

application of this subdivision may be illustrated by the following example:

Example. Assume the same facts as in the example in subdivision (i) of this subparagraph except that H dies in 1966 and W files a separate return for 1967. W made a joint return for herself and H for 1966. In that example, the unused excess charitable contribution as of January 1, 1967, was \$10,000, \$6,000 of which was allocable to H and \$4,000 to W. No portion of the \$6,000 allocable to H may be treated as paid by W or any other person in 1967 or any subsequent year.

(7) *Information required in support of a deduction of an amount treated as paid.* If, in a taxable year, a deduction is claimed in respect of an excess charitable contribution which, in accordance with the provisions of subparagraph (2) of this paragraph, is treated (in whole or in part) as paid in such taxable year, the taxpayer shall attach to his return a statement showing:

- (i) The year (or years) in which the excess charitable contributions were made (the contribution year or years),
- (ii) The excess charitable contributions made in each contribution year,
- (iii) The portion of such excess (or each such excess) treated as paid in accordance with subparagraph (2) of this paragraph in any taxable year intervening between the contribution year and the taxable year for which the return is made, and
- (iv) Such other information as the return or the instructions relating thereto may require.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6605, 27 FR 8096, Aug. 15, 1962; T.D. 6639, 28 FR 1762, Feb. 26, 1963; T.D. 6732, 29 FR 6280, May 13, 1964; T.D. 6900, 31 FR 14634, Nov. 17, 1966; T.D. 7207, 37 FR 20768, Oct. 4, 1972; T.D. 7427, 41 FR 34026, Aug. 12, 1976]

§ 1.170-3 Contributions or gifts by corporations (before amendment by Tax Reform Act of 1969).

(a) *In general.* The deduction by a corporation in any taxable year for charitable contributions, as defined in section 170(c), is limited to 5 percent of its taxable income for the year computed without regard to:

- (1) The deduction for charitable contributions,
- (2) The special deductions for corporations allowed under part VIII (ex-

cept section 248), subchapter B, chapter 1 of the Code,

(3) Any net operating loss carryback to the taxable year under section 172,

(4) The special deduction for Western Hemisphere trade corporations under section 922, and

(5) Any capital loss carryback to the taxable year under section 1212(a)(1).

A contribution by a corporation to a trust, chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals is deductible only if the contribution is to be used in the United States or its possessions for those purposes. See section 170(c)(2). For the purposes of section 170, amounts excluded from the gross income of a corporation under section 114 (relating to sports programs conducted for the American National Red Cross) are not to be considered contributions or gifts. For reduction or disallowance of certain charitable, etc., deductions, see paragraphs (c)(2), (e), and (f) of § 1.170-1.

(b) *Election by corporations on an accrual method.* A corporation reporting its taxable income on an accrual method may elect to have a charitable contribution (as defined in section 170 (c)) considered as paid during the taxable year, if payment is actually made on or before the fifteenth day of the third month following the close of the year and if, during the year, the board of directors authorized the contribution. 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 that the resolution authorizing the contribution was adopted by the board of directors during the taxable year, and the declaration shall be verified by a statement signed by an officer authorized to sign the return that it is made under the penalties of perjury. There shall also be attached to the return when filed a copy of the resolution of the board of directors authorizing the contribution.

(c) *Charitable contributions carryover of corporations—(1) Contributions made in taxable years beginning before January 1, 1962.* Subject to the rules set forth in

subparagraph (3) of this paragraph, any contributions made by a corporation in a taxable year (hereinafter in this paragraph referred to as the contribution year) subject to the Code beginning before January 1, 1962, in excess of the amount deductible in such contribution year under the 5-percent limitation of section 170(b)(2) are deductible in each of the two succeeding taxable years in order of time, but only to the extent of the lesser of the following amounts:

(i) The excess of the maximum amount deductible for the succeeding year under the 5-percent limitation of section 170(b)(2) over the contributions made in that year; and

(ii) In the case of the first taxable year succeeding the contribution year, the amount of the excess contributions; and, in the case of the second taxable year succeeding the contribution year, the portion of the excess contributions not deductible in the first succeeding taxable year.

The application of the rules in this subparagraph may be illustrated by the following example:

Example. A corporation which reports its income on the calendar year basis makes a charitable contribution of \$10,000 in June 1961, anticipating taxable income for 1961 of \$200,000. Its actual taxable income (without regard to any deduction for charitable contributions) for 1961 is only \$50,000 and the charitable deduction for that year is limited to \$2,500 (5 percent of \$50,000). The excess charitable contribution not deductible in 1961 (\$7,500) represents a carryover potentially available as a deduction in the two succeeding taxable years. The corporation has taxable income (without regard to any deduction for charitable contributions) of \$150,000 in 1962 and makes a charitable contribution of \$2,500 in that year. For 1962, the corporation may deduct as a charitable contribution the amount of \$7,500 (5 percent of \$150,000). This amount consists first of the \$2,500 contribution made in 1962, and \$5,000 of the \$7,500 carried over from 1961. The remaining \$2,500 carried over from 1961 and not allowable as a deduction in 1962 because of the 5-percent limitation may be carried over to 1963. The corporation has taxable income (without regard to any deduction for charitable contributions) of \$100,000 in 1963 and makes a charitable contribution of \$3,000. For 1963, the corporation may deduct under section 170 the amount of \$5,000 (5 percent of \$100,000). This amount consists first of the \$3,000 contributed in 1963, and \$2,000 of the

\$2,500 carried over from 1961 to 1963. The remaining \$500 of the carryover from 1961 is not allowable as a deduction in any year because of the 2-year limitation with respect to excess contributions made in taxable years beginning before January 1, 1962.

(2) *Contributions made in taxable years beginning after December 31, 1961.* Subject to the rules set forth in subparagraph (3) of this paragraph, any contributions made by a corporation in a taxable year (hereinafter in this paragraph referred to as the contribution year) beginning after December 31, 1961, in excess of the amount deductible in such contribution year under the 5-percent limitation of section 170(b)(2) are deductible in each of the five succeeding taxable years in order of time, but only to the extent of the lesser of the following amounts:

(i) The excess of the maximum amount deductible for such succeeding taxable year under the 5-percent limitation of section 170(b)(2) over the sum of the contributions made in that year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this paragraph in such succeeding taxable year; or

(ii) In the case of the first taxable year succeeding the contribution year, the amount of the excess contributions, and in the case of the second, third, fourth, or fifth taxable years succeeding the contribution year, the portion of the excess contributions not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

The application of the rules of this subparagraph may be illustrated by the following example:

Example. A corporation which reports its income on the calendar year basis makes a charitable contribution of \$20,000 in June 1964, anticipating taxable income for 1964 of \$400,000. Its actual taxable income (without regard to any deduction for charitable contributions) for 1964 is only \$100,000 and the charitable deduction for that year is limited to \$5,000 (5 percent of \$100,000). The excess charitable contribution not deductible in 1964 (\$15,000) represents a carryover potentially available as a deduction in the five succeeding taxable years. The corporation has taxable income (without regard to any

deduction for charitable contributions) of \$150,000 in 1965 and makes a charitable contribution of \$5,000 in that year. For 1965 the corporation may deduct as a charitable contribution the amount of \$7,500 (5 percent of \$150,000). This amount consists first of the \$5,000 contribution made in 1965, and \$2,500 carried over from 1964. The remaining \$12,500 carried over from 1964 and not allowable as a deduction for 1965 because of the 5-percent limitation may be carried over to 1966. The corporation has taxable income (without regard to any deduction for charitable contributions) of \$200,000 in 1966 and makes a charitable contribution of \$5,000. For 1966, the corporation may deduct the amount of \$10,000 (5 percent of \$200,000). This amount consists first of the \$5,000 contributed in 1966, and \$5,000 of the \$12,500 carried over from 1964 to 1966. The remaining \$7,500 of the carryover from 1964 is available for purposes of computing the charitable contributions carryover from 1964 to 1967, 1968, and 1969.

(3) *Reduction of excess contributions.* A corporation having a net operating loss carryover (or carryovers) must apply the special rule of section 170(b)(3) and this subparagraph before computing under subparagraph (1) or (2) of this paragraph the charitable contributions carryover for any taxable year subject to the Internal Revenue Code of 1954. In determining the amount of charitable contributions that may be deducted in accordance with the rules set forth in subparagraph (1) or (2) of this paragraph in taxable years succeeding the contribution year, the excess of contributions made by a corporation in the contribution year over the amount deductible in such year must be reduced by the amount by which such excess reduces taxable income (for purposes of determining the net operating loss carryover under the second sentence of section 172(b)(2) and increases a net operating loss carryover to a succeeding taxable year. Thus, if the excess of the contributions made in a taxable year over the amount deductible in the taxable year is utilized to reduce taxable income (under the provisions of section 172(b)(2)) for such year, thereby serving to increase the amount of the net operating loss carryover to a succeeding year or years, no charitable contributions carryover will be allowed. If only a portion of the excess charitable contributions is so used, the charitable contributions carryover will be reduced only to that extent.

The application of the rules of this subparagraph may be illustrated by the following example:

Example. A corporation which reports its income on the calendar year basis makes a charitable contribution of \$10,000 during the taxable year 1960. Its taxable income for 1960 is \$80,000 (computed without regard to any net operating loss deduction and computed in accordance with section 170(b)(2) without regard to any deduction for charitable contributions). The corporation has a net operating loss carryover from 1959 of \$80,000. In the absence of the net operating loss deduction the corporation would have been allowed a deduction for charitable contributions of \$4,000 (5 percent of \$80,000). After the application of the net operating loss deduction the corporation is allowed no deduction for charitable contributions, and there is a tentative charitable contribution carryover of \$10,000. For purposes of determining the net operating loss carryover to 1961 the corporation computes its taxable income for its prior taxable year 1960 under section 172(b)(2) by deducting the \$4,000 charitable contribution. Thus, after the \$80,000 net operating loss carryover is applied against the \$76,000 of taxable income for 1960 (computed in accordance with section 172(b)(2)), there remains a \$4,000 net operating loss carryover to 1961. Since the application of the net operating loss carryover of \$80,000 from 1959 reduces the taxable income for 1960 to zero, no part of the \$10,000 of charitable contributions in that year is deductible under section 170(b)(2). However, in determining the amount of the allowable charitable contributions carryover to the taxable years 1961 and 1962, the \$10,000 must be reduced by the portion thereof (\$4,000) which was used to reduce taxable income for 1960 (as computed for purposes of the second sentence of section 172(b)(2)) and which thereby served to increase the net operating loss carryover to 1961 from zero to \$4,000.

(4) *Year contribution is made.* For purposes of this paragraph, contributions made by a corporation in a contribution year include contributions which, in accordance with the provisions of section 170(a)(2) and paragraph (b) of this section, are considered as paid during such contribution year.

(5) *Effect of net operating loss carryback to contribution year.* The amount of the excess contribution for a contribution year (computed as provided in this paragraph) shall not be increased because a net operating loss carryback is available as a deduction in the contribution year. In addition, in determining (under the provisions of

section 172(b)(2)) the amount of the net operating loss for any year subsequent to the contribution year which is a carryback or carryover to taxable years succeeding the contribution year, the amount of contributions shall be limited to the maximum amount deductible under the 5-percent limitation of section 170(b)(2) (computed without regard to any net operating loss carryback or any of the modifications referred to in section 172(d)) for the contribution year.

(6) *Effect of net operating loss carryback to taxable years succeeding the contribution year.* The amount of the charitable contribution from a preceding taxable year which is deductible (as provided in this paragraph) in a current taxable year (hereinafter referred to in this subparagraph as the "deduction year") shall not be reduced because a net operating loss carryback is available as a deduction in the deduction year. In addition, in determining (under the provisions of section 172(b)(2)) the amount of the net operating loss for any year subsequent to the deduction year which is a carryback or a carryover to taxable years succeeding the deduction year, the amount of contributions shall be limited to the maximum amount deductible under the 5-percent limitation of section 170(b)(2) (computed without regard to any net operating loss carryback or any of the modifications referred to in section 172(d)) for the deduction year.

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§ 1.170A-1 Charitable, etc., contributions and gifts; allowance of deduction.

(a) *Allowance of deduction.* Any charitable contribution, as defined in section 170(c), actually paid during the taxable year is allowable as a deduction in computing taxable income irrespective of the method of accounting employed or of the date on which the contribution is pledged. However, charitable contributions by corporations may under certain circumstances be deductible even though not paid during the taxable year as provided in section

170(a)(2) and § 1.170A-11. For rules relating to recordkeeping and return requirements in support of deductions for charitable contributions (whether by an itemizing or nonitemizing taxpayer) see § 1.170A-13. The deduction is subject to the limitations of section 170(b) and § 1.170A-8 or § 1.170A-11. Subject to the provisions of section 170(d) and §§ 1.170A-10 and 1.170A-11, certain excess charitable contributions made by individuals and corporations shall be treated as paid in certain succeeding taxable years. For provisions relating to direct charitable deductions under section 63 by nonitemizers, see section 63 (b)(1)(C) and (i) and section 170(i). For rules relating to the determination of, and the deduction for, amounts paid to maintain certain students as members of the taxpayer's household and treated under section 170(g) as paid for the use of an organization described in section 170(c) (2), (3), or (4), see § 1.170A-2. For the reduction of any charitable contributions for interest on certain indebtedness, see section 170(f)(5) and § 1.170A-3. For a special rule relating to the computation of the amount of the deduction with respect to a charitable contribution of certain ordinary income or capital gain property, see section 170(e) and §§ 1.170A-4 and 1.170A-4A. For rules for postponing the time for deduction of a charitable contribution of a future interest in tangible personal property, see section 170(a)(3) and § 1.170A-5. For rules with respect to transfers in trust and of partial interests in property, see section 170(e), section 170(f) (2) and (3), §§ 1.170A-4, 1.170A-6, and 1.170A-7. For definition of the term *section 170(b)(1)(A) organization*, see § 1.170A-9. For valuation of a remainder interest in real property, see section 170(f)(4) and the regulations thereunder. The deduction for charitable contributions is subject to verification by the district director.

(b) *Time of making contribution.* Ordinarily, a contribution is made at the time delivery is effected. The unconditional delivery or mailing of a check which subsequently clears in due course will constitute an effective contribution on the date of delivery or mailing. If a taxpayer unconditionally delivers or mails a properly endorsed stock certificate to a charitable donee