxable years beginning after December 31, 1982*—(1) *In general.* If a taxpayer makes a charitable contribution of money in a taxable year beginning after December 31, 1982, the taxpayer shall maintain for each contribution one of the following:

(i) A cancelled check.

(ii) A receipt from the donee charitable organization showing the name of the donee, the date of the contribution, and the amount of the contribution. A letter or other communication from the donee charitable organization acknowledging receipt of a contribution and showing the date and amount of the contribution constitutes a receipt for purposes of this paragraph (a).

(iii) In the absence of a canceled check or receipt from the donee charitable organization, other reliable written records showing the name of the donee, the date of the contribution, and the amount of the contribution.

(2) *Special rules*—(i) *Reliability of records.* The reliability of the written records described in paragraph (a)(1)(iii) of this section is to be determined on the basis of all of the facts and circumstances of a particular case. In all events, however, the burden shall be on the taxpayer to establish reliability. Factors indicating that the written records are reliable include, but are not limited to:

(A) The contemporaneous nature of the writing evidencing the contribution.

(B) The regularity of the taxpayer's recordkeeping procedures. For example, a contemporaneous diary entry stating the amount and date of the donation and the name of the donee charitable organization made by a taxpayer who regularly makes such diary entries would generally be considered reliable.

(C) In the case of a contribution of a small amount, the existence of any written or other evidence from the donee charitable organization evidencing receipt of a donation that would not otherwise constitute a receipt under paragraph (a)(1)(ii) of this section (including an emblem, button, or other token traditionally associated with a charitable organization and regularly given by the organization to persons making cash donations).

(ii) *Information stated in income tax return.* The information required by paragraph (a)(1)(iii) of this section shall be stated in the taxpayer's income tax return if required by the return form or its instructions.

(3) *Taxpayer option to apply paragraph (d)(1) to pre-1985 contribution.* See paragraph (d)(1) of this section with regard to contributions of money made on or before December 31, 1984.

(b) *Charitable contributions of property other than money made in taxable years beginning after December 31, 1982*—(1) *In general.* Except in the case of certain charitable contributions of property made after December 31, 1984, to which paragraph (c) of this section applies, any taxpayer who makes a charitable contribution of property other than money in a taxable year beginning after December 31, 1982, shall maintain for each contribution a receipt from the donee showing the following information:

(i) The name of the donee.

(ii) The date and location of the contribution.

(iii) A description of the property in detail reasonably sufficient under the circumstances. Although the fair market value of the property is one of the circumstances to be taken into account in determining the amount of detail to be included on the receipt, such value need not be stated on the receipt.

A letter or other written communication from the donee acknowledging receipt of the contribution, showing the