

additional standardization is necessary to facilitate more robust capacity trading; whether the Working Group priorities are acceptable; and how the Commission should be involved in this process. The Commission also is interested in receiving comment on GISB's current and future role in developing standards and on the structure of the relationship between GISB and the Commission.

Any person who wishes to make a formal presentation to the Commission should submit a request to the Secretary of the Commission no later than September 1, 1995. Each request should include the time anticipated for the presentation and any special equipment requirements. Every effort will be made to accommodate requests to make presentations, but, depending on the number of requests received, the Commission may have to limit participation. To provide a more productive conference, the Commission encourages interested parties to coordinate their efforts and choose one spokesperson to make a statement on behalf of the group. After reviewing the presentation requests, a subsequent notice of the conference presentation schedule will be issued.

If sufficient interest is shown, the Commission will attempt to arrange for broadcast of the conference in the Washington, DC metropolitan area or nationally. Those interested in the local or national television broadcast should call The Capitol Connection at (703) 993-3100 no later than September 7, 1995. Requests from viewers outside of Washington, DC, should be directed to Julia Morelli or Shirley Al-Jarani.

All questions concerning the format of the conference should be directed to: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, Room 4120-B, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-2294.

By direction of the Commission.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[IA-44-94]

RIN 1545-AS94

#### Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations that provide guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of \$250 or more, and the disclosure requirements for quid pro quo contributions in excess of \$75. The proposed regulations will affect organizations described in section 170(c) and individuals and entities that make payments to those organizations.

**DATES:** Written comments must be received by November 2, 1995. Requests to appear and outlines of oral comments to be presented at the public hearing scheduled for November 1, 1995, must be received by October 11, 1995.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:T:R(IA-44-94), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R(IA-44-94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. The Public Hearing scheduled for November 1, 1995 at 10:00 a.m., will be held in the IRS Auditorium, 7th floor, 1111 Constitution Avenue, N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Jefferson K. Fox, 202-622-4930; concerning submissions and the hearing, Christina Vasquez, 202-622-6803. These are not toll-free numbers.

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collections

of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collections of information are in §§ 1.170A-13(f)(1), (f)(10), (f)(14), and 1.6115-1. This information is required by the IRS to determine the deductibility of certain charitable contributions. The likely respondents are individuals or households, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

*Estimated total annual recordkeeping burden: 100,000 hours.*

*Estimated average annual burden per recordkeeper: .10 hour.*

*Estimated number of recordkeepers: 1,000,000.*

*Estimated total annual reporting burden: 1,875,000 hours.*

*Estimated average burden per respondent: 2.5 hours.*

*Estimated number of respondents: 750,000.*

*Estimated frequency of responses: On occasion.*

#### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that provide guidance under sections 170(a), 170(f)(8), and 6115 of the Internal Revenue Code of 1986.

Sections 170(f)(8) and 6115 were added to the Code by sections 13172 and 13173 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 455, 1993-3 C.B. 43. Temporary regulations (TD 8544) and a notice of proposed rulemaking by cross-reference to temporary regulations under section 170(f)(8) were published in the **Federal Register** for May 27, 1994 (52 FR 27458, 27515). The temporary and proposed regulations primarily address contributions made by payroll deduction and a donor's receipt of goods or services with insubstantial value. A public hearing was held on November 10, 1994. On March 22, 1995, the Service released Notice 95-15, which was published in 1995-15 I.R.B., dated April 10, 1995. Notice 95-15 provides transitional relief (for 1994) from the substantiation requirement.

#### Explanation of Statutory Provisions

Section 170(a) allows a deduction for certain charitable contributions to or for the use of an organization described in section 170(c). Under section 170(f)(8),

taxpayers who claim a deduction for a charitable contribution of \$250 or more are responsible for obtaining from the donee organization, and maintaining in their records, substantiation of that contribution. See H.R. Conf. Rep. 2264, 103d Cong., 1st Sess. 565 (1993). Specifically, section 170(f)(8) provides that no charitable contribution deduction will be allowed under section 170(a) for a contribution of \$250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from the donee organization.

Section 170(f)(8)(B) provides that an acknowledgment meets the requirements of that section if it includes the following information: (1) the amount of cash paid and a description (but not necessarily the value) of any property other than cash transferred to a donee organization; (2) whether or not the donee organization provided any goods or services in consideration for the cash or property; and (3) a description and good faith estimate of the value of any goods or services provided by the donee organization in consideration for the cash or property. A written acknowledgment is contemporaneous, within the meaning of section 170(f)(8)(C), if it is obtained on or before the earlier of: (1) the date the taxpayer files its original return for the taxable year in which the contribution was made, or (2) the due date (including extensions) for filing the taxpayer's original return for that year.

Section 170(f)(8) does not prescribe a format for the written acknowledgment. Any document that contains the required information, including but not limited to a letter, postcard, computer-generated form, or tax form, is an acceptable means of providing a taxpayer with a written acknowledgment. For example, a private foundation may use a copy of its Form 990-PF, Return of Private Foundation, as a written acknowledgment for a taxpayer's charitable contribution of \$250 or more if it contains the necessary information. Any documents that are used as a written acknowledgment of a taxpayer's charitable contribution must be contemporaneous within the meaning of section 170(f)(8)(C).

Section 6115 generally requires an organization described in section 170(c) that receives a "quid pro quo contribution" in excess of \$75 to provide a written disclosure statement to the donor. The written disclosure statement must contain the following information: (1) a statement that the deductibility of the donor's contribution is limited to the excess of the amount of

any money or the value of any property contributed by the donor over the value of the goods or services provided to the donor by the organization, and (2) a good faith estimate of the value of the goods or services provided by the organization. Section 6115(b) defines a quid pro quo contribution as a payment made partly as a contribution and partly in consideration for goods or services provided by the organization.

#### **Explanation of Regulatory Provisions**

##### *Deductibility of a Payment in Exchange for Consideration*

In *United States v. American Bar Endowment*, 477 U.S. 105 (1986), the Supreme Court set forth a two-part test for determining whether a payment that is partly in consideration for goods or services is deductible under section 170(a). First, a payment to an organization described in section 170(c) is deductible only if, and to the extent that, the payment exceeds the fair market value of the benefits received. Second, the excess payment must be made with the intent to make a charitable contribution. See also Rev. Rul. 67-246, 1967-2 C.B. 104.

The proposed regulations adopt this two-part test for determining whether a payment is deductible under section 170(a). Specifically, the regulations provide that, in order for a charitable contribution deduction to be allowed, a taxpayer must intend to make a payment in an amount that exceeds the fair market value of the goods or services received in return, and must actually make a payment in an amount that exceeds that fair market value.

##### *Certain Goods or Services Disregarded*

Under current law, a taxpayer who receives membership benefits in return for a payment to an organization described in section 170(c) may not claim a charitable contribution deduction for more than the amount by which the payment exceeds the fair market value of the membership benefits. *United States v. American Bar Endowment*, 477 U.S. 105 (1986). See also Rev. Rul. 68-432, 1968-2 C.B. 104; Rev. Rul. 67-246, 1967-2 C.B. 104. Accordingly, taxpayers and donee organizations must determine the fair market value of any membership benefits the donee organization provides to its donors.

It is often difficult to value membership benefits, especially rights or privileges that are not limited as to use, such as free or discounted admission or parking, and gift shop discounts. In the course of preparing these proposed regulations, the IRS and

the Treasury Department have considered the extent of the difficulty of valuation and have concluded that it is appropriate to provide limited relief with respect to certain types of customary membership benefits while preserving the IRS's ability to administer the law fairly and consistently. Accordingly, the proposed regulations provide that both the donee organization and the donor may disregard certain membership benefits when they are provided in return for a payment to the organization.

Section 1.170A-13T(a) already allows donors and donee organizations to disregard goods or services that are treated as having insubstantial value under existing IRS guidelines. See Rev. Proc. 90-12, 1990-1 C.B. 471, and Rev. Proc. 92-49, 1992-1 C.B. 987. The guidelines cover low cost articles (items costing \$6.60 or less for 1995), newsletters that are not commercial quality publications, and benefits worth 2% or less of a payment, up to a maximum of \$66 for 1995. The substance of this section has been incorporated into section 1.170A-13(f)(8)(i).

Under the proposed regulations, other benefits may be disregarded only if they are given as part of an annual membership offered in return for a payment of \$75 or less and fall into one of two categories. The first category is admission to events that are open only to members and for which the donee organization reasonably projects that the cost per person (excluding allocable overhead) for each event will be less than or equal to the standard for low cost articles under section 513(h)(2)(C) (\$6.60 for 1995). An example is a modest reception where light refreshments are served to members of a donee organization before an event. The second category is rights or privileges that members can exercise frequently during the membership period. An example is free admission to a museum.

The items described in the previous two paragraphs may be disregarded for purposes of determining whether the taxpayer has made a charitable contribution, the amount of any charitable contribution that has been made, and whether any goods or services have been provided that must be substantiated under section 170(f)(8) or disclosed under section 6115. Thus, the effect of these provisions is broader than that of the temporary regulations, which provided less comprehensive relief and then only for items of insubstantial value.

### *Goods or Services Provided to Donor's Employees*

The proposed regulations also contain relief where donee organizations provide goods or services to the employees of their donors. Goods or services that may be disregarded for the purposes specified above when provided directly to a donor may also be disregarded for the same purposes when provided to a donor's employees.

Any other goods or services provided to the donor's employees must be taken into account for purposes of calculating any charitable contribution the donor claims as a deduction. If a contemporaneous written acknowledgment of the donor's contribution is required under section 170(f)(8), it must include a description of these goods or services. However, the proposed regulations provide that the contemporaneous written acknowledgment may omit the otherwise required good faith estimate of the value of these goods or services; similarly, the proposed regulations provide that a written disclosure statement required by section 6115 for a payment made in exchange for these goods or services may include a description of them in lieu of the otherwise required good faith estimate of their value.

### *Good Faith Estimate*

For purposes of sections 170 and 6115, the proposed regulations define a good faith estimate of the value of goods or services provided by an organization described in section 170(c) as an estimate of the fair market value of those goods or services. The fair market value of goods or services may differ from their cost to the donee organization. The organization may use any reasonable methodology that it applies in good faith in making the good faith estimate. However, a taxpayer is not required to determine how the donee organization made the estimate.

The proposed regulations further provide that a donee organization may make a good faith estimate of the value of goods or services that are not available in a commercial transaction by reference to the fair market value of similar or comparable goods or services. Goods or services may be similar or comparable even though they do not have the unique qualities of the goods or services that are being valued.

### *Reliance on Donee Estimates*

The proposed regulations provide that a taxpayer generally may treat an estimate of the value of goods or services as the fair market value for

purposes of section 170(a) if the estimate is in a contemporaneous written acknowledgment (as required by section 170(f)(8)) or a written disclosure statement (as required by section 6115). Thus, a taxpayer that makes a payment to an organization described in section 170(c) and receives an item in return generally may rely on the organization's estimate of the value of the item in calculating its charitable contribution deduction if the estimate is included in a contemporaneous written acknowledgment or a written disclosure statement.

However, a taxpayer may not treat an estimate as the fair market value of the goods or services if the taxpayer knows, or has reason to know, that such treatment is unreasonable. For example, if the taxpayer is a dealer in the type of goods or services it receives from an organization described in section 170(c), or if the goods or services are readily valued, it is unreasonable for the taxpayer to treat the donee organization's estimate as the fair market value of the goods or services if that estimate is in error and the taxpayer knows, or has reason to know, the fair market value of the goods or services.

An estimate of the value of goods or services in a contemporaneous written acknowledgment or written disclosure statement is not in error if the estimate is within the typical range of retail prices for the goods or services. For example, if an organization provides a book in exchange for a \$100 payment, and the book is sold at retail prices ranging from \$18 to \$25, the taxpayer may rely on any estimate of the organization that is within the \$18 to \$25 range.

### *Substantiation of Contributions to a Split Interest Trust*

Section 170(f)(8)(E) provides the Secretary with authority to issue regulations that relieve taxpayers, in appropriate cases, from some or all of the requirements of section 170(f)(8).

The grantor of a charitable lead trust, a charitable remainder annuity trust, or a charitable remainder unitrust is not required to designate a specific organization as the charitable beneficiary at the time the grantor transfers property to the trust. As a result, there is often no designated donee organization available to provide a contemporaneous written acknowledgment to a taxpayer. In addition, even if a specific beneficiary is designated, the designation is often revocable. In contrast, a pooled income fund is created and maintained by one charitable organization to which the remainder interest is contributed.

The IRS and the Treasury Department believe that for these reasons it is appropriate to exempt from the requirements of section 170(f)(8) transfers of property to charitable lead trusts, charitable remainder annuity trusts, or charitable remainder unitrusts while not exempting transfers to pooled income funds.

### *Substantiation of Out-of-Pocket Expenses*

Section 1.170A-1(g) provides that an unreimbursed expenditure made incident to the rendition of services to a donee organization may be a deductible charitable contribution. Some taxpayers may make individual unreimbursed expenditures of \$250 or more (such as for a plane ticket) that will require substantiation under section 170(f)(8). The IRS and the Treasury Department recognize that a donee organization typically has no knowledge of the amount of out-of-pocket expenditures incurred by a taxpayer, and therefore, would have difficulty providing taxpayers with substantiation of unreimbursed expenditures.

To address this concern, the proposed regulations provide that where a taxpayer has individual unreimbursed expenditures made incident to the rendition of services and of an amount requiring substantiation, the expenditures may be substantiated by the donor's normal records (see § 1.170A-13(a)) and an abbreviated written acknowledgment provided by the donee organization. This written acknowledgment from the donee organization must contain a description of the services provided by the donor, the date the services were provided, whether or not the donee organization provided any goods or services in return and, if the donee organization provided any goods or services, a description and good faith estimate of the fair market value of those goods or services. This written acknowledgment must be obtained by the taxpayer on or before the earlier of the date the taxpayer files its original return for the taxable year in which the contribution was made, or the due date (including extensions) for filing the taxpayer's original return for that year.

### *Contributions Made by a Partnership or an S Corporation*

The proposed regulations provide that if a partnership or an S corporation makes a charitable contribution of \$250 or more, the partnership or S corporation will be treated as the taxpayer for purposes of section 170(f)(8). Therefore, the partnership or S

corporation is required to obtain a contemporaneous written acknowledgment for each charitable contribution of \$250 or more that it reports on its income tax return (regardless of whether any partner's or shareholder's distributive share of the contribution is less than \$250). Because the partnership or S corporation must satisfy the requirements of section 170(f)(8) in order to list charitable contributions of \$250 or more on the schedules provided to its partners or shareholders, the partners and shareholders are not required to obtain any additional contemporaneous written acknowledgments before taking a deduction for their allocable shares of the partnership's or S corporation's charitable contribution.

#### Contributions Made by Payroll Deduction

These proposed regulations reserve two paragraphs so that the balance of the temporary and proposed regulations published in the **Federal Register** for May 27, 1994, may be incorporated into § 1.170A-13(f) upon finalization.

#### Proposed Effective Date

These regulations are proposed to be effective on the date they are published in the **Federal Register** as final regulations. Taxpayers may, however, rely on the proposed regulations for contributions made on or after January 1, 1994.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

#### Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 1, 1995, at 10:00 a.m. in the IRS Auditorium, 7th floor, 1111 Constitution Avenue, N.W., Washington, D.C. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing is scheduled to begin.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by November 2, 1995 and submit an outline (a signed original and eight copies) of the topics to be discussed and the time to be devoted to each topic by October 11, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these regulations is Rosemary DeLeone, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding a new entry for section 1.170A-1 and revising the entry for section 1.170A-13 to read as follows:

**Authority:** 26 U.S.C. 7805. Section 1.170A-1 also issued under 26 U.S.C. 170(a). Section 1.170A-13 also issued under 26 U.S.C. 170(f)(8). \* \* \*

**Par. 2.** Section 1.170A-1 is amended as follows:

1. Paragraph (h) is redesignated as paragraph (j).
  2. Paragraph (i) is redesignated as paragraph (k) and is revised.
  3. Paragraph (h) is added.
  4. Paragraph (i) is added and reserved.
- The additions and revisions read as follows:

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

\* \* \* \* \*

(h) *Payment in exchange for consideration*—(1) *Burden on taxpayer to show that all or part of payment is a charitable contribution or gift.* No part of a payment that a taxpayer makes to or for the use of an organization described in section 170(c) that is in consideration for goods or services (as defined in § 1.170A-13(f)(5)) is a contribution or gift within the meaning of section 170(c) unless the taxpayer—

- (i) Intends to make a payment in an amount that exceeds the fair market value of the goods or services; and
- (ii) Makes a payment in an amount that exceeds the fair market value of the goods or services.

(2) *Limitation on amount deductible*—

(i) *In general.* The charitable contribution deduction under section 170(a) for a payment a taxpayer makes partly in consideration for goods or services may not exceed the excess of—

(A) The amount of any cash paid and the fair market value of any property (other than cash) transferred by the taxpayer to an organization described in section 170(c); over

(B) The fair market value of the goods or services the organization provides in return.

(ii) *Special rules.* For special limits on the deduction for charitable contributions of ordinary income and capital gain property, see section 170(e) and §§ 1.170A-4 and 1.170A-4A.

(3) *Certain goods or services disregarded.* For purposes of section 170(a) and paragraphs (h)(1) and (h)(2) of this section, goods or services described in § 1.170A-13(f)(8)(i) or § 1.170A-13(f)(9)(i) are disregarded.

(4) *Donee estimates of the value of goods or services may be treated as fair market value*—(i) *In general.* For purposes of section 170(a), a taxpayer may rely on either a contemporaneous written acknowledgment provided under section 170(f)(8) and § 1.170A-13(f) or a written disclosure statement provided under section 6115 for the fair market value of any goods or services provided to the taxpayer by the donee organization.

(ii) *Exception.* A taxpayer may not treat an estimate of the value of goods or services as their fair market value if the taxpayer knows, or has reason to know, that such treatment is unreasonable. For example, if the taxpayer knows, or has reason to know, that there is an error in an estimate provided by an organization described in section 170(c) pertaining to goods or services that have a readily ascertainable value, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services. Similarly, if the taxpayer is a

dealer in the type of goods or services provided in consideration for its payment and knows, or has reason to know, that the estimate is in error, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services.

(5) *Examples.* The following examples illustrate the rules of this paragraph (h).

*Example 1. Certain goods or services disregarded.* Taxpayer makes a \$50 payment to Charity B, an organization described in section 170(c), in exchange for a family membership. The family membership entitles Taxpayer and members of Taxpayer's family to certain benefits. These benefits include free admission to weekly poetry readings, discounts on merchandise sold by B in its gift shop or by mail order, and invitations to special events for members only, such as lectures or informal receptions. When B first offers its membership package for the year, B reasonably projects that each special event for members will have a cost to B, excluding any allocable overhead, of \$5 or less per person. Because the family membership benefits are disregarded pursuant to § 1.170A-13(f)(8)(i), Taxpayer may treat the \$50 payment as a contribution or gift within the meaning of section 170(c), regardless of Taxpayer's intent and whether or not the payment exceeds the fair market value of the goods or services. Furthermore, any charitable contribution deduction available to Taxpayer may be calculated without regard to the membership benefits.

*Example 2. Treatment of good faith estimate at auction as the fair market value.* Taxpayer attends an auction held by Charity C, an organization described in section 170(c). Prior to the auction, C publishes a catalog that meets the requirements for a written disclosure statement under section 6115(a) (including C's good faith estimate of the value of items that will be available for bidding). A representative of C gives a copy of the catalog to each individual (including Taxpayer) who attends the auction. Taxpayer notes that in the catalog C's estimate of the value of a vase is \$100. Taxpayer has no reason to doubt the accuracy of this estimate. Taxpayer successfully bids and pays \$500 for the vase. Because Taxpayer knew, prior to making her payment, that the estimate in the catalog was less than the amount of her payment, Taxpayer satisfies the requirement of paragraph (h)(1)(i) of this section. Because Taxpayer makes a payment in an amount that exceeds that estimate, Taxpayer satisfies the requirements of paragraph (h)(1)(ii) of this section. Taxpayer may treat C's estimate of the value of the vase as its fair market value in determining the amount of her charitable contribution deduction.

*Example 3. Good faith estimate not in error.* Taxpayer makes a \$200 payment to Charity D, an organization described in section 170(c). In return for Taxpayer's payment, D gives Taxpayer a book that Taxpayer could buy at retail prices typically ranging from \$18 to \$25. D provides Taxpayer with a good faith estimate, in a written disclosure statement under section 6115(a), of \$20 for the value of the book. Because the estimate is within the range of

typical retail prices for the book, the estimate contained in the written disclosure statement is not in error. Although Taxpayer knows that the book is sold for as much as \$25, Taxpayer may treat the estimate of \$20 as the fair market value of the book in determining the amount of his charitable contribution deduction.

(i) [Reserved]

\* \* \* \* \*

(k) *Effective date.* In general this section applies to contributions made in taxable years beginning after December 31, 1969. Paragraph (j)(11) of this section, however, applies only to out-of-pocket expenditures made in taxable years beginning after December 31, 1976. In addition, paragraph (h) of this section applies only to payments made on or after the date these regulations are published in the **Federal Register** as final regulations. However, taxpayers may rely on the rules of paragraph (h) of this section for payments made on or after January 1, 1994.

**Par. 3.** Section 1.170A-13 is amended as follows:

1. Paragraph (e) is added and reserved.

2. Paragraph (f) is added.

The additions read as follows:

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

\* \* \* \* \*

(e) [Reserved]

(f) *Substantiation of charitable contributions of \$250 or more—(1) In general.* No deduction is allowed under section 170(a) for all or part of any contribution of \$250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from a donee organization. Section 170(f)(8) does not apply to a payment of \$250 or more if the amount contributed (as determined under § 1.170A-1(h)) is less than \$250.

(2) *Written acknowledgment.* Except as otherwise provided in paragraphs (f)(8) and (f)(9) of this section, a written acknowledgment from a donee organization must provide the following information—

(i) The amount of any cash the taxpayer paid and a description (but not necessarily the value) of any property other than cash the taxpayer transferred to the donee organization;

(ii) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for any of the cash or other property transferred to the donee organization;

(iii) If the donee organization provides any goods or services other than intangible religious benefits (as

described in section 170(f)(8)), a description and good faith estimate of the value of those goods or services; and

(iv) If the donee organization provides any intangible religious benefits, a statement to that effect.

(3) *Contemporaneous.* A written acknowledgment is contemporaneous if it is obtained by the taxpayer on or before the earlier of—

(i) The date the taxpayer files its original return for the taxable year in which the contribution was made; or

(ii) The due date (including extensions) for filing the taxpayer's original return for that year.

(4) *Donee organization.* For purposes of this paragraph (f), a donee organization is an organization described in section 170(c).

(5) *Goods or services.* Goods or services means cash, property, services, benefits, and privileges.

(6) *In consideration for.* A donee organization provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes the payment to the donee organization, the taxpayer receives or expects to receive goods or services in exchange for that payment. Goods or services a donee organization provides in consideration for a payment by a taxpayer include goods or services provided in a year other than the year in which the taxpayer makes the payment to the donee organization.

(7) *Good faith estimate.* For purposes of this section, good faith estimate means the donee organization's estimate of the fair market value of any goods or services, without regard to the manner in which the organization in fact made that estimate. See § 1.170A-1(h)(4) for rules regarding when a taxpayer may treat a donee organization's estimate of the value of goods or services as the fair market value.

(8) *Certain goods or services disregarded—(i) In general.* For purposes of section 170(f)(8), the following goods or services are disregarded—

(A) Goods or services that have insubstantial value under the guidelines provided in Revenue Procedures 90-12, 1990-1 C.B. 471, 92-49, 1992-1 C.B. 987, and any successor documents. (See § 601.601(d)(2)(ii) of the Statement of Procedural Rules, 26 CFR part 601.); and

(B) Annual membership benefits offered to a taxpayer for a payment of \$75 or less per year that consist of—

(1) Any rights or privileges, other than those described in section 170(l), that the taxpayer can exercise frequently during the membership period. Examples of such rights and privileges include, but are not limited to, free or

discounted admission to the organization's facilities or events, free or discounted parking, preferred access to goods or services, and discounts on the purchase of goods or services; and

(2) Admission to events during the membership period that are open only to members of the donee organization and for which the donee organization reasonably projects that the cost per person (excluding any allocable overhead) for each such event is within the limits established for "low cost articles" under section 513(h)(2). The projected cost to the donee organization is determined at the time the organization first offers its membership package for the year (using section 3.07 of Revenue Procedure 90-12, or any successor documents, to determine the cost if items or services are donated).

(ii) *Examples.* The following examples illustrate the rules of this paragraph (f)(8).

*Example 1. Membership benefits disregarded.* Performing Arts Center *E* is an organization described in section 170(c). In return for a payment of \$75, *E* offers a package of basic membership benefits that includes the right to purchase tickets to performances one week before they go on sale to the general public, free parking in *E*'s garage during evening and weekend performances, and a 10% discount on merchandise sold in *E*'s gift shop. In return for a payment of \$150, *E* offers a package of preferred membership benefits that includes all of the benefits in the \$75 package as well as a poster that is sold in *E*'s gift shop for \$20. The basic membership and the preferred membership are each valid for twelve months, and there are approximately 50 performances of various productions at *E* during a twelve month period. *E*'s gift shop is open for several hours each week and at performance times. *F*, a patron of the arts, is solicited by *E* to make a contribution. *E* offers *F* the preferred membership benefits in return for a payment of \$150 or more. *F* makes a payment of \$300 to *E*. *F* can satisfy the substantiation requirement of section 170(f)(8) by obtaining a contemporaneous written acknowledgment from *E* that includes a description of the poster and a good faith estimate of its fair market value (\$20) and disregards the remaining membership benefits.

*Example 2. Rights or privileges that cannot be exercised frequently.* Community Theater Group *G* is an organization described in section 170(c). Every summer, *G* performs four different plays. Each play is performed two times. In return for a membership fee of \$60, *G* offers its members free admission to any of its performances. Non-members may purchase tickets on a performance by performance basis for \$15 a ticket. *H*, an individual who is a sponsor of the theater, is solicited by *G* to make a contribution. *G* tells *H* that the membership benefit will be provided in return for any payment of \$60 or more. *H* chooses to make a payment of \$350 to *G* and receives in return the membership

benefit. *G*'s membership benefit of free admission is not described in paragraph (f)(8)(i)(B) of this section because it is not a privilege that can be exercised frequently (due to the limited number of performances offered by *G*). Therefore, to meet the requirements of section 170(f)(8), a contemporaneous written acknowledgment of *H*'s \$350 payment must include a description of the free admission benefit and a good faith estimate of its value.

(9) *Goods or services provided to employees of donors—(i) Certain goods or services disregarded.* For purposes of section 170(f)(8), goods or services provided by a donee organization to a taxpayer's employees in return for a payment to the organization may be disregarded to the extent that the goods or services provided to each employee are the same as those described in paragraph (f)(8)(i) of this section.

(ii) *No good faith estimate required for other goods or services.* If a taxpayer makes a contribution of \$250 or more to a donee organization and, in return, the donee organization offers the taxpayer's employees goods or services other than those described in paragraph (f)(9)(i) of this section, the contemporaneous written acknowledgment of the taxpayer's contribution is not required to include a good faith estimate of the value of such goods or services but must include a description of those goods or services.

(iii) *Example.* The following example illustrates the rules of this paragraph (f)(9).

*Example.* Museum *J* is an organization described in section 170(c). For a payment of \$40, *J* offers a package of basic membership benefits that includes free admission and a 10% discount on merchandise sold in *J*'s gift shop. *J*'s other membership categories are for supporters who contribute \$100 or more. Corporation *K* makes a payment of \$50,000 to *J* and in return, *J* offers *K*'s employees free admission, a tee-shirt with *J*'s logo that costs *J* \$4.50, and a gift shop discount of 25%. The free admission for *K*'s employees is the same as the benefit made available to holders of the \$40 membership and is otherwise described in paragraph (f)(8)(i)(B) of this section. The tee-shirt given to each of *K*'s employees is described in paragraph (f)(8)(i)(A) of this section. Therefore, a contemporaneous written acknowledgment of *K*'s payment is not required to include a description or good faith estimate of the value of the free admission or the tee-shirts. However, because the gift shop discount offered to *K*'s employees is different than that offered to those who purchase the \$40 membership, the discount is not described in paragraph (f)(8)(i) of this section. Therefore, the contemporaneous written acknowledgment of *K*'s payment is required to include a description of the 25% discount offered to *K*'s employees.

(10) *Substantiation of out-of-pocket expenses.* A taxpayer that incurs

unreimbursed expenditures incident to the rendition of services, within the meaning of § 1.170A-1(g), is treated as having obtained a contemporaneous written acknowledgment of those expenditures if the taxpayer—

(i) Has adequate records under paragraph (a) of this section to substantiate the amount of the expenditures; and

(ii) Obtains by the date prescribed in paragraph (f)(3) of this section a statement prepared by the donee organization containing—

(A) A description of the services provided by the taxpayer;

(B) The date the services were provided;

(C) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for the unreimbursed expenditures; and

(D) The information required by paragraphs (f)(2)(iii) and (iv) of this section.

(11) *Contributions made by payroll deduction.* [Reserved]

(12) *Distributing organizations as donees.* [Reserved]

(13) *Transfers to certain trusts.*

Section 170(f)(8) does not apply to a transfer of property to a trust described in section 170(f)(2)(B), a charitable remainder annuity trust (as defined in section 664(d)(1)), or a charitable remainder unitrust (as defined in section 664(d)(2)). Section 170(f)(8) does apply, however, to a transfer to a pooled income fund (as defined in section 642(c)(5)).

(14) *Substantiation of charitable contributions made by a partnership or an S corporation.* If a partnership or an S corporation makes a charitable contribution of \$250 or more, the partnership or S corporation will be treated as the taxpayer for purposes of section 170(f)(8). Therefore, the partnership or S corporation must substantiate the contribution with a contemporaneous written acknowledgment from the donee organization before reporting the contribution on its income tax return for the year in which the contribution was made and must maintain the contemporaneous written acknowledgment in its records. A partner of a partnership or a shareholder of an S corporation is not required to obtain any additional substantiation for his or her share of the partnership's or S corporation's charitable contribution.

(15) *Substantiation of matched payments—(i) In general.* For purposes of section 170, if a taxpayer's payment to a donee organization is matched, in whole or in part, by another payor, and

the taxpayer receives goods or services in consideration for its payment and some or all of the matching payment, those goods or services will be treated as provided in consideration for the taxpayer's payment and not in consideration for the matching payment.

(ii) *Example.* The following example illustrates the rules of this paragraph (f)(15).

*Example.* Taxpayer makes a \$400 payment to Charity L, a donee organization. Pursuant to a matching payment plan, Taxpayer's employer matches Taxpayer's \$400 payment with an additional payment of \$400. In consideration for the combined payments of \$800, L gives Taxpayer an item that it estimates has a fair market value of \$100. L does not give the employer any goods or services in consideration for its contribution. The contemporaneous written acknowledgment provided to the employer must include a statement that no goods or services were provided in consideration for the employer's \$400 payment. The contemporaneous written acknowledgment provided to Taxpayer must include the amount of Taxpayer's payment, a description of the item received by Taxpayer, and a statement that L's good faith estimate of the value of the item received by Taxpayer is \$100.

(16) *Effective date.* This paragraph (f) applies to contributions made on or after the date that these regulations are published in the **Federal Register** as final regulations. However, taxpayers may rely on the rules of this paragraph (f) for contributions made on or after January 1, 1994.

**Par. 4.** Section 1.6115-1 is added under the undesignated centerheading "Miscellaneous Provisions" to read as follows:

**§ 1.6115-1 Disclosure requirements for quid pro quo contributions.**

(a) *Good faith estimate defined—(1) In general.* A good faith estimate of the value of goods or services provided by an organization described in section 170(c) in consideration for a taxpayer's payment to that organization is an estimate of the fair market value, within the meaning of § 1.170A-1(c)(2), of the goods or services. The organization may use any reasonable methodology in making a good faith estimate, provided it applies the methodology in good faith. If the organization fails to apply the methodology in good faith, the organization will be treated as not having met the requirements of section 6115. See section 6714 for the penalties that apply for failure to meet the requirements of section 6115.

(2) *Good faith estimate for goods or services that are not commercially available.* A good faith estimate of the value of goods or services that are not

generally available in a commercial transaction may be determined by reference to the fair market value of similar or comparable goods or services. Goods or services may be similar or comparable even though they do not have the unique qualities of the goods or services that are being valued.

(3) *Examples.* The following examples illustrate the rules of this paragraph (a).

*Example 1. Facility not available on a commercial basis.* Museum M, an organization described in section 170(c), is located in Community N. In return for a payment of \$50,000 or more, M allows a donor to hold a private event in a room located in M. No other private events are permitted to be held in M. In Community N, there are four hotels, O, P, Q, and R, that have ballrooms with the same capacity as the room in M. Of these hotels, only O and P have ballrooms that offer amenities and atmosphere that are similar to the amenities and atmosphere of the room in M (although O and P lack the unique collection of art that is displayed in the room of M). Because the capacity, amenities, and atmosphere of ballrooms in O and P are comparable to the capacity, amenities, and atmosphere of the room in M, a good faith estimate of the benefits received from M may be determined by reference to the cost of renting either the ballroom in O or the ballroom in P. The cost of renting the ballroom in O is \$2500 and, therefore, a good faith estimate of the fair market value of the right to host a private event in the room at M is \$2500. In this example, the ballrooms in O and P are considered similar and comparable facilities to the room in M for valuation purposes, notwithstanding the fact that the room in M displays a unique collection of art.

*Example 2. Services available on a commercial basis.* Charity S is an organization described in section 170(c). S offers to provide a one-hour tennis lesson with Tennis Professional T in return for the first payment of \$500 or more that it receives. T provides one-hour tennis lessons on a commercial basis for \$100. Taxpayer pays \$500 to S and in return receives the tennis lesson with T. A good faith estimate of the fair market value of the lesson provided in exchange for Taxpayer's payment is \$100.

*Example 3. Celebrity presence.* Charity U is an organization described in section 170(c). In return for the first payment of \$1000 or more that it receives, U will provide a dinner for two followed by an evening tour of Museum V conducted by Artist W, whose most recent works are on display at V. W does not provide tours of V on a commercial basis. Typically, tours of V are free to the public. Taxpayer pays \$1000 to U and in return receives a dinner valued at \$100 and an evening tour of V conducted by W. Because tours of V are typically free to the public, a good faith estimate of the value of the evening tour conducted by W is \$0. In this example, the fact that Taxpayer's tour of V is conducted by W rather than V's regular tour guides does not render the tours dissimilar or incomparable for valuation purposes.

(b) *Certain goods or services disregarded.* For purposes of section 6115, an organization described in section 170(c) may disregard goods or services described in § 1.170A-13(f)(8)(i).

(c) *Goods or services provided to employees of donors—*

(1) *Certain goods or services disregarded.* For purposes of section 6115, goods or services provided by an organization described in section 170(c) to a taxpayer's employees in return for a payment to the organization may be disregarded to the extent that the goods or services provided to each employee are the same as those described in § 1.170A-13(f)(8)(i).

(2) *Description permitted in lieu of good faith estimate for other goods or services.* If a taxpayer makes a quid pro quo contribution in excess of \$75 to an organization described in section 170(c) and, in return, the organization offers the taxpayer's employees goods or services other than those described in paragraph (c)(1) of this section, the organization's written disclosure statement required by section 6115 may include a description of the goods or services in lieu of a good faith estimate of the value of the goods or services, provided that the statement otherwise satisfies the requirements of section 6115.

(d) *Effective date.* This section applies to contributions made on or after the date that these regulations are published in the **Federal Register** as final regulations. However, taxpayers may rely on the rules of this section for contributions made on or after January 1, 1994.

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

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**26 CFR Part 1**

[IL-65-93]

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**Exceptions to Passive Income Characterization for Certain Foreign Banks and Securities Dealers; Hearing**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Change of date for public hearing on proposed regulations.

**SUMMARY:** This document changes the date of the public hearing on proposed regulations concerning the application of the exceptions to passive income contained in section 1296(b) for foreign banks, securities dealers and brokers.