

section 170 in the case of a charitable contribution of a partial interest in property to which paragraph (b) of this section applies is the fair market value of the partial interest at the time of the contribution. See § 1.170A-1(c). The fair market value of such partial interest must be determined in accordance with § 20.2031-7, of this chapter (Estate Tax Regulations), except that, in the case of a charitable contribution of a remainder interest in real property which is not transferred in trust, the fair market value of such interest must be determined in accordance with section 170(f)(4) and § 1.170A-12. In the case of a charitable contribution of a remainder interest in the form of a remainder interest in a pooled income fund, a charitable remainder annuity trust, or a charitable remainder unitrust, the fair market value of the remainder interest must be determined as provided in paragraph (b)(2) of § 1.170A-6. 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 paragraph (a) of § 1.170A-4.

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

Example 1. A, an individual owning a 10-story office building, donates the rent-free use of the top floor of the building for the year 1971 to a charitable organization. Since A's contribution consists of a partial interest to which section 170(f)(3)(A) applies, he is not entitled to a charitable contributions deduction for the contribution of such partial interest.

Example 2. In 1971, B contributes to a charitable organization an undivided one-half interest in 100 acres of land, whereby as tenants in common they share in the economic benefits from the property. The present value of the contributed property is \$50,000. Since B's contribution consists of an undivided portion of his entire interest in the property to which section 170(f)(3)(B) applies, he is allowed a deduction in 1971 for his charitable contribution of \$50,000.

Example 3. In 1971, D loans \$10,000 in cash to a charitable organization and does not require the organization to pay any interest for the use of the money. Since D's contribution consists of a partial interest to which section 170(f)(3)(A) applies, he is not entitled to a charitable contributions deduction for the contribution of such partial interest.

(e) *Effective date.* This section applies only to contributions made after July 31, 1969. The deduction allowable under § 1.170A-7(b)(1)(ii) shall be available only for contributions made on or before December 17, 1980. Except as otherwise provided in § 1.170A-14(g)(4)(ii), the deduction allowable under § 1.170A-7(b)(5) shall be available for contributions made on or after December 18, 1980.

(83 Stat. 544, 26 U.S.C. 170(f)(4); 83 Stat. 560, 26 U.S.C. 642(c)(5); 68A Stat. 917, 26 U.S.C. 7805)

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§ 1.170A-8 Limitations on charitable deductions by individuals.

(a) *Percentage limitations—(1) In general.* An individual's charitable contributions deduction is subject to 20-, 30-, and 50-percent limitations unless the individual qualifies for the unlimited charitable contributions deduction under section 170(b)(1)(C). For a discussion of these limitations and examples of their application, see paragraphs (b) through (f) of this section. If a husband and wife make a joint return, the deduction for contributions is the aggregate of the contributions made by the spouses, and the limitations in section 170(b) and this section are based on the aggregate contribution base of the spouses. A charitable contribution by an individual to or for the use of an organization described in section 170(c) may be deductible even though all, or some portion, of the funds of the organization may be used in foreign countries for charitable or educational purposes.

(2) *“To” or “for the use of” defined.* For purposes of section 170, a contribution of an income interest in property, whether or not such contributed interest is transferred in trust, for which a deduction is allowed under section 170(f)(2)(B) or (3)(A) shall be considered as made “for the use of” rather than “to” the charitable organization. A contribution of a remainder interest in property, whether or not such contributed interest is transferred in trust, for

which a deduction is allowed under section 170(f)(2)(A) or (3)(A), shall be considered as made "to" the charitable organization except that, if such interest is transferred in trust and, pursuant to the terms of the trust instrument, the interest contributed is, upon termination of the predecessor estate, to be held in trust for the benefit of such organization, the contribution shall be considered as made "for the use of" such organization. Thus, for example, assume that A transfers property to a charitable remainder annuity trust described in section 664(d)(1) which is required to pay to B for life an annuity equal to 5 percent of the initial fair market value of the property transferred in trust. The trust instrument provides that after B's death the remainder interest in the trust is to be transferred to M Church or, in the event M Church is not an organization described in section 170(c) when the amount is to be irrevocably transferred to such church, to an organization which is described in section 170(c) at that time. The contribution by A of the remainder interest shall be considered as made "to" M Church. However, if in the trust instrument A had directed that after B's death the remainder interest is to be held in trust for the benefit of M Church, the contribution shall be considered as made "for the use of" M Church. This subparagraph does not apply to the contribution of a partial interest in property, or of an undivided portion of such partial interest, if such partial interest is the donor's entire interest in the property and such entire interest was not created to avoid section 170(f)(2) or (3)(A). See paragraph (a)(2) of § 1.170A-6 and paragraphs (a)(2)(i) and (b)(1) of § 1.170A-7.

(b) *50-percent limitation.* An individual may deduct charitable contributions made during a taxable year to any one or more section 170(b)(1)(A) organizations, as defined in § 1.170A-9, to the extent that such contributions in the aggregate do not exceed 50 percent of his contribution base, as defined in section 170(b)(1)(F) and paragraph (e) of this section, for the taxable year. However, see paragraph (d) of this section for a limitation on the amount of charitable contributions of 30-percent capital gain property. To qualify for the 50-percent

limitation the contributions must be made "to," and not merely "for the use of," one of the specified organizations. A contribution to an organization referred to in section 170(c)(2), other than a section 170(b)(1)(A) organization, will not qualify for the 50-percent limitation even though such organization makes the contribution available to an organization which is a section 170(b)(1)(A) organization. For provisions relating to the carryover of contributions in excess of 50-percent of an individual's contribution base see section 170(d)(1) and paragraph (b) of § 1.170A-10.

(c) *20-percent limitation.* (1) An individual may deduct charitable contributions made during a taxable year:

(i) To any one or more charitable organizations described in section 170(c) other than section 170(b)(1)(A) organizations, as defined in § 1.170A-9, and,

(ii) For the use of any charitable organization described in section 170(c), to the extent that such contributions in the aggregate do not exceed the lesser of the limitations under subparagraph (2) of this paragraph.

(2) For purposes of subparagraph (1) of this paragraph the limitations are:

(i) 20 percent of the individual's contribution base, as defined in paragraph (e) of this section, for the taxable year, or

(ii) The excess of 50 percent of the individual's contribution base, as so defined, for the taxable year over the total amount of the charitable contributions allowed under section 170(b)(1)(A) and paragraph (b) of this section, determined by first reducing the amount of such contributions under section 170(e)(1) and paragraph (a) of § 1.170A-4 but without applying the 30-percent limitation under section 170(b)(1)(D)(i) and paragraph (d)(1) of this section.

However, see paragraph (d) of this section for a limitation on the amount of charitable contributions of 30-percent capital gain property. If an election under section 170(b)(1)(D)(iii) and paragraph (d)(2) of this section applies to any contributions of 30-percent capital gain property made during the taxable year or carried over to the taxable year, the amount allowed for the taxable year under paragraph (b) of this

section with respect to such contributions for purposes of applying subdivision (ii) of this subparagraph shall be the reduced amount of such contributions determined by applying paragraph (d)(2) of this section.

(d) *30-percent limitation—(1) In general.* An individual may deduct charitable contributions of 30-percent capital gain property, as defined in subparagraph (3) of this paragraph, made during a taxable year to or for the use of any charitable organization described in section 170(c) to the extent that such contributions in the aggregate do not exceed 30-percent of his contribution base, as defined in paragraph (e) of this section, subject, however, to the 50- and 20-percent limitations prescribed by paragraphs (b) and (c) of this section. For purposes of applying the 50-percent and 20-percent limitations described in paragraphs (b) and (c) of this section, charitable contributions of 30-percent capital gain property paid during the taxable year, and limited as provided by this subparagraph, shall be taken into account after all other charitable contributions paid during the taxable year. For provisions relating to the carryover of certain contributions of 30-percent capital gain property in excess of 30-percent of an individual's contribution base, see section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10.

(2) *Election by an individual to have section 170(e)(1)(B) apply to contributions—(i) In general.* (A) An individual may elect under section 170(b)(1)(D)(iii) for any taxable year to have the reduction rule of section 170(e)(1)(B) and paragraph (a) of § 1.170A-4 apply to all his charitable contributions of 30-percent capital gain property made during such taxable year or carried over to such taxable year from a taxable year beginning after December 31, 1969. If such election is made such contributions shall be treated as contributions of section 170(e) capital gain property in accordance with paragraph (b)(2)(iii) of § 1.170A-4. The election may be made with respect to contributions of 30-percent capital gain property carried over to the taxable year even though the individual has not made any contribution of 30-percent capital gain property in such year. If such an election is made,

section 170(b)(1)(D) (i) and (ii) and subparagraph (1) of this paragraph shall not apply to such contributions made during such year. However, such contributions must be reduced as required under section 170(e)(1)(B) and paragraph (a) of § 1.170A-4.

(B) If there are carryovers to such taxable year of charitable contributions of 30-percent capital gain property made in preceding taxable years beginning after December 31, 1969, the amount of such contributions in each such preceding year shall be reduced as if section 170(e)(1)(B) had applied to them in the preceding year and shall be carried over to the taxable year and succeeding taxable years under section 170(d)(1) and paragraph (b) of § 1.170A-10 as contributions of property other than 30-percent capital gain property. For purposes of applying the immediately preceding sentence, the percentage limitations under section 170(b) for the preceding taxable year and for any taxable years intervening between such year and the year of the election shall not be redetermined and the amount of any deduction allowed for such years under section 170 in respect of the charitable contributions of 30-percent capital gain property in the preceding taxable year shall not be redetermined. However, the amount of the deduction so allowed under section 170 in the preceding taxable year must be subtracted from the reduced amount of the charitable contributions made in such year in order to determine the excess amount which is carried over from such year under section 170(d)(1). If the amount of the deduction so allowed in the preceding taxable year equals or exceeds the reduced amount of the charitable contributions, there shall be no carryover from such year to the year of the election.

(C) An election under this subparagraph may be made for each taxable year in which charitable contributions of 30-percent capital gain property are made or to which they are carried over under section 170(b)(1)(D)(ii). If there are also carryovers under section 170(d)(1) to the year of the election by reason of an election made under this subparagraph for a previous taxable year, such carryovers under section

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170(d)(1) shall not be redetermined by reason of the subsequent election.

(ii) *Husband and wife making joint return.* If a husband and wife make a joint return of income for a contribution year and one of the spouses elects under this subparagraph in a later year when he files a separate return, or if a spouse dies after a contribution year for which a joint return is made, any excess contribution of 30-percent capital gain property which is carried over to the election year from the contribution year shall be allocated between the husband and wife as provided in paragraph (d)(4) (i) and (iii) of § 1.170A-10. If a husband and wife file separate returns in a contribution year, any election under this subparagraph in a later year when a joint return is filed shall be applicable to any excess contributions of 30-percent capital gain property of either taxpayer carried over from the contribution year to the election year. The immediately preceding sentence shall also apply where two single individuals are subsequently married and file a joint return. A remarried individual who filed a joint return with his former spouse for a contribution year and thereafter files a joint return with his present spouse shall treat the carryover to the election year as provided in paragraph (d)(4)(ii) of § 1.170A-10.

(iii) *Manner of making election.* The election under subdivision (i) of this subparagraph shall be made by attaching to the income tax return for the election year a statement indicating that the election under section 170(b)(1)(D)(iii) and this subparagraph is being made. If there is a carryover to the taxable year of any charitable contributions of 30-percent capital gain property from a previous taxable year or years, the statement shall show a recomputation, in accordance with this subparagraph and § 1.170A-4, of such carryover, setting forth sufficient information with respect to the previous taxable year or any intervening year to show the basis of the recomputation. The statement shall indicate the district director, or the director of the internal revenue service center, with whom the return for the previous taxable year or years was filed, the name or names in which such return or re-

turns were filed, and whether each such return was a joint or separate return.

(3) *30-percent capital gain property defined.* If there is a charitable contribution of a capital asset which, if it were sold by the donor at its fair market value at the time of its contribution, would result in the recognition of gain all, or any portion, of which would be long-term capital gain and if the amount of such contribution is not required to be reduced under section 170(e)(1)(B) and § 1.170A-4(a)(2), such capital asset shall be treated as “30-percent capital gain property” for purposes of section 170 and the regulations thereunder. For such purposes any property which is property used in the trade or business, as defined in section 1231(b), shall be treated as a capital asset. However, see paragraph (b)(4) of § 1.170A-4. For the treatment of such property as section 170(e) capital gain property, see paragraph (b)(2)(iii) of § 1.170A-4.

(e) *Contribution base defined.* For purposes of section 170 the term *contribution base* means adjusted gross income under section 62, computed without regard to any net operating loss carryback to the taxable year under section 172. See section 170(b)(1)(F).

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

Example 1. B, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of \$100,000. During 1970 he makes charitable contributions of \$70,000 in cash, of which \$40,000 is given to section 170(b)(1)(A) organizations and \$30,000 is given to other organizations described in section 170(c). Accordingly, B is allowed a charitable contributions deduction of \$50,000 (50% of \$100,000), which consists of the \$40,000 contributed to section 170(b)(1)(A) organizations and \$10,000 of the \$30,000 contributed to the other organizations. Under paragraph (c) of this section, only \$10,000 of the \$30,000 contributed to the other organizations is allowed as a deduction since such contribution of \$30,000 is allowed to the extent of the lesser of \$20,000 (20% of \$100,000) or \$10,000 ([50% of \$100,000] - \$40,000 (contributions allowed under section 170(b)(1)(A) and paragraph (b) of this section)). Under section 170(b)(1)(D)(ii) and (d)(1) and § 1.170A-10, B is not allowed a carryover to 1971 or to any other taxable year for any of the \$20,000 (\$30,000 - \$10,000) not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example 2. C, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of \$100,000. During 1970 he makes charitable contributions of \$40,000 in 30-percent capital gain property to section 170(b)(1)(A) organizations and of \$30,000 in cash to other organizations described in section 170(c). The 20-percent limitation in section 170(b)(1)(B) and paragraph (c) of this section is applied before the 30-percent limitation in section 170(b)(1)(D)(i) and paragraph (d) of this section; accordingly section 170(b)(1)(B)(ii) limits the deduction for the \$30,000 cash contribution to \$10,000 (50% of $\$100,000$) - \$40,000). The amount of the contribution of 30-percent capital gain property is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to \$30,000 (30% of $\$100,000$). Accordingly, C's charitable contributions deduction for 1970 is limited to \$40,000 ($\$10,000 + \$30,000$). Under section 170(b)(1)(D)(i) and paragraph (c) of § 1.170A-10, C is allowed a carryover to 1971 of \$10,000 ($\$40,000 - \$30,000$) in respect of his contributions of 30-percent capital gain property. C is not allowed a carryover to 1971 or to any other taxable year for any of the \$20,000 cash ($\$30,000 - \$10,000$) not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example 3. (a) D, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of \$100,000. During 1970 he makes charitable contributions of \$70,000 in cash, of which \$40,000 is given to section 170(b)(1)(A) organizations and \$30,000 is given to other organizations described in section 170(c). During 1971 D makes charitable contributions to a section 170(b)(1)(A) organization of \$12,000, consisting of cash of \$1,000 and \$11,000 in 30-percent capital gain property. His contribution base for 1971 is \$10,000.

(b) For 1970, D is allowed a charitable contributions deduction of \$50,000 (50% of $\$100,000$), which consists of the \$40,000 contributed to section 170(b)(1)(A) organizations and \$10,000 of the \$30,000 contributed to the other organizations. Under paragraph (c) of this section, only \$10,000 of the \$30,000 contributed to the other organizations is allowed as a deduction since such contribution of \$30,000 is allowed to the extent of the lesser of \$20,000 (20% of $\$100,000$) or \$10,000 (50% of $\$100,000$) - \$40,000 (contributions allowed under section 170(b)(1)(A) and paragraph (b) of this section)). D is not allowed a carryover to 1971 or to any other taxable year for any of the \$20,000 ($\$30,000 - \$10,000$) not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(c) For 1971, D is allowed a charitable contributions deduction of \$4,000, consisting of \$1,000 cash and \$3,000 of the 30-percent capital gain property (30% of $\$10,000$). Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, D is allowed a carryover to 1972 of \$8,000

($\$11,000 - \$3,000$) in respect of his contribution of 30-percent capital gain property in 1971.

Example 4. (a) E, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of \$100,000. During 1970 he makes charitable contributions of \$70,000 in cash, of which \$40,000 is given to section 170(b)(1)(A) organizations and \$30,000 is given to other organizations described in section 170(c). During 1971 E makes charitable contributions to a section 170(b)(1)(A) organization of \$14,000 consisting of cash of \$3,000 and \$11,000 in 30-percent capital gain property. His contribution base for 1971 is \$10,000.

(b) For 1970, E is allowed a charitable contributions deduction of \$50,000 (50% of $\$100,000$), which consists of the \$40,000 contributed to section 170(b)(1)(A) organizations and \$10,000 of the \$30,000 contributed to the other organizations. Under paragraph (c) of this section, only \$10,000 of the \$30,000 contributed to the other organizations is allowed as a deduction since such contribution of \$30,000 is allowed to the extent of the lesser of \$20,000 (20% of $\$100,000$) or \$10,000 (50% of $\$100,000$) - \$40,000 (contributions allowed under section 170(b)(1)(A) and paragraph (b) of this section)). E is not allowed a carryover to 1971 or to any other taxable year for any of the \$20,000 ($\$30,000 - \$10,000$) not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(c) For 1971, E is allowed a charitable contributions deduction of \$5,000 (50% of $\$10,000$), consisting of \$3,000 cash and \$2,000 of the \$3,000 (30% of $\$10,000$) 30-percent capital gain property which is taken into account. This result is reached because, as provided in section 170(b)(1)(D)(i) and paragraph (d)(1) of this section, cash contributions are taken into account before charitable contributions of 30-percent capital gain property. Under section 170(b)(1)(D)(ii) and (d)(1) and paragraphs (b) and (c) of § 1.170A-10, E is allowed a carryover of \$9,000 ($[\$11,000 - \$3,000] + [\$6,000 - \$5,000]$) to 1972 in respect of his contribution of 30-percent capital gain property in 1971.

Example 5. In 1970, C, a calendar-year individual taxpayer, contributes to section 170(b)(1)(A) organizations the amount of \$8,000, consisting of \$3,000 in cash and \$5,000 in 30-percent capital gain property. In 1970, C also makes charitable contributions of \$8,500 in 30 percent capital gain property to other organizations described in section 170(c). C's contribution base for 1970 is \$20,000. The 20-percent limitation in section 170(b)(1)(B) and paragraph (c) of this section is applied before the 30-percent limitation in section 170(b)(1)(D)(i) and paragraph (d) of this section; accordingly, section 170(b)(1)(B)(ii) limits the deduction for the \$8,500 of contributions to the other organizations described in section 170(c) to \$2,000 (50% of $\$20,000$) - $[\$3,000 + \$5,000]$). However, the total

amount of contributions of 30-percent capital gain property which is allowed as a deduction for 1970 is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to \$6,000 (30% of \$20,000), consisting of the \$5,000 contribution to the section 170(b)(1)(A) organizations and \$1,000 of the contributions to the other organizations described in section 170(c). Accordingly C is allowed a charitable contributions deduction for 1970 of \$9,000, which consists of \$3,000 cash and \$6,000 of the \$13,500 of 30-percent capital gain property. C is not allowed to carryover to 1971 or any other year the remaining \$7,500 because his contributions of 30-percent capital gain property for 1970 to section 170(b)(1)(A) organizations amount only to \$5,000 and do not exceed \$6,000 (30% of \$20,000). Thus, the requirement of section 170(b)(1)(D)(ii) is not satisfied.

Example 6. During 1971, D, a calendar-year individual taxpayer, makes a charitable contribution to a church of \$8,000, consisting of \$5,000 in cash and \$3,000 in 30-percent capital gain property. For such year, D's contribution base is \$10,000. Accordingly, D is allowed a charitable contributions deduction for 1971 of \$5,000 (50% of \$10,000) of cash. Under section 170(d)(1) and paragraph (b) of § 1.170A-10, D is allowed a carryover to 1972 of his \$3,000 contribution of 30-percent capital gain property, even though such amount does not exceed 30 percent of his contribution base for 1971.

Example 7. In 1970, E, a calendar-year individual taxpayer, makes a charitable contribution to a section 170(b)(1)(A) organization in the amount of \$10,000, consisting of \$8,000 in 30-percent capital gain property and of \$2,000 (after reduction under section 170(e)) in other property. E's contribution base for 1970 is \$20,000. Accordingly, E is allowed a charitable contributions deduction for 1970 of \$8,000, consisting of the \$2,000 of property the amount of which was reduced under section 170(e) and \$6,000 (30% of \$20,000) of the 30-percent capital gain property. Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, E is allowed to carryover to 1971 \$2,000 (\$8,000 - \$6,000) of his contribution of 30-percent capital gain property.

Example 8. (a) In 1972, F, calendar-year individual taxpayer, makes a charitable contribution to a church of \$4,000, consisting of \$1,000 in cash and \$3,000 in 30-percent capital gain property. In addition, F makes a charitable contribution in 1972 of \$2,000 in cash to an organization described in section 170(c)(4). F also has a carryover from 1971 under section 170(d)(1) of \$5,000 (none of which consists of contributions of 30-percent capital gain property) and a carryover from 1971 under section 170(b)(1)(D)(ii) of \$6,000 of contributions of 30-percent capital gain property. F's contribution base for 1972 is \$11,000.

Accordingly, F is allowed a charitable contributions deduction for 1972 of \$5,500 (50% of

\$11,000), which consists of \$1,000 cash contributed in 1972 to the church, \$3,000 of 30-percent capital gain property contributed in 1972 to the church, and \$1,500 (carryover of \$5,000 but not to exceed [\$5,500 - (\$1,000 + \$3,000)]) of the carryover from 1971 under section 170(d)(1).

(b) No deduction is allowed for 1972 for the contribution in that year of \$2,000 cash to the section 170(c)(4) organization since section 170(b)(1)(B)(ii) and paragraph (c) of this section limit the deduction for such contribution to \$0 ([50% of \$11,000] - [\$1,000 + \$1,500 + \$3,000]). Moreover, F is not allowed a carryover to 1973 or to any other year for any of such \$2,000 cash contributed to the section 170(c)(4) organization.

(c) Under section 170(d)(1) and paragraph (b) of § 1.170A-10, F is allowed a carryover to 1973 from 1971 of \$3,500 (\$5,000 - \$1,500) of contributions of other than 30-percent capital gain property. Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, F is allowed a carryover to 1973 from 1971 of \$6,000 (\$6,000 - \$0 of such carryover treated as paid in 1972) of contributions of 30-percent capital gain property. The portion of such \$6,000 carryover from 1971 which is treated as paid in 1972 is \$0 ([50% of \$11,000] - [\$4,000 contributions to the church in 1972 plus \$1,500 of section 170(d)(1) carryover treated as paid in 1972]).

Example 9. (a) In 1970, A, a calendar-year individual taxpayer, makes a charitable contribution to a church of 30-percent capital gain property having a fair market value of \$60,000 and an adjusted basis of \$10,000. A's contribution base for 1970 is \$50,000, and he makes no other charitable contributions in that year. A does not elect for 1970 under paragraph (d)(2) of this section to have section 170(e)(1)(B) apply to such contribution. Accordingly, under section 170(b)(1)(D)(i) and paragraph (d) of this section, A is allowed a charitable contributions deduction for 1970 of \$15,000 (30% of \$50,000). Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, A is allowed a carryover to 1971 of \$45,000 (\$60,000 - \$15,000) for his contribution of 30-percent capital gain property.

(b) In 1971, A makes a charitable contribution to a church of 30-percent capital gain property having a fair market value of \$11,000 and an adjusted basis of \$10,000. A's contribution base for 1971 is \$60,000, and he makes no other charitable contributions in that year. A elects for 1971 under paragraph (d)(2) of this section to have section 170(e)(1)(B) and § 1.170A-4 apply to his contribution of \$11,000 in that year and to his carryover of \$45,000 from 1970. Accordingly, he is required to recompute his carryover from 1970 as if section 170(e)(1)(B) had applied to his contribution of 30-percent capital gain property in that year.

(c) If section 170(e)(1)(B) had applied in 1970 to his contribution of 30-percent capital gain

property, A's contribution would have been reduced from \$60,000 to \$35,000, the reduction of \$25,000 being 50 percent of the gain of \$50,000 (\$60,000-\$10,000) which would have been recognized as long-term capital gain if the property had been sold by A at its fair market value at the time of the contribution in 1970. Accordingly, by taking the election under paragraph (d)(2) of this section into account, A has a recomputed carryover to 1971 of \$20,000 (\$35,000-\$15,000) of his contribution of 30-percent capital gain property in 1970. However, A's charitable contributions deduction of \$15,000 allowed for 1970 is not recomputed by reason of the election.

(d) Pursuant to the election for 1971, the contribution of 30-percent capital gain property for 1971 is reduced from \$11,000 to \$10,500, the reduction of \$500 being 50 percent of the gain of \$1,000 (\$11,000-\$10,000) which would have been recognized as long-term capital gain if the property had been sold by A at its fair market value at the time of its contribution in 1971.

(e) Accordingly, A is allowed a charitable contributions deduction for 1971 of \$30,000 (total contributions of \$30,500 [\$20,000+\$10,500] but not to exceed 50% of \$60,000).

(f) Under section 170(d)(1) and paragraph (b) of § 1.170A-10, A is allowed a carryover of \$500 (\$30,500-\$30,000) to 1972 and the 3 succeeding taxable years. The \$500 carryover, which by reason of the election is no longer treated as a contribution of 30-percent capital gain property, is treated as carried over under paragraph (b) of § 1.170A-10 from 1970 since in 1971 current year contributions are deducted before contributions which are carried over from preceding taxable years.

Example 10. The facts are the same as in *Example 9* except that A also makes a charitable contribution in 1971 of \$2,000 cash to a private foundation not described in section 170(b)(1)(E) and that A's contribution base for that year is \$62,000, instead of \$60,000. Accordingly, A is allowed a charitable contributions deduction for 1971 of \$31,000, determined in the following manner. Under section 170(b)(1)(A) and paragraph (b) of this section, A is allowed a charitable contributions deduction for 1971 of \$30,500, consisting of \$10,500 of property contributed to the church in 1971 and of \$20,000 (carryover of \$20,000 but not to exceed $[(\$62,000 \times 50\%) - \$10,500]$) of contributions of property carried over to 1971 under section 170(d)(1) and paragraph (b) of § 1.170A-10. Under section 170(b)(1)(B) and paragraph (c) of this section, A is allowed a charitable contributions deduction for 1971 of \$500 $[(50\% \text{ of } \$62,000) - [\$10,500 + \$20,000]]$ of cash contributed to the private foundation in that year. A is not allowed a carryover to 1972 or to any other taxable year for any of the \$1,500 $(\$2,000 - \$500)$ cash not deductible in 1971 under section 170(b)(1)(B) and paragraph (c) of this section.

Example 11. The facts are the same as in *Example 9* except that A's contribution base for 1970 is \$120,000. Thus, before making the election under paragraph (d)(2) of this section for 1971, A is allowed a charitable contributions deduction for 1970 of \$36,000 (30% of \$120,000) and is allowed a carryover to 1971 of \$24,000 $(\$60,000 - \$36,000)$. By making the election for 1971, A is required to recompute the carryover from 1970, which is reduced from \$24,000 to zero, since the charitable contributions deduction of \$36,000 allowed for 1970 exceeds the reduced \$35,000 contribution for 1970 which may be taken into account by reason of the election for 1971. Accordingly, A is allowed a deduction for 1971 of \$10,500 and is allowed no carryover to 1972, since the reduced contribution for 1971 (\$10,500) does not exceed the limitation of \$30,000 (50% of \$60,000) for 1971 which applies under section 170(d)(1) and paragraph (b) of § 1.170A-10. A's charitable contributions deduction of \$36,000 allowed for 1970 is not recomputed by reason of the election. Thus, it is not to A's advantage to make the election under paragraph (d)(2) of this section.

Example 12. (a) B, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of \$100,000. During 1970 he makes charitable contributions of \$70,000, consisting of \$50,000 in 30-percent capital gain property contributed to a church and \$20,000 in cash contributed to a private foundation not described in section 170(b)(1)(E). For 1971, B's contribution base is \$40,000, and in that year he makes a charitable contribution of \$5,000 in cash to such private foundation. During the years involved B makes no other charitable contributions.

(b) The amount of the contribution of 30-percent capital gain property which may be taken into account for 1970 is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to \$30,000 (30% of \$100,000). Accordingly, under section 170(b)(1)(A) and paragraph (b) of this section B is allowed a deduction for 1970 of \$30,000 of 30-percent capital gain property (contribution of \$30,000 but not to exceed \$50,000 [50% of \$100,000]). No deduction is allowed for 1970 for the contribution in that year of \$20,000 of cash to the private foundation since section 170(b)(1)(B)(ii) and paragraph (c) of this section limit the deduction for such contribution to \$0 $[(50\% \text{ of } \$100,000) - \$50,000]$, the amount of the contribution of 30-percent capital gain property).

(c) Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, B is allowed a carryover to 1971 of \$20,000 $(\$50,000 - [30\% \text{ of } \$100,000])$ of his contribution in 1970 of 30-percent capital gain property. B is not allowed a carryover to 1971 or to any other taxable year for any of the \$20,000 cash contribution in 1970 which is not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(d) The amount of the contribution of 30-percent capital gain property which may be taken into account for 1971 is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to \$12,000 (30% of \$40,000).

Accordingly, under section 170(b)(1)(A) and paragraph (b) of this section B is allowed a deduction for 1971 of \$12,000 of 30-percent capital gain property (contribution of \$12,000 but not to exceed \$20,000 [50% of \$40,000]). No deduction is allowed for 1971 for the contribution in that year of \$5,000 of cash to the private foundation, since section 170(b)(1)(B)(ii) and paragraph (c) of this section limit the deduction for such contribution to \$0 ([50% of \$40,000] - \$20,000 carryover of 30-percent capital gain property from 1970).

(e) Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, B is allowed a carryover to 1972 of \$8,000 (\$20,000 - [30% of \$40,000]) of his contribution in 1970 of 30-percent capital gain property. B is not allowed a carryover to 1972 or to any other taxable year for any of the \$5,000 cash contribution for 1971 which is not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example 13. D, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of \$100,000. On March 1, 1970, he contributes to a church intangible property to which section 1245 applies which has a fair market value of \$60,000 and an adjusted basis of \$10,000. At the time of the contribution D has used the property in his business for more than 6 months. If the property had been sold by D at its fair market value at the time of its contribution, it is assumed that under section 1245 \$20,000 of the gain of \$50,000 would have been treated as ordinary income and \$30,000 would have been long-term capital gain. Since the property contributed is ordinary income property within the meaning of paragraph (b)(1) of § 1.170A-4, D's contribution of \$60,000 is reduced under paragraph (a)(1) of such section to \$40,000 (\$60,000 - \$20,000 ordinary income). However, since the property contributed is also 30-percent capital gain property within the meaning of paragraph (d)(3) of this section, D's deduction for 1970 is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to \$30,000 (30% of \$100,000). Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, D is allowed to carry over to 1971 \$10,000 (\$40,000 - \$30,000) of his contribution of 30-percent capital gain property.

Example 14. C, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of \$50,000. During 1970 he makes charitable contributions to a church of \$57,000, consisting of \$2,000 cash and of 30-percent capital gain property with a fair market value of \$55,000 and an adjusted basis of \$15,000. In addition, C contributes \$3,000 cash in 1970 to a private foundation not described in section 170(b)(1)(E). For 1970, C elects under paragraph (d)(2) of this section

to have section 170(e)(1)(B) and § 1.170A-4(a) apply to his contribution of property to the church. Accordingly, for 1970 C's contribution of property to the church is reduced from \$55,000 to \$35,000, the reduction of \$20,000 being 50 percent of the gain of \$40,000 (\$55,000 - \$15,000) which would have been recognized as long-term capital gain if the property had been sold by C at its fair market value at the time of its contribution to the church. Under section 170(b)(1)(A) and paragraph (b) of this section, C is allowed a charitable contributions deduction for 1970 of \$25,000 ([(\$2,000+\$35,000)] but not to exceed [50% of \$50,000]). Under section 170(d)(1) and paragraph (b) of § 1.170A-10, C is allowed a carryover from 1970 to 1971 of \$12,000 (\$37,000 - \$25,000). No deduction is allowed for 1970 for the contribution in that year of \$3,000 cash to the private foundation since section 170(b)(1)(B) and paragraph (c) of this section limit the deduction for such contribution to the smaller of \$10,000 (50% of \$20,000) or \$0 ([50% of \$50,000] - \$25,000). C is not allowed a carryover from 1970 for any of the \$3,000 cash contribution in that year which is not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example 15. (a) D, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of \$100,000. During 1970 he makes a charitable contribution to a church of 30-percent capital gain property with a fair market value of \$40,000 and an adjusted basis of \$21,000. In addition, he contributes \$23,000 cash in 1970 to a private foundation not described in section 170(b)(1)(E). For 1970, D elects under paragraph (d)(2) of this section to have section 170(e)(1)(B) and § 1.170A-4(a) apply to his contribution of property to the church. Accordingly, for 1970 D's contribution of property to the church is reduced from \$40,000 to \$30,500, the reduction of \$9,500 being 50 percent of the gain of \$19,000 (\$40,000 - \$21,000) which would have been recognized as long-term capital gain if the property had been sold by D at its fair market value at the time of its contribution to the church. Under section 170(b)(1)(A) and paragraph (b) of this section, D is allowed a charitable contributions deduction for 1970 of \$30,500 for the property contributed to the church. In addition, under section 170(b)(1)(B) and paragraph (c) of this section D is allowed a deduction of \$19,500 for the cash contributed to the private foundation, since such contribution of \$23,000 is allowed to the extent of the lesser of \$20,000 (20% of \$100,000) or \$19,500 ([50% of \$100,000] - \$30,500). D is not allowed a carryover to 1971 or to any other taxable year for any of the \$3,500 (\$23,000 - \$19,500) of cash not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(b) If D had not made the election under paragraph (d)(2) of this section for 1970, his deduction for 1970 under section 170(a) for the

\$40,000 contribution of property to the church would have been limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to \$30,000 (30% of \$100,000), and under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10 he would have been allowed a carryover to 1971 of \$10,000 (\$40,000-\$30,000) for his contribution of such property. In addition, he would have been allowed under section 170(b)(1)(B)(ii) and paragraph (c) of this section for 1970 a charitable contributions deduction of \$10,000 ($[\$100,000 \times 50\%] - \$40,000$) for the cash contributed to the private foundation. In such case, D would not have been allowed a carryover to 1971 or to any other taxable year for any of the \$13,000 (\$23,000-\$10,000) of cash not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

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

[T.D. 7207, 37 FR 20783, Oct. 4, 1972; 37 FR 22982, Oct. 27, 1972]

§ 1.170A-9 Definition of section 170(b)(1)(A) organization.

The term *section 170(b)(1)(A) organization* as used in the regulations under section 170 means any organization described in paragraphs (a) through (i) of this section, effective with respect to taxable years beginning after December 31, 1969, except as otherwise provided. Section 1.170-2(b) shall continue to be applicable with respect to taxable years beginning prior to January 1, 1970. The term *one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii))* as used in sections 507 and 509 of the Code and the regulations thereunder means one or more organizations described in paragraphs (a) through (e) of this section, except as modified by the regulations under part II of subchapter F of chapter I or under chapter 42.

(a) *Church or a convention or association of churches.* An organization is described in section 170(b)(1)(A)(i) if it is a church or a convention or association of churches.

(b) *Educational organization and organizations for the benefit of certain State and municipal colleges and universities—*
(1) *Educational organization.* An educational organization is described in section 170(b)(1)(A)(ii) if its primary function is the presentation of formal instruction and it normally maintains

a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities. It includes Federal, State, and other public-supported schools which otherwise come within the definition. It does not include organizations engaged in both educational and noneducational activities unless the latter are merely incidental to the educational activities. A recognized university which incidentally operates a museum or sponsors concerts is an educational organization within the meaning of section 170(b)(1)(A)(ii). However, the operation of a school by a museum does not necessarily qualify the museum as an educational organization within the meaning of this subparagraph.

(2) *Organizations for the benefit of certain State and municipal colleges and universities.* (i) An organization is described in section 170(b)(1)(A)(iv) if it meets the support requirements of subdivision (ii) of this subparagraph and is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization described in subdivision (iii) of this subparagraph. The phrase "expenditures to or for the benefit of a college or university" includes expenditures made for any one or more of the normal functions of colleges and universities such as the acquisition and maintenance of real property comprising part of the campus area; the erection of, or participation in the erection of, college or university buildings; the acquisition and maintenance of equipment and furnishings used for, or in conjunction with, normal functions of colleges and universities; or expenditures for scholarships, libraries and student loans.

(ii) To qualify under section 170(b)(1)(A)(iv), the organization receiving the contribution must normally receive a substantial part of its support from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, or from a combination