

method of accounting for inventory, where there has been an invasion of a prior year's layer, the donor may choose to treat the item contributed as having a basis of the unit's cost with reference to the layer(s) of prior year(s) cost or with reference to the current year cost.

(3) *Adjustment to cost of goods sold.* Notwithstanding the rules of § 1.170A-1(c)(4), the donor of the property which is inventory contributed under this section must make a corresponding adjustment to cost of goods sold by decreasing the cost of goods sold by the lesser of the fair market value of the contributed item or the amount of basis determined under paragraph (c)(2) of this section.

(4) *Examples.* The rules of this paragraph (c) may be illustrated by the following examples:

Example 1. During 1978 corporation X, a calendar year taxpayer, makes a qualified contribution of women's coats which were section 1221(l) property. The fair market value of the property at the date of contribution is \$1,000, and the basis of the property is \$200. The amount of the charitable contribution which would be taken into account under section 170(a) is the fair market value (\$1,000). The amount of gain which would not have been long-term capital gain if the property had been sold is \$800 (\$1,000-\$200). The amount of the contribution is reduced by one-half the amount which would not have been capital gain if the property had been sold ($\$800/2 = \400).

After this reduction, the amount of the contribution which may be taken into account is \$600 (\$1,000-\$400). A second reduction is made in the amount of the charitable contribution because this amount (as first reduced to \$600) is more than \$400 which is an amount equal to twice the basis of the property. The amount of the further reduction is \$200 [$\$600 - (2 \times \$200)$], and the amount of the contribution as finally reduced is \$400 [$\$1,000 - (\$400 + \$200)$]. X would also have to decrease its cost of goods sold for the year of contribution by \$200.

Example 2. Assume the same facts as set forth in *Example 1* except that the basis of the property is \$600. The amount of the first reduction is \$200 ($(\$1,000 - \$600)/2$).

As reduced, the amount of the contribution which may be taken into account is \$800 (\$1,000-\$200). There is no second reduction because \$800 is less than \$1,200 which is twice the basis of the property. However, X would have to decrease its cost of goods sold for the year of contribution by \$600.

(d) *Recapture excluded.* A deduction is not allowed under section 170(e)(3) or this section for any amount which, if the property had been sold by the donor-taxpayer on the date of its contribution for an amount equal to its fair market value, would have been treated as ordinary income under section 617, 1245, 1250, 1251, or 1252. Thus, before making either reduction required by section 170(e)(3)(B) and paragraph (c) of this section, the fair market value of the contributed property must be reduced by the amount of gain that would have been recognized (if the property had been sold) as ordinary income under section 617, 1245, 1250, 1251, or 1252.

(e) *Effective date.* This section applies to qualified contributions made after October 4, 1976.

[T.D. 7807, 47 FR 4510, Feb. 1, 1982, as amended by T.D. 7962, 49 FR 27317, July 3, 1984]

§ 1.170A-5 Future interests in tangible personal property.

(a) *In general.* (1) A contribution consisting of a transfer of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property:

(i) Have expired, or

(ii) Are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) and the regulations thereunder, relating to losses, expenses, and interest with respect to transactions between related taxpayers.

(2) Section 170(a)(3) and this section have no application in respect of a transfer of an undivided present interest in property. For example, a contribution of an undivided one-quarter interest in a painting with respect to which the donee is entitled to possession during 3 months of each year shall be treated as made upon the receipt by the donee of a formally executed and acknowledged deed of gift. However, the period of initial possession by the donee may not be deferred in time for more than 1 year.

(3) Section 170(a)(3) and this section have no application in respect of a

transfer of a future interest in intangible personal property or in real property. However, a fixture which is intended to be severed from real property shall be treated as tangible personal property. For example, a contribution of a future interest in a chandelier which is attached to a building is considered a contribution which consists of a future interest in tangible personal property if the transferor intends that it be detached from the building at or prior to the time when the charitable organization's right to possession or enjoyment of the chandelier is to commence.

(4) For purposes of section 170(a)(3) and this section, the term *future interest* has generally the same meaning as it has when used in section 2503 and § 25.2503-3 of this chapter (Gift Tax Regulations); it includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession, or enjoyment at some future date or time. The term *future interest* includes situations in which a donor purports to give tangible personal property to a charitable organization, but has an understanding, arrangement, agreement, etc., whether written or oral, with the charitable organization which has the effect of reserving to, or retaining in, such donor a right to the use, possession, or enjoyment of the property.

(5) In the case of a charitable contribution of a future interest to which section 170(a)(3) and this section apply the other provisions of section 170 and the regulations thereunder are inapplicable to the contribution until such time as the contribution is treated as made under section 170(a)(3).

(b) *Illustrations.* The application of this section may be illustrated by the following examples:

Example 1. On December 31, 1970, A, an individual who reports his income on the calendar year basis, conveys by deed of gift to a museum title to a painting, but reserves to himself the right to the use, possession, and enjoyment of the painting during his lifetime. It is assumed that there was no intention to avoid the application of section 170(f)(3)(A) by the conveyance. At the time of the gift the value of the painting is \$90,000.

Since the contribution consists of a future interest in tangible personal property in which the donor has retained an intervening interest, no contribution is considered to have been made in 1970.

Example 2. Assume the same facts as in *Example 1* except that on December 31, 1971, A relinquishes all of his right to the use, possession, and enjoyment of the painting and delivers the painting to the museum. Assuming that the value of the painting has increased to \$95,000, A is treated as having made a charitable contribution of \$95,000 in 1971 for which a deduction is allowable without regard to section 170(f)(3)(A).

Example 3. Assume the same facts as in *Example 1* except A dies without relinquishing his right to the use, possession, and enjoyment of the property during his life, A is treated as not having made a charitable contribution of the painting for income tax purposes.

Example 4. Assume the same facts as in *Example 1* except A, on December 31, 1971, transfers his interest in the painting to his son, B, who reports his income on the calendar year basis. Since the relationship between A and B is one described in section 267(b), no contribution of the remainder interest in the painting is considered to have been made in 1971.

Example 5. Assume the same facts as in *Example 4.* Also assume that on December 31, 1972, B conveys to the museum the interest measured by A's life. B has made a charitable contribution of the present interest in the painting conveyed to the museum. In addition, since all intervening interests in, and rights to the actual possession or enjoyment of the property, have expired, a charitable contribution of the remainder interest is treated as having been made by A in 1972 for which a deduction is allowable without regard to section 170(f)(3)(A). Such remainder interest is valued according to § 20.2031-7A(c) of this chapter (estate tax regulations), determined by subtracting the value of B's interest measured by A's life expectancy in 1972, and B receives a deduction in 1972 for the life interest measured by A's life expectancy and valued according to Table A(1) in such section.

Example 6. On December 31, 1970, C, an individual who reports his income on the calendar year basis, transfers a valuable painting to a pooled income fund described in section 642(c)(5), which is maintained by a university. C retains for himself for life an income interest in the painting, the remainder interest in the painting being contributed to the university. Since the contribution consists of a future interest in tangible personal property in which the donor has retained an intervening interest, no charitable contribution is considered to have been made in 1970.

Example 7. On January 15, 1972, D, an individual who reports his income on the calendar year basis, transfers a capital asset held for more than 6 months consisting of a valuable painting to a pooled income fund described in section 642(c)(5), which is maintained by a university, and creates an income interest in such painting for E for life. E is an individual not standing in a relationship to D described in section 267(b). The remainder interest in the property is contributed by D to the university. The trustee of the pooled income fund puts the painting to an unrelated use within the meaning of paragraph (b)(3) of § 1.170A-4. Accordingly, D is allowed a deduction under section 170 in 1972 for the present value of the remainder interest in the painting, after reducing such amount under section 170 (e)(1)(B)(i) and paragraph (a)(2) of § 1.170A-4. This reduction in the amount of the contribution is required since under paragraph (b)(3) of that section the use by the pooled income fund of the painting is a use which would have been an unrelated use if it had been made by the university.

(c) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969.

[T.D. 7207, 37 FR 20779, Oct. 4, 1972, as amended by T.D. 8540, 59 FR 30102, June 10, 1994]

§ 1.170A-6 Charitable contributions in trust.

(a) *In general.* (1) No deduction is allowed under section 170 for the fair market value of a charitable contribution of any interest in property which is less than the donor's entire interest in the property and which is transferred in trust unless the transfer meets the requirements of paragraph (b) or (c) of this section. If the donor's entire interest in the property is transferred in trust and is contributed to a charitable organization described in section 170(c), a deduction is allowed under section 170. Thus, if on July 1, 1972, property is transferred in trust with the requirement that the income of the trust be paid for a term of 20 years to a church and thereafter the remainder be paid to an educational organization described in section 170(b)(1)(A), a deduction is allowed for the value of such property. See section 170(f)(2) and (3)(B), and paragraph (b)(1) of § 1.170A-7.

(2) A deduction is allowed without regard to this section for a contribution

of a partial interest in property if such interest is the taxpayer's entire interest in the property, such as an income interest or a remainder interest. If, however, the property in which such partial interest exists was divided in order to create such interest and thus avoid section 170(f)(2), the deduction will not be allowed. Thus, for example, assume that a taxpayer desires to contribute to a charitable organization the reversionary interest in certain stocks and bonds which he owns. If the taxpayer transfers such property in trust with the requirement that the income of the trust be paid to his son for life and that the reversionary interest be paid to himself and immediately after creating the trust contributes the reversionary interest to a charitable organization, no deduction will be allowed under section 170 for the contribution of the taxpayer's entire interest consisting of the reversionary interest in the trust.

(b) *Charitable contribution of a remainder interest in trust—(1) In general.* No deduction is allowed under section 170 for the fair market value of a charitable contribution of a remainder interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust unless the trust is:

(i) A pooled income fund described in section 642(c)(5) and § 1.642(c)-5,

(ii) A charitable remainder annuity trust described in section 664(d)(1) and § 1.664-2, or

(iii) A charitable remainder unitrust described in section 664(d)(2) and § 1.664-3.

(2) *Value of a remainder interest.* The fair market value of a remainder interest in a pooled income fund shall be computed under § 1.642(c)-6. The fair market value of a remainder interest in a charitable remainder annuity trust shall be computed under § 1.664-2. The fair market value of a remainder interest in a charitable remainder unitrust shall be computed under § 1.664-4. However, in some cases a reduction in the amount of a charitable contribution of the remainder interest may be required. See section 170(e) and § 1.170A-4.