US Code of Federal Regulations, Sections 1.170A-1 A-14
Charitable Contributions and Gifts

Contents

§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 record keeping 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 or the donee's agent, the gift is completed on the date of delivery or, if such certificate is received in the ordinary course of the mails, on the date of mailing. If the donor delivers the stock certificate to his bank or broker as the donor's agent, or to the issuing corporation or its agent, for transfer into the name of the donee, the gift is completed on the date the stock is transferred on the books of the corporation. For rules relating to the date of payment of a contribution consisting of a future interest in tangible personal property, see section 170(a)(3) and §1.170A-5.

(c) *Value of a contribution in property*

(1) If a charitable contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution reduced as provided in section 170(e)(1) and paragraph (a) of §1.170A-4, or section 170(e)(3) and paragraph (c) of §1.170A-4A.

(2) The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. If the contribution is made in property of a type which the taxpayer sells in the course of his business, the fair market value is the price which the taxpayer would have received if he had sold the contributed property in the usual market in which he

customarily sells, at the time and place of the contribution and, in the case of a contribution of goods in quantity, in the quantity contributed. The usual market of a manufacturer or other producer consists of the wholesalers or other distributors to or through whom he customarily sells, but if he sells only at retail the usual market consists of his retail customers.

(3) If the donor makes a charitable contribution of property, such as stock in trade, at a time when he could not reasonably have been expected to realize its usual selling price, the value of the gift is not the usual selling price but is the amount for which the quantity of property contributed would have been sold by the donor at the time of the contribution.

(4) Any costs and expenses pertaining to the contributed property which were incurred in taxable years preceding the year of contribution and are properly reflected in the opening inventory for the year of contribution must be removed from inventory and are not a part of the cost of goods sold for purposes of determining gross income for the year of contribution. Any costs and expenses pertaining to the contributed property which are incurred in the year of contribution and would, under the method of accounting used, be properly reflected in the cost of goods sold for such year are to be treated as part of the cost of goods sold for such year. If costs and expenses incurred in producing or acquiring the contributed property are, under the method of accounting used, properly deducted under section 162 or other section of the Code, such costs and expenses will be allowed as deductions for the taxable year in which they are paid or incurred, whether or not such year is the year of the contribution. Any such costs and expenses which are treated as part of the cost of goods sold for the year of contribution, and any such costs and expenses which are properly deducted under section 162 or other section of the Code, are not to be treated under any section of the Code as resulting in any basis for the contributed property. Thus, for example, the contributed property has no basis for purposes of determining under section 170(e)(1)(A) and paragraph (a) of §1.170A-4 the amount of gain which would have been recognized if such property had been sold by the donor at its fair market value at the time of its contribution. The amount of any charitable contribution for the taxable year is not to be reduced by the amount of any costs or expenses pertaining to the contributed property which was properly deducted under section 162 or other section of the Code for any taxable year preceding the year of the contribution. This subparagraph applies only to property which was held by the taxpayer for sale in the course of a trade or business. The application of this subparagraph may be illustrated by the following examples:

Example (1). In 1970, A, an individual using the calendar year as the taxable year and the accrual method of accounting, contributed to a church property from inventory having a fair market value of $600. The closing inventory at the end of 1969 properly included $400 of costs attributable to the acquisition of such property, and in 1969 A properly deducted under section 162 $50 of administrative and other expenses attributable to such property. Under section 170(e)(1)(A) and paragraph (a) of §1.170A-4, the amount of the charitable contribution allowed for 1970 is $400 ($600 - [$600 - $400]). Pursuant to this subparagraph, the cost of goods sold to be used in determining gross income for 1970 may not include the $400 which was included in opening inventory for that year.

Example (2). The facts are the same as in example (1) except that the contributed property was acquired in 1970 at a cost of $400. The $400 cost of the property is included in determining the cost of goods sold for 1970, and $50 is allowed as a deduction for that year under section 162. A is not allowed any deduction under section 170 for the contributed property, since under section 170(e)(1)(A) and paragraph (a) of §1.170A-4 the amount of the charitable contribution is reduced to zero ($600 - [$600 - $0]).

Example (3). In 1970, B, an individual using the calendar year as the taxable year and the accrual

method of accounting, contributed to a church property from inventory having a fair market value of $600. Under §1.471-3(c), the closing inventory at the end of 1969 properly included $450 costs attributable to the production of such property, including $50 of administrative and other indirect expenses which, under his method of accounting, was properly added to inventory rather than deducted as a business expense. Under section 170(e)(1)(A) and paragraph (a) of §1.170A-4, the amount of the charitable contribution allowed for 1970 is $450 ($600 - [$600 - $450]). Pursuant to this subparagraph, the cost of goods sold to be used in determining gross income for 1970 may not include the $450 which was included in opening inventory for that year.

Example (4). The facts are the same as in example (3) except that the contributed property was produced in 1970 at a cost of $450, including $50 of administrative and other indirect expenses. The $450 cost of the property is included in determining the cost of goods sold for 1970. B is not allowed any deduction under section 170 for the contributed property, since under section 170(e)(1)(A) and paragraph (a) of §1.170A-4 the amount of the charitable contribution is reduced to zero ($600 - [$600 - $0]).

Example (5). In 1970, C, a farmer using the cash method of accounting and the calendar year as the taxable year, contributed to a church a quantity of grain which he had raised having a fair market value of $600. In 1969, C paid expenses of $450 in raising the property which he properly deducted for such year under section 162. Under section 170(e)(1)(A) and paragraph (a) of §1.170A-4, the amount of the charitable contribution in 1970 is reduced to zero ($600 - [$600 - $0]). Accordingly, C is not allowed any deduction under section 170 for the contributed property.

Example (6). The facts are the same as in example (5) except that the $450 expenses incurred in raising the contributed property were paid in 1970. The result is the same as in example (5), except the amount of $450 is deductible under section 162 for 1970.

(5) Transfers of property to an organization described in section 170(c) which bear a direct relationship to the taxpayer's trade or business and which are made with a reasonable expectation of financial return commensurate with the amount of the transfer may constitute allowable deductions as trade or business expenses rather than as charitable contributions. See section 162 and the regulations thereunder.

(d) *Purchase of an annuity*

(1) In the case of an annuity or portion thereof purchased from an organization described in section 170(c), there shall be allowed as a deduction the excess of the amount paid over the value at the time of purchase of the annuity or portion purchased.

(2) The value of the annuity or portion is the value of the annuity determined in accordance with paragraph (e)(1)(iii)(*b*)(*2*) of §1.101-2.

(3) For determining gain on any such transaction constituting a bargain sale, see section 1011(b) and §1.1011-2.

(e) *Transfers subject to a condition or power.* —If as of the date of a gift a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an interest in property passes to, or is vested in, charity on the date of the gift and the interest would be defeated by the subsequent performance of some act or the happening of some event, the possibility of occurrence of which

appears on the date of the gift to be so remote as to be negligible, the deduction is allowable. For example, A transfers land to a city government for as long as the land is used by the city for a public park. If on the date of the gift the city does plan to use the land for a park and the possibility that the city will not use the land for a public park is so remote as to be negligible, A is entitled to a deduction under section 170 for his charitable contribution.

(f) *Special rules applicable to certain contributions*

(1) See section 14 of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat. 918) for provisions relating to the claim and allowance of the value of certain easements as a charitable contribution under section 170.

(2) For treatment of gifts accepted by the Secretary of State or the Secretary of Commerce, for the purpose of organizing and holding an international conference to negotiate a Patent Corporation Treaty, as gifts to or for the use of the United States, see section 3 of Joint Resolution of December 24, 1969 (Public Law 91-160, 83 Stat. 443).

(3) For treatment of gifts accepted by the Secretary of the Department of Housing and Urban Development, for the purpose of aiding or facilitating the work of the Department, as gifts to or for the use of the United States, see section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535), as added by section 905 of Public Law 91-609 (84 Stat. 1809).

(g) *Contributions of services*. —No deduction is allowable under section 170 for a contribution of services. However, unreimbursed expenditures made incident to the rendition of services to an organization contributions to which are deductible may constitute a deductible contribution. For example, the cost of a uniform without general utility which is required to be worn in performing donated services is deductible. Similarly, out-of-pocket transportation expenses necessarily incurred in performing donated services are deductible. Reasonable expenditures for meals and lodging necessarily incurred while away from home in the course of performing donated services also are deductible. For the purposes of this paragraph, the phrase "while away from home" has the same meaning as that phrase is used for purposes of section 162 and the regulations thereunder.

(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 (as defined in §1.170A-13(f)(6)) 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 a 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 a taxpayer is a dealer in the type of goods or services provided in consideration for the taxpayer's 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 attending the event. 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]

(j) *Exceptions and other rules*

(1) The provisions of section 170 do not apply to contributions by an estate; nor do they apply to a trust unless the trust is a private foundation which, pursuant to section 642(c)(6) and §1.642(c)-4, is allowed a deduction under section 170 subject to the provisions applicable to individuals.

(2) No deduction shall be allowed under section 170 for a charitable contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4), subject to the conditions specified in such sections and the regulations thereunder.

(3) For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950, as amended (50 U.S.C. 790).

(4) For denial of deductions for charitable contributions as trade or business expenses and rules with respect to treatment of payments to organizations other than those described in section 170(c), see section 162 and the regulations thereunder.

(5) No deduction shall be allowed under section 170 for amounts paid to an organization:

(i) Which is disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, or

(ii) Which participates in, or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

For purposes of determining whether an organization is attempting to influence legislation or is engaging in political activities, see sections 501(c)(3), 501(h), 4911 and the regulations thereunder.

(6) No deduction shall be allowed under section 170 for expenditures for lobbying purposes, the promotion or defeat of legislation, etc. See also the regulations under sections 162 and 4945.

(7) No deduction for charitable contributions is allowed in computing the taxable income of a common trust fund or of a partnership. See sections 584(d)(3) and 703(a)(2)(D). However, a partner's distributive share of charitable contributions actually paid by a partnership during its

taxable year may be allowed as a deduction in the partner's separate return for his taxable year with or within which the taxable year of the partnership ends, to the extent that the aggregate of his share of the partnership contributions and his own contributions does not exceed the limitations in section 170(b).

(8) For charitable contributions paid by a nonresident alien individual or a foreign corporation, see §1.170A-4(b)(5) and sections 873, 876, 877, and 882(c), and the regulations thereunder.

(9) [Reserved]. For further guidance see §1.170A-1T(j)(9).

(10) For carryover of excess charitable contributions in certain corporate acquisitions, see section 381(c)(19) and the regulations thereunder.

(11) No deduction shall be allowed under section 170 for out-of-pocket expenditures on behalf of an eligible organization (within the meaning of §1.501(h)-2(b)(1)) if the expenditure is made in connection with influencing legislation (within the meaning of section 501(c)(3) or §56.4911-2), or in connection with the payment of the organization's tax liability under section 4911. For the treatment of similar expenditures on behalf of other organizations see paragraph (h)(6) of this section.

(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 December 16, 1996. However, taxpayers may rely on the rules of paragraph (h) of this section for payments made on or after January 1, 1994. [Reg. §1.170A-1.]

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(a) through (j)(8) [Reserved]. For further guidance, see §1.170A-1(a) through (j)(8).

(j)(9) Charitable contributions paid by bona fide residents of a section 931 possession as defined in §1.931-1T(c)(1) or Puerto Rico are deductible only to the extent allocable to income that is not excluded under section 931 or 933. For the rules for allocating deductions for charitable contributions, see the regulations under section 861.

(j)(10) and (11) [Reserved]. For further guidance, see §1.170-1(j)(10) and (11).

(k) *Effective date*. —This section shall apply for taxable years ending after October 22, 2004. [Temporary Reg. §1.170A-1T.]

§1.170A-2. Amounts paid to maintain certain students as members of the taxpayer's household

(a) *In general*

(1) The term “charitable contributions” includes amounts paid by the taxpayer during the taxable year to maintain certain students as members of his household which, under the provisions of section 170(h) and this section, are treated as amounts paid for the use of an organization described in section 170(c)(2), (3), or (4), and such amounts, to the extent they do not exceed the limitations under section 170(h)(2) and paragraph (b) of this section, are contributions deductible under section

170. In order for such amounts to be so treated, the student must be an individual who is neither a dependent (as defined in section 152) of the taxpayer nor related to the taxpayer in a manner described in any of the paragraphs (1) through (8) of section 152(a), and such individual must be a member of the taxpayer's household pursuant to a written agreement between the taxpayer and an organization described in section 170(c)(2), (3), or (4) to implement a program of the organization to provide educational opportunities for pupils or students placed in private homes by such organization. Furthermore, such amounts must be paid to maintain such individual during the period in the taxable year he is a member of the taxpayer's household and is a full-time pupil or student in the twelfth or any lower grade at an educational institution, as defined in section 151(e)(4) and §1.151-3, located in the United States. Amounts paid outside of such period, but within the taxable year, for expenses necessary for the maintenance of the student during the period will qualify for the charitable contributions deduction if the other limitation requirements of the section are met.

(2) For purposes of subparagraph (1) of this paragraph, amounts treated as charitable contributions include only those amounts actually paid by the taxpayer during the taxable year which are directly attributable to the maintenance of the student while he is a member of the taxpayer's household and is attending an educational institution on a full-time basis. This would include amounts paid to ensure the well-being of the individual and to carry out the purpose for which the individual was placed in the taxpayer's home. For example, a deduction under section 170 would be allowed for amounts paid for books, tuition, food, clothing, transportation, medical and dental care, and recreation for the individual. Amounts treated as charitable contributions under this section do not include amounts which the taxpayer would have expended had the student not been in the household. They would not include, for example, amounts paid in connection with the taxpayer's home for taxes, insurance, interest on a mortgage, repairs, etc. Moreover, such amounts do not include any depreciation sustained by the taxpayer in maintaining such student or students in his household, nor do they include the value of any services rendered on behalf of such student or students by the taxpayer or any member of the taxpayer's household.

(3) For purposes of section 170(h) and this section, an individual will be considered to be a full-time pupil or student at an educational institution only if he is enrolled for a course of study prescribed for a full-time student at such institution and is attending classes on a full-time basis. Nevertheless, such individual may be absent from school due to special circumstances and still be considered to be in full-time attendance. Periods during the regular school term when the school is closed for holidays, such as Christmas and Easter, and for periods between semesters are treated as periods during which the pupil or student is in full-time attendance at the school. Also, absences during the regular school term due to illness of such individual shall not prevent him from being considered as a full-time pupil or student. Similarly, absences from the taxpayer's household due to special circumstances will not disqualify the student as a member of the household. Summer vacations between regular school terms are not considered periods of school attendance.

(4) When claiming a deduction for amounts described in section 170(h) and this section, the taxpayer must submit with his return a copy of his agreement with the organization sponsoring the individual placed in the taxpayer's household, together with a summary of the various items for which amounts were paid to maintain such individual, and a statement as to the date the individual became a member of the household and the period of his full-time attendance at school and the name and location of such school. Substantiation of amounts claimed must be supported by adequate records of the amounts actually paid. Due to the nature of certain items, such as food, a record of amounts spent for all members of the household, with an equal portion thereof allocated to each member, will be acceptable.

(b) *Limitations*. —Section 170(h) and this section shall apply to amounts paid during the taxable year

only to the extent that the amounts paid in maintaining each pupil or student do not exceed $50 multiplied by the number of full calendar months in the taxable year that the pupil or student is maintained in accordance with the provisions of this section. For purposes of such limitation if 15 or more days of a calendar month fall within the period to which the maintenance of such pupil or student relates, such month is considered as a full calendar month. To the extent that such amounts qualify as charitable contributions under section 170(c), the aggregate of such amounts plus other contributions made during the taxable year for the use of an organization described in section 170(c) is deductible under section 170 subject to the limitation provided in section 170(b)(1)(B) and paragraph (c) of §1.170A-8.

(c) *Compensation or reimbursement*. —Amounts paid during the taxable year to maintain a pupil or student as a member of the taxpayer's household as provided in paragraph (a) of this section, shall not be taken into account under section 170(h) and this section, if the taxpayer receives any money or other property as compensation or reimbursement for any portion of such amounts. The taxpayer will not be denied the benefits of section 170(h) if he prepays an extraordinary or non-recurring expense, such as a hospital bill or vacation trip, at the request of the individual's parents or the sponsoring organization and is reimbursed for such prepayment. The value of services performed by the pupil or student in attending to ordinary chores of the household will generally not be considered to constitute compensation or reimbursement. However, if the pupil or student is taken into the taxpayer's household to replace a former employee of the taxpayer or gratuitously to perform substantial services for the taxpayer, the facts and circumstances may warrant a conclusion that the taxpayer received reimbursement for maintaining the pupil or student.

(d) *No other amount allowed as deduction*. —Except to the extent that amounts described in section 170(h) and this section are treated as charitable contributions under section 170(c) and, therefore, deductible under section 170(a), no deduction is allowed for any amount paid to maintain an individual, as a member of the taxpayer's household, in accordance with the provisions of section 170(h) and this section.

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

Example (1). The X organization is an organization described in section 170(c)(2) and is engaged in a program under which a number of European children are placed in the homes of U.S. residents in order to further the children's high school education. In accordance with paragraph (a) of this section, the taxpayer, A, who reports his income on the calendar year basis, agreed with X to take two of the children, and they were placed in the taxpayer's home on January 2, 1970, where they remained until January 21, 1971, during which time they were fully maintained by the taxpayer. The children enrolled at the local high school for the full course of study prescribed for 10th grade students and attended the school on a full-time basis for the spring semester starting January 18, 1970, and ending June 3, 1970, and for the fall semester starting September 1, 1970, and ending January 13, 1971. The total cost of food paid by A in 1970 for himself, his wife, and the two children amounted to $1,920, or $40 per month for each member of the household. Since the children were actually full-time students for only $8^1/_2$ months during 1970, the amount paid for food for each child during that period amounted to $340. Other amounts paid during the $8^1/_2$ month period for each child for laundry, lights, water, recreation, and school supplies amounted to $160. Thus, the amounts treated under section 170(h) and this section as paid for the use of X would, with respect to each child, total $500 ($340 + $160), or a total for both children of $1,000, subject to the limitations of paragraph (b) of this section. Since, for purposes of such limitations, the children were full-time students for only 8 full calendar months during 1970 (less than 15 days in January 1970), the taxpayer may treat only $800 as a charitable contribution made in 1970, that is, $50 multiplied by the 8 full calendar months, or $400 paid for the maintenance of each child. Neither the excess payments nor amounts paid to maintain the children during the period before

school opened and for the period in summer between regular school terms is taken into account by reason of section 170(h). Also, because the children were full-time students for less than 15 days in January 1971 (although maintained in the taxpayer's household for 21 days), amounts paid to maintain the children during 1971 would not qualify as a charitable contribution.

Example (2). A religious organization described in section 170(c)(2) has a program for providing educational opportunities for children it places in private homes. In order to implement the program, the taxpayer, H, who resides with his wife, son, and daughter of high school age in a town in the United States, signs an agreement with the organization to maintain a girl sponsored by the organization as a member of his household while the child attends the local high school for the regular 1970-71 school year. The child is a full-time student at the school during the school year starting September 6, 1970, and ending June 6, 1971, and is a member of the taxpayer's household during that period. Although the taxpayer pays $200 during the school period falling in 1970, and $240 during the school period falling in 1971, to maintain the child, he cannot claim either amount as a charitable contribution because the child's parents, from time to time during the school year, send butter, eggs, meat, and vegetables to H to help defray the expenses of maintaining the child. This is considered property received as reimbursement under paragraph (c) of this section. Had her parents not contributed the food, the fact that the child, in addition to the normal chores she shared with the taxpayer's daughter, such as cleaning their own rooms and helping with the shopping and cooking, was responsible for the family laundry and for the heavy cleaning of the entire house while the taxpayer's daughter had no comparable responsibilities would also preclude a claim for a charitable contributions deduction. These substantial gratuitous services are considered property received as reimbursement under paragraph (c) of this section.

Example (3). A taxpayer resides with his wife in a city in the eastern United States. He agrees, in writing, with a fraternal society described in section 170(c)(4) to accept a child selected by the society for maintenance by him as a member of his household during 1971 in order that the child may attend the local grammar school as a part of the society's program to provide elementary education for certain children selected by it. The taxpayer maintains the child, who has as his principal place of abode the home of the taxpayer, and is a member of the taxpayer's household, during the entire year 1971. The child is a full-time student at the local grammar school for 9 full calendar months during the year. Under the agreement, the society pays the taxpayer $30 per month to help maintain the child. Since the $30 per month is considered as compensation or reimbursement to the taxpayer for some portion of the maintenance paid on behalf of the child, no amounts paid with respect to such maintenance can be treated as amounts paid in accordance with section 170(h). In the absence of the $30 per month payments, if the child qualifies as a dependent of the taxpayer under section 152(a)(9), that fact would also prevent the maintenance payments from being treated as charitable contributions paid for the use of the fraternal society.

(f) *Effective date*. —This section applies only to contributions paid in taxable years beginning after December 31, 1969. [Reg. §1.170A-2.]

§1.170A-3. Reduction of charitable contribution for interest on certain indebtedness

(a) *In general*. —Section 170(f)(5) requires that the amount of a charitable contribution be reduced for certain interest to the extent necessary to avoid the deduction of the same amount both as an interest deduction under section 163 and as a deduction for charitable contributions under section 170. The reduction is to be determined in accordance with paragraphs (b) and (c) of this section.

(b) *Interest attributable to postcontribution period*. —In determining the amount to be taken into account as a charitable contribution for purposes of section 170, the amount determined without regard

to section 170(f)(5) or this section shall be reduced by the amount of interest which has been paid, or is to be paid, by the taxpayer, which is attributable to any liability connected with the contribution, and which is attributable to any period of time after the making of the contribution. The deduction otherwise allowable for charitable contributions under section 170 is required to be reduced pursuant to section 170(f)(5) and this section only if, in connection with a charitable contribution, a liability is assumed by the recipient of the contribution or by any other person or if the charitable contribution is of property which is subject to a liability. Thus, if a charitable contribution is made in property and the transfer is conditioned upon the assumption of a liability by the donee or by some other person, the contribution must be reduced by the amount of any interest which has been paid, or will be paid, by the taxpayer, which is attributable to the liability, and which is attributable to any period after the making of the contribution. The adjustment referred to in this paragraph must also be made where the contributed property is subject to a liability and the value of the property reflects the payment by the donor of interest with respect to a period of time after the making of the contribution.

(c) *Interest attributable to precontribution period.* —If, in connection with the charitable contribution of a bond, a liability is assumed by the recipient or by any other person, or if the bond is subject to a liability, then, in determining the amount to be taken into account as a charitable contribution under section 170, the amount determined without regard to section 170(f)(5) and this section shall, without regard to whether any reduction may be required by paragraph (b) of this section, also be reduced for interest which has been paid, or is to be paid, by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and which is attributable to any period before the making of the contribution. However, the reduction referred to in this paragraph shall be made only to the extent that such reduction does not exceed the interest (including bond discount and other interest equivalent) receivable on the bond, and attributable to any period before the making of the contribution which is not, by reason of the taxpayer's method of accounting, includible in the taxpayer's gross income for any taxable year. For purposes of section 170(f)(5) and this section the term “bond” means any bond, debenture, note, or certificate or other evidence of indebtedness.

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

Example (1). On January 1, 1970, A, a cash basis taxpayer using the calendar year as the taxable year, contributed to a charitable organization real estate having a fair market value and adjusted basis of $10,000. In connection with the contribution the charitable organization assumed an indebtedness of $8,000 which A had incurred. On December 31, 1969, A prepaid one year's interest on that indebtedness for 1970, amounting to $960, and took an interest deduction of $960 for such amount. The amount of the gift, determined without regard to this section, is $2,960 ($10,000 less $8,000, the outstanding indebtedness, plus $960, the amount of prepaid interest). In determining the amount of the deduction for the charitable contribution, the value of the gift ($2,960) must be reduced by $960 to eliminate from the computation of such deduction that portion thereof for which A has been allowed an interest deduction.

Example (2). (a) On January 1, 1970, B, an individual using the cash receipts and disbursements method of accounting, purchased for $9,950 a $5^{1}/_{2}$ percent $10,000, 20-year M Corporation bond, the interest on which was payable semi-annually on June 30 and December 31. The M Corporation had issued the bond on January 1, 1960, at a discount of $720 from the principal amount. On December 1, 1970, B donated the bond to a charitable organization, and, in connection with the contribution, the charitable organization assumed an indebtedness of $7,000 which B had incurred to purchase and carry the bond.

(b) During the calendar year 1970 B paid accrued interest of $330 on the indebtedness for the period from January 1, 1970, to December 1, 1970, and has taken an interest deduction of $330 for such

amount. No portion of the bond discount of $36 a year ($720 divided by 20 years) has been included in B's income, and of the $550 of annual interest receivable on the bond, he included in income only the June 30, 1970, payment of $275.

(c) The market value of the bond on December 1, 1970, was $9,902. Such value includes $229 of interest receivable which had accrued from July 1 to December 1, 1970.

(d) The amount of the charitable contribution determined without regard to this section is $2,902 ($9,902, the value of the property on the date of gift, less $7,000, the amount of the liability assumed by the charitable organization). In determining the amount of the allowable deduction for charitable contributions, the value of the gift ($2,902) must be reduced to eliminate from the deduction that portion thereof for which B has been allowed an interest deduction. Although the amount of such interest deduction was $330, the reduction required by this section is limited to $262, since the reduction is not in excess of the amount of interest income on the bond ($229 of accrued interest plus $33, the amount of bond discount attributable to the 11-month period B held the bond).

(e) *Effective date*. —This section applies only to contributions paid in taxable years beginning after December 31, 1969. [Reg. §1.170A-3.]

§1.170A-4. Reduction in amount of charitable contributions of certain appreciated property

(a) *Amount of reduction*. —Section 170(e)(1) requires that the amount of the charitable contribution which would be taken into account under section 170(a) without regard to section 170(e) shall be reduced before applying the percentage limitations under section 170(b) —

(1) In the case of a contribution by an individual or by a corporation of ordinary income property, as defined in paragraph (b)(1) of this section, by the amount of gain (hereinafter in this section referred to as ordinary income) which would have been recognized as gain which is not long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization,

(2) In the case of a contribution by an individual of section 170(e) capital gain property, as defined in paragraph (b)(2) of this section, by 50 percent of the amount of gain (hereinafter in this section referred to as long-term capital gain) which would have been recognized as long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization, and

(3) In the case of a contribution by a corporation of section 170(e) capital gain property, as defined in paragraph (b)(2) of this section by $62^1/_2$ percent of the amount of gain (hereinafter in this section referred to as long-term capital gain) which would have been recognized as long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization,

Section 170(e)(1) and this paragraph do not apply to reduce the amount of the charitable contribution where, by reason of the transfer of the contributed property, ordinary income or capital gain is recognized by the donor in the same taxable year in which the contribution is made. Thus, where income or gain is recognized under section 453(d) upon the transfer of an installment obligation to a charitable organization, or under section 454(b) upon the transfer of an obligation issued at a discount to such an organization, or upon the assignment of income to such an organization, section 170(e)(1) and this paragraph do not apply if recognition of the income or gain occurs in the same taxable year in which the contribution is made. Section 170(e)(1) and this paragraph apply to a charitable contribution

of an interest in ordinary income property or section 170(e) capital gain property which is described in paragraph (b) of §1.170A-6 or paragraph (b) of §1.170A-7. For purposes of applying section 170(e)(1) and this paragraph it is immaterial whether the charitable contribution is made "to" the charitable organization or whether it is made "for the use of" the charitable organization. See §1.170A-8(a)(2).

(b) *Definitions and other rules*. —For purposes of this section —

(1) *Ordinary income property*. —The term "ordinary income property" means property any portion of the gain on which would not have been long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization. Such term includes, for example, property held by the donor primarily for sale to customers in the ordinary course of his trade or business, a work of art created by the donor, a manuscript prepared by the donor, letters and memorandums prepared by or for the donor, a capital asset held by the donor for not more than 1 year (6 months for taxable years beginning before 1977; 9 months for taxable years beginning in 1977), and stock described in section 306(a), 341(a), or 1248(a) to the extent that, after applying such section, gain on its disposition would not have been long-term capital gain. The term does not include an income interest in respect of which a deduction is allowed under section 170(f)(2)(B) and paragraph (c) of §1.170A-6.

(2) *Section 170(e) capital gain property*. —The term "section 170(e) capital gain property" means property any portion of the gain on which would have been treated as long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization and which —

(i) Is contributed to or for the use of a private foundation, as defined in section 509(a) and the regulations thereunder, other than a private foundation described in section 170(b)(1)(E),

(ii) Constitutes tangible personal property contributed to or for the use of a charitable organization, other than a private foundation to which subdivision (i) of this subparagraph applies, which is put to an unrelated use by the charitable organization within the meaning of subparagraph (3) of this paragraph, or

(iii) Constitutes property not described in subdivision (i) or (ii) of this subparagraph which is 30-percent capital gain property to which an election under paragraph (d)(2) of §1.170A-8 applies.

For purposes of this subparagraph a fixture which is intended to be severed from real property shall be treated as tangible personal property.

(3) *Unrelated use*

(i) *In general*. —The term "unrelated use" means a use which is unrelated to the purpose or function constituting the basis of the charitable organization's exemption under section 501 or, in the case of a contribution of property to a governmental unit, the use of such property by such unit for other than exclusively public purposes. For example, if a painting contributed to an educational institution is used by that organization for educational purposes by being placed in its library for display and study by art students, the use is not an unrelated use; but if the painting is sold and the proceeds used by the organization for educational purposes, the use of the property is an unrelated use. If furnishings contributed to a charitable organization are used by it in its offices and buildings in the course of carrying out its functions, the use of the property is not an unrelated use. If a set or collection of items of tangible personal property is contributed to a charitable organization or governmental unit, the use of the set or collection is not an unrelated use if the

donee sells or otherwise disposes of only an insubstantial portion of the set or collection. The use by a trust of tangible personal property contributed to it for the benefit of a charitable organization is an unrelated use if the use by the trust is one which would have been unrelated if made by the charitable organization.

(ii) *Proof of use*. —For purposes of applying subparagraph (2)(ii) of this paragraph, a taxpayer who makes a charitable contribution of tangible personal property to or for the use of a charitable organization or governmental unit may treat such property as not being put to an unrelated use by the donee if —

(a) He establishes that the property is not in fact put to an unrelated use by the donee, or

(b) At the time of the contribution or at the time the contribution is treated as made, it is reasonable to anticipate that the property will not be put to an unrelated use by the donee. In the case of a contribution of tangible personal property to or for the use of a museum, if the object donated is of a general type normally retained by such museum or other museums for museum purposes, it will be reasonable for the donor to anticipate, unless he has actual knowledge to the contrary, that the object will not be put to an unrelated use by the donee, whether or not the object is later sold or exchanged by the donee.

(4) *Property used in trade or business*. —For purposes of applying subparagraphs (1) and (2) of this paragraph, property which is used in the trade or business, as defined in section 1231(b), shall be treated as a capital asset, except that any gain in respect of such property which would have been recognized if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization shall be treated as ordinary income to the extent that such gain would have constituted ordinary income by reason of the application of section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a).

(5) *Nonresident alien individuals and foreign corporations*. —The reduction in the case of a nonresident alien individual or a foreign corporation shall be determined by taking into account the gain which would have been recognized and subject to tax under chapter 1 of the Code if the property had been sold or disposed of within the United States by the donor at its fair market value at the time of its contribution to the charitable organization. However, the amount of such gain which would have been subject to tax under section 871(a) or 881 (relating to gain not effectively connected with the conduct of a trade or business within the United States) if there had been a sale or other disposition within the United States shall be treated as long-term capital gain. Thus, a charitable contribution by a nonresident alien individual or a foreign corporation of property the sale or other disposition of which within the United States would have resulted in gain subject to tax under section 871(a) or 881 will be reduced only as provided in section 170(e)(1)(B) and paragraph (a)(2) or (3) of this section, but only if the property contributed is described in subdivision (i), (ii), or (iii) of subparagraph (2) of this paragraph. A charitable contribution by a nonresident alien individual or a foreign corporation of property the sale or other disposition of which within the United States would have resulted in gain subject to tax under section 871(a) or 881 will in no case be reduced under section 170(e)(1)(A) and paragraph (a)(1) of this section.

(c) *Allocation of basis and gain*

(1) *In general*. —Except as provided in subparagraph (2) of this paragraph —

(i) If a taxpayer makes a charitable contribution of less than his entire interest in appreciated property, whether or not the transfer is made in trust, as, for example, in the case of a transfer of

appreciated property to a pooled income fund described in section 642(c)(5) and §1.642(c)-5, and is allowed a deduction under section 170 for a portion of the fair market value of such property, then for purposes of applying the reduction rules of section 170(e)(1) and this section to the contributed portion of the property the taxpayer's adjusted basis in such property at the time of the contribution shall be allocated under section 170(e)(2) between the contributed portion of the property and the noncontributed portion.

(ii) The adjusted basis of the contributed portion of the property shall be that portion of the adjusted basis of the entire property which bears the same ratio to the total adjusted basis as the fair market value of the contributed portion of the property bears to the fair market value of the entire property.

(iii) The ordinary income and the long-term capital gain which shall be taken into account in applying section 170(e)(1) and paragraph (a) of this section to the contributed portion of the property shall be the amount of gain which would have been recognized as ordinary income and long-term capital gain if such contributed portion had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

(2) *Bargain sale*

(i) Section 1011(b) and §1.1011-2 apply to bargain sales of property to charitable organizations. For purposes of applying the reduction rules of section 170(e)(1) and this section to the contributed portion of the property in the case of a bargain sale, there shall be allocated under section 1011(b) to the contributed portion of the property that portion of the adjusted basis of the entire property that bears the same ratio to the total adjusted basis as the fair market value of the contributed portion of the property bears to the fair market value of the entire property. For purposes of applying section 170(e)(1) and paragraph (a) of this section to the contributed portion of the property in such a case, there shall be allocated to the contributed portion the amount of gain that is not recognized on the bargain sale but that would have been recognized if such contributed portion had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

(ii) The term “bargain sale”, as used in this subparagraph, means a transfer of property which is in part a sale or exchange of the property and in part a charitable contribution, as defined in section 170(c), of the property.

(3) *Ratio of ordinary income and capital gain*. —For purposes of applying subparagraphs (1)(iii) and (2)(i) of this paragraph, the amount of ordinary income (or long-term capital gain) which would have been recognized if the contributed portion of the property had been sold by the donor at its fair market value at the time of its contribution shall be that amount which bears the same ratio to the ordinary income (or long-term capital gain) which would have been recognized if the entire property had been sold by the donor at its fair market value at the time of its contribution as (i) the fair market value of the contributed portion at such time bears to (ii) the fair market value of the entire property at such time. In the case of a bargain sale, the fair market value of the contributed portion for purposes of subdivision (i) is the amount determined by subtracting from the fair market value of the entire property the amount realized on the sale.

(4) *Donee's basis of property acquired*. —The adjusted basis of the contributed portion of the property as determined under subparagraph (1) or (2) of this paragraph, shall be used by the donee in applying to the contributed portion such provisions as section 514(a)(1), relating to adjusted basis of debt-financed property; section 1015(a), relating to basis of property acquired by gift; section

4940(c)(4), relating to capital gains and losses in determination of net investment income; and section 4942(f)(2)(B), relating to net short-term capital gain in determination of tax on failure to distribute income. The fair market value of the contributed portion of the property at the time of the contribution shall not be used by the donee as the basis of such contributed portion.

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

Example (1). (a) On July 1, 1970, C, an individual, makes the following charitable contributions, all of which are made to a church except in the case of the stock (as indicated):

Property	*Fair Market Value*	*Adjusted Basis*	*Recognized Gain if Sold*
Ordinary income property	$50,000	$35,000	$15,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock held more than 6 months contributed to --			
(i) A church	25,000	21,000	4,000
(ii) A private foundation not described in section 170(b)(1)(E)	15,000	10,000	5,000
(2) Tangible personal property held more than 6 months (put to unrelated use by church)	12,000	6,000	6,000
Total	$102,000	$72,000	$30,000

(b) After making the reductions required by paragraph (a) of this section, the amount of charitable contributions allowed (before application of section 170(b) limitations) is as follows:

Property	*Fair Market Value*	*Reduction*	*Contribution Allowed*
Ordinary income property	$50,000	$15,000	$35,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock contributed to --			
(i) The church	25,000		25,000
(ii) The private foundation	15,000	2,500	12,500
(2) Tangible personal property	12,000	3,000	9,000
Total	$102,000	$20,500	$81,500

(c) If C were a corporation, rather than an individual, the amount of charitable contributions allowed (before application of section 170(b) limitation) would be as follows:

Property	*Fair Market Value*	*Reduction*	*Contribution Allowed*
Ordinary income property	$50,000	$15,000	$35,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock contributed to --			
(i) The church	25,000	.....	25,000
(ii) The private foundation	15,000	3,125	11,875
(2) Tangible personal property	12,000	3,750	8,250
Total	$102,000	$21,875	$80,125

Example (2). On March 1, 1970, D, an individual, 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. Under paragraph (a)(1) of this section, D's contribution of $60,000 is reduced by $20,000.

Example (3). The facts are the same as in example (2) except that the property is contributed to a private foundation not described in section 170(b)(1)(E). Under paragraph (a)(1) and (2) of this section, D's contribution is reduced by $35,000 (100% of the ordinary income of $20,000 and 50% of the long-term capital gain of $30,000).

Example (4). (a) In 1971, E, an individual calendar-year taxpayer, contributes to a church stock held for more than 6 months which has a fair market value of $90,000 and an adjusted basis of $10,000. In 1972, E also contributes to a church stock held for more than 6 months which has a fair market value of $20,000 and an adjusted basis of $10,000. E's contribution base for 1971 is $200,000; and for 1972, is $150,000. E makes no other charitable contributions for these 2 taxable years.

(b) For 1971 the amount of the contribution which may be taken into account under section 170(a) is limited by section 170(b)(1)(D)(i) to $60,000 ($200,000 ´ 30%), and A is allowed a deduction for $60,000. Under section 170(b)(1)(D)(ii), E has a $30,000 carryover to 1972 of 30-percent capital gain property, as defined in paragraph (d)(3) of §1.170A-8. For 1972 the amount of the charitable contributions deduction is $45,000 (total contributions of $50,000 [$30,000 + $20,000] but not to exceed 30% of $150,000).

(c) Assuming, however, that in 1972 E elects under section 170(b)(1)(D)(iii) and paragraph (d)(2) of §1.170A-8 to have section 170(e)(1)(B) apply to his contributions and carryovers of 30-percent capital

gain property, he must apply section 170(d)(1) as if section 170(e)(1)(B) had applied to the contribution for 1971. If section 170(e)(1)(B) had applied in 1971 to his contributions of 30-percent capital gain property, E's contribution would have been reduced from $90,000 to $50,000, the reduction of $40,000 being 50 percent of the gain of $80,000 ($90,000 - $10,000) which would have been recognized as long-term capital gain if the property had been sold by E at its fair market value at the time of its contribution to the church. Accordingly, by taking the election into account, E has no carryover of 30-percent capital gain property to 1972 since the charitable contributions deduction of $60,000 allowed for 1971 in respect of that property exceeds the reduced contribution of $50,000 for 1971 which may be taken into account by reason of the election. The charitable contributions deduction of $60,000 allowed for 1971 is not reduced by reason of the election.

(d) Since by reason of the election E is allowed under paragraph (a)(2) of this section a charitable contributions deduction for 1972 of $15,000 ($20,000 - [($20,000 - $10,000) ´ 50%]) and since the $30,000 carryover from 1971 is eliminated, it would not be to E's advantage to make the election under section 170(b)(1)(D)(iii) in 1972.

Example (5). In 1970, F, an individual calendar-year taxpayer, sells to a church for $4,000 ordinary income property with a fair market value of $10,000 and an adjusted basis of $4,000. F's contribution base for 1970 is $20,000, and F makes no other charitable contributions in 1970. Thus, F makes a charitable contribution to the church of $6,000 ($10,000 - $4,000 amount realized), which is 60% of the value of the property. The amount realized on the bargain sale is 40% ($4,000/$10,000) of the value of the property. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of $1,600 ($4,000 adjusted basis ´ 40%) is allocated under §1.1011-2(b) to the noncontributed portion of the property, and F recognizes $2,400 ($4,000 amount realized less $1,600 adjusted basis) of ordinary income. Under paragraphs (a)(1) and (c)(2)(i) of this section, F's contribution of $6,000 is reduced by $3,600 ($6,000 - [$4,000 adjusted basis ´ 60%]) (*i.e.*, the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of $2,400 consists of the portion ($4,000 ´ 60%) of the adjusted basis not allocated to the noncontributed portion of the property. That is, the reduced contribution consists of the portion of the adjusted basis allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is $6,400 ($4,000 + $2,400).

Example (6). In 1970, G, an individual calendar-year taxpayer, sells to a church for $6,000 ordinary income property with a fair market value of $10,000 and an adjusted basis of $4,000. G's contribution base for 1970 is $20,000, and G makes no other charitable contributions in 1970. Thus, G makes a charitable contribution to the church of $4,000 ($10,000 - $6,000 amount realized), which is 40% of the value of the property. The amount realized on the bargain sale is 60% ($6,000/$10,000) of the value of the property. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of $2,400 ($4,000 adjusted basis ´ 60%) is allocated under §1.1011-2(b) to the noncontributed portion of the property, and G recognizes $3,600 ($6,000 amount realized less $2,400 adjusted basis) of ordinary income. Under paragraphs (a)(1) and (c)(2)(i) of this section, G's contribution of $4,000 is reduced by $2,400 ($4,000 - [$4,000 adjusted basis ´ 40%]) (*i.e.*, the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of $1,600 consists of the portion ($4,000 ´ 40%) of the adjusted basis not allocated to the noncontributed portion of the property. That is, the reduced contribution consists of the portion of the adjusted basis allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is $7,600 ($6,000 + $1,600).

Example (7). In 1970, H, an individual calendar-year taxpayer, sells to a church for $2,000 stock held for not more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. H's contribution base for 1970 is $20,000, and H makes no other charitable contributions in 1970.

Thus, H makes a charitable contribution to the church of $8,000 ($10,000 - $2,000 amount realized), which is 80% of the value of the property. The amount realized on the bargain sale is 20% ($2,000/$10,000) of the value of the property. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of $800 ($4,000 adjusted basis ´ 20%) is allocated under §1.1011-2(b) to the noncontributed portion of the property, and H recognizes $1,200 ($2,000 amount realized less $800 adjusted basis) of ordinary income. Under paragraphs (a)(1) and (c)(2)(i) of this section, H's contribution of $8,000 is reduced by $4,800 ($8,000 - [$4,000 adjusted basis ´ 80%]) (*i.e.*, the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of $3,200 consists of the portion ($4,000 ´ 80%) of the adjusted basis not allocated to the noncontributed portion of the property. That is, the reduced contribution consists of the portion of the adjusted basis allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is $5,200 ($2,000 + $3,200).

Example (8). In 1970, F, an individual calendar-year taxpayer, sells for $4,000 to a private foundation not described in section 170(b)(1)(E) property to which section 1245 applies which has a fair market value of $10,000 and an adjusted basis of $4,000. F's contribution base for 1970 is $20,000, and F makes no other charitable contributions in 1970. At the time of the bargain sale, F has used the property in his business for more than 6 months. Thus, F makes a charitable contribution of $6,000 ($10,000 - $4,000 amount realized), which is 60% of the value of the property. The amount realized on the bargain sale is 40% ($4,000/$10,000) of the value of the property. If the property had been sold by F at its fair market value at the time of its contribution, it is assumed that under section 1245 $4,000 of the gain of $6,000 ($10,000 - $4,000 adjusted basis) would have been treated as ordinary income and $2,000 would have been long-term capital gain. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of $1,600 ($4,000 adjusted basis ´ 40%) is allocated under §1.1011-2(b) to the noncontributed portion of the property, and F's recognized gain of $2,400 ($4,000 amount realized less $1,600 adjusted basis) consists of $1,600 ($4,000 ´ 40%) of ordinary income and $800 ($2,000 ´ 40%) of long-term capital gain. Under paragraphs (a) and (c)(2)(i) of this section, F's contribution of $6,000 is reduced by $3,000 (the sum of $2,400 ($4,000 ´ 60%) of ordinary income and $600 ([$2,000 ´ 60%] ´ 50%) of long-term capital gain) (*i.e.*, the amount of gain that would have been recognized on the contributed portion had the property been sold). The reduced contribution of $3,000 consists of $2,400 ($4,000 ´ 60%) of adjusted basis and $600 ([$2,000 ´ 60%] ´ 50%) of long-term capital gain not used as a reduction under paragraph (a)(2) of this section. Under sections 1012 and 1015(a) the basis of the property to the private foundation is $6,400 ($4,000 + $2,400).

Example (9). On January 1, 1970, A, an individual, transfers to a charitable remainder annuity trust described in section 664(d)(1) stock which he has held for more than 6 months and which has a fair market value of $250,000 and an adjusted basis of $50,000, an irrevocable remainder interest in the property being contributed to a private foundation not described in section 170(b)(1)(E). The trust provides that an annuity of $12,500 a year is payable to A at the end of each year for 20 years. By reference to §20.2031-7A(c) of this chapter (Estate Tax Regulations) the figure in column (2) opposite 20 years is 11.4699. Therefore, under §1.664-2 the fair market value of the gift of the remainder interest to charity is $106,626.25 ($250,000 - [$12,500 ´ 11.4699]). Under paragraph (c)(1)(ii) of this section, the adjusted basis allocated to the contributed portion of the property is $21,325.25 ($50,000 ´ $106,626.25/$250,000). Under paragraphs (a)(2) and (c)(1) of this section, A's contribution is reduced by $42,650.50 (50% ´ [$106,626.25 - $21,325.25]) to $63,975.75 ($106,626.25 - $42,650.50). If, however, the irrevocable remainder interest in the property had been contributed to a section 170(b)(1)(A) organization, A's contribution of $106,626.25 would not be reduced under paragraph (a) of this section.

Example (10). (a) On July 1, 1970, B, a calendar-year individual taxpayer, sells to a church for $75,000 intangible property to which section 1245 applies which has a fair market value of $250,000 and an

adjusted basis of $75,000. Thus, B makes a charitable contribution to the church of $175,000 ($250,000 - $75,000 amount realized), which is 70% ($175,000/$250,000) of the value of the property, the amount realized on the bargain sale is 30% ($75,000/$250,000) of the value of the property. At the time of the bargain sale, B has used the property in his business for more than 6 months. B's contribution base for 1970 is $500,000, and B makes no other charitable contributions in 1970. If the property had been sold by B at its fair market value at the time of its contribution, it is assumed that under section 1245 $105,000 of the gain of $175,000 ($250,000 - $75,000 adjusted basis) would have been treated as ordinary income and $70,000 would have been long-term capital gain. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of $22,500 ($75,000 adjusted basis ´ 30%) is allocated under §1.1011-2(b) to the noncontributed portion of the property, and B's recognized gain of $52,500 ($75,000 amount realized less $22,500 adjusted basis) consists of $31,500 ($105,000 ´ 30%) of ordinary income and $21,000 ($70,000 ´ 30%) of long-term capital gain.

(b) Under paragraphs (a)(1) and (c)(2)(i) of this section B's contribution of $175,000 is reduced by $73,500 ($105,000 ´ 70%) (*i.e.*, the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of $101,500 consists of $52,500 [$75,000 ´ 70%] of adjusted basis allocated to the contributed portion of the property and $49,000 [$70,000 ´ 70%] of long-term capital gain allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is $127,500 ($75,000 + $52,500).

(e) *Effective date*. —This section applies only to contributions paid after December 31, 1969, except that, in the case of a charitable contribution of a letter, memorandum, or property similar to a letter or memorandum, it applies to contributions paid after July 25, 1969. [Reg. §1.170A-4.]

§1.170A-4A. Special rule for the deduction of certain charitable contributions of inventory and other property

(a) *Introduction*. —Section 170(e)(3) provides a special rule for the deduction of certain qualified contributions of inventory and certain other property. To be treated as a “qualified contribution,” a contribution must meet the restrictions and requirements of section 170(e)(3)(A) and paragraph (b) of this section. Paragraph (b)(1) of this section describes the corporations whose contributions may be subject to this section, the exempt organizations to which these contributions may be made, and the kinds of property which may be contributed. Under paragraph (b)(2) of this section, the use of the property must be related to the purpose or function constituting the ground for the exemption of the organization to which the contribution is made. Also, the property must be used for the care of the ill, needy, or infants. Under paragraph (b)(3) of this section, the recipient organization may not, except as there provided, require or receive in exchange money, property, or services for the transfer or use of property contributed under section 170(e)(3). Under paragraph (b)(4) of this section, the recipient organization must provide the contributing taxpayer with a written statement representing that the organization intends to comply with the restrictions set forth in paragraph (b)(2) and (3) of this section on the use and transfer of the property. Under paragraph (b)(5) of this section, the contributed property must conform to any applicable provisions of the Federal Food, Drug, and Cosmetic Act (as amended), and the regulations thereunder, at the date of contribution and for the immediately preceding 180 days. Paragraph (c) of this section provides the rules for determining the amount of reduction of the charitable contribution under section 170(e)(3). In general, the amount of the reduction is equal to one-half of the amount of gain (other than gain described in paragraph (d) of this section) which would not have been long-term capital gain if the property had been sold by the donor-taxpayer at fair market value at the date of contribution. If, after this reduction, the amount of the deduction would be more than twice the basis of the contributed property, the amount of the deduction is accordingly further reduced under paragraph (c)(1) of this section. The basis of contributed property which is inventory is determined under paragraph (c)(2) of this section, and the donor's cost of goods sold for the year of

contribution must be adjusted under paragraph (c)(3) of this section. Under paragraph (d) of this section, a deduction is not allowed for any amount which, if the property had been sold by the donor-taxpayer, would have been gain to which the recapture provisions of section 617, 1245, 1250, 1251, or 1252 would have applied. For purposes of section 170(e)(3), the rules of §1.170A-4 apply where not inconsistent with the rules of this section.

(b) *Qualified contributions*

(1) *In general*. —A contribution of property qualifies under section 170(e)(3) of this section only if it is a charitable contribution —

(i) By a corporation, other than a corporation which is an electing small business corporation within the meaning of section 1371(b);

(ii) To an organization described in section 501(c)(3) and exempt under section 501(a), other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(e);

(iii) Of property described in section 1221(1) or (2);

(iv) Which contribution meets the restrictions and requirements of paragraph (b)(2) through (5) of this section.

(2) *Restrictions on use of contributed property*. —In order for the contribution to qualify under this section, the contributed property is subject to the following restrictions in use. If the transferred property is used or transferred by the donee organization (or by any subsequent transferee that furnished to the donee organization the written statement described in paragraph (b)(4)(ii) of this section) in a manner inconsistent with the requirements of subdivision (i) or (ii) of this paragraph (b)(2) or the requirements of paragraph (b)(3) of this section, the donor's deduction is reduced to the amount allowable under section 170 of the regulations thereunder, determined without regard to section 170(e)(3) of this section. If, however, the donor establishes that, at the time of the contribution, the donor reasonably anticipated that the property would be used in a manner consistent with those requirements, then the donor's deduction is not reduced.

(i) *Requirement of use for exempt purpose*. —The use of the property must be related to the purpose or function constituting the ground for exemption under section 501(c)(3) of the organization to which the contribution is made. The property may not be used in connection with any activity which gives rise to unrelated trade or business income, as defined in sections 512 and 513 and the regulations thereunder.

(ii) *Requirement of use for care of the ill, needy, or infants*

(A) *In general*. —The property must be used for the care of the ill, needy, or infants, as defined in this subdivision (ii). The property itself must ultimately either be transferred to (or for the use of) the ill, needy, or infants for their care or be retained for their care. No other person may use the contributed property except as incidental to primary use in the care of the ill, needy, or infants. The organization may satisfy the requirement of this subdivision by transferring the property to a relative, custodian, parent or guardian of the ill or needy individual or infant, or to any other individual if it makes a reasonable effort to ascertain that the property will ultimately be used primarily for the care of the ill or needy individual, or infant, and not for the primary benefit of any other person. The recipient organization may transfer the property to

another exempt organization within the jurisdiction of the United States which meets the description contained in paragraph (b)(1)(ii) of this section, or to an organization not within the jurisdiction of the United States that, but for the fact that it is not within the jurisdiction of the United States, would be described in paragraph (b)(1)(ii) of this section. If an organization transfers the property to another organization, the transferring organization must obtain a written statement from the transferee organization as set forth in paragraph (b)(4) of this section. If the property is ultimately transferred to, or used for the benefit of, ill or needy persons, or infants, not within the jurisdiction of the United States, the organization which so transfers the property outside the jurisdiction of the United States must necessarily be a corporation. See section 170(c)(2) and §1.170A-11(a). For purposes of this subdivision, if the donee-organization charges for its transfer of contributed property (other than a fee allowed by paragraph (b)(3)(ii) of this section) the requirement of this subdivision is not met. See paragraph (b)(3) of this section.

(B) *Definition of the ill.* —An ill person is a person who requires medical care within the meaning of §1.213-1(e). Examples of ill persons include a person suffering from physical injury, a person with a significant impairment of a bodily organ, a person with an existing handicap, whether from birth or later injury, a person suffering from malnutrition, a person with a disease, sickness, or infection which significantly impairs physical health, a person partially or totally incapable of self-care (including incapacity due to old age). A person suffering from mental illness is included if the person is hospitalized or institutionalized for the mental disorder, or, although the person is nonhospitalized or noninstitutionalized, if the person's mental illness constitutes a significant health impairment.

(C) *Definition of care of the ill.* —Care of the ill means alleviation or cure of an existing illness and includes care of the physical, mental, or emotional needs of the ill.

(D) *Definition of the needy.* —A needy person is a person who lacks the necessities of life, involving physical, mental, or emotional well-being, as a result of poverty or temporary distress. Examples of needy persons include a person who is financially impoverished as a result of low income and lack of financial resources, a person who temporarily lacks food or shelter (and the means to provide for it), a person who is the victim of a natural disaster (such as fire or flood), a person who is the victim of a civil disaster (such as a civil disturbance), a person who is temporarily not self-sufficient as a result of a sudden and severe personal or family crisis (such as a person who is the victim of a crime of violence or who has been physically abused), a person who is a refugee or immigrant and who is experiencing language, cultural, or financial difficulties, a minor child who is not self-sufficient and who is not cared for by a parent or guardian, and a person who is not self-sufficient as a result of previous institutionalization (such as a former prisoner or a former patient in a mental institution).

(E) *Definition of care of the needy.* —Care of the needy means alleviation or satisfaction of an existing need. Since a person may be needy in some respects and not needy in other respects, care of the needy must relate to the particular need which causes the person to be needy. For example, a person whose temporary need arises from a natural disaster may need temporary shelter and food but not recreational facilities.

(F) *Definition of infant.* —An infant is a minor child (as determined under the laws of the jurisdiction in which the child resides).

(G) *Definition of care of an infant.* —Care of an infant means performance of parental functions and provision for the physical, mental, and emotional needs of the infant.

(3) *Restrictions on transfer of contributed property*

(i) *In general*. —Except as otherwise provided in subdivision (ii) of this paragraph (b)(3), a contribution will not qualify under this section, if the donee-organization or any transferee of the donee-organization requires or receives any money, property, or services for the transfer or use of property contributed under section 170(e)(3). For example, if an organization provides temporary shelter for a fee, and also provides free meals to ill or needy individuals, or infants using food contributed under this section the contribution of food is subject to this section (if the other requirements of this section are met). However, the fee charged by the organization for the shelter may not be increased merely because meals are served to the ill or needy individuals or infants.

(ii) *Exception*. —A contribution may qualify under this section if the donee-organization charges a fee to another organization in connection with its transfer of the donated property, if —

(A) The fee is small or nominal in relation to the value of the transferred property and is not determined by this value; and

(B) The fee is designed to reimburse the donee-organization for its administrative, warehousing, or other similar costs.

For example, if a charitable organization (such as a food bank) accepts surplus food to distribute to other charities which give the food to needy persons, a small fee may be charged to cover administrative, warehousing, and other similar costs. This fee may be charged on the basis of the total number of pounds of food distributed to the transferee charity but not on the basis of the value of the food distributed. The provisions of this subdivision (ii) do not apply to a transfer of donated property directly from an organization to ill or needy individuals, or infants.

(4) *Requirement of a written statement*

(i) *Furnished to taxpayer*. —In the case of any contribution made on or after [Date which is 30 days after the issuance of these regulations by Treasury decision], the donee-organization must furnish to the taxpayer a written statement which —

(A) Describes the contributed property, stating the date of its receipt;

(B) Represents that the property will be used in compliance with section 170(e)(3) and paragraphs (b)(2) and (3) of this section;

(C) Represents that the donee-organization meets the requirements of paragraph (b)(1)(ii) of this section; and

(D) Represents that adequate books and records will be maintained, and made available to the Internal Revenue Service upon request.

The written statement must be furnished within a reasonable period after the contribution, but not later than the date (including extensions) by which the donor is required to file a United States corporate income tax return for the year in which the contribution was made. The books and records described in (D) of this subdivision (i) need not trace the receipt and disposition of specific items of donated property if they disclose compliance with the requirements by reference to aggregate quantities of donated property. The books and records are adequate if

they reflect total amounts received and distributed (or used), and outline the procedure used for determining that the ultimate recipient of the property is an ill or needy individual, or infant. However, the books and records need not reflect the names of the ultimate individual recipients or the property distributed to (or used by) each one.

(ii) *Furnished to transferring organization*. —If an organization that received a contribution under this section transfers the contributed property to another organization on or after [Date which is 30 days after the issuance of these regulations by Treasury decision], the transferee organization must furnish to the transferring organization a written statement which contains the information required in paragraph (b)(4)(i)(A), (B) and (D) of this section. The statement must also represent that the transferee organization meets the requirements of paragraph (b)(1)(ii) of this section (or, in the case of a transferee organization which is a foreign organization not within the jurisdiction of the United States, that, but for such fact, the organization would meet the requirements of paragraph (b)(1)(ii) of this section). The written statement must be furnished within a reasonable period after the transfer.

(5) *Requirement of compliance with the Federal Food, Drug, and Cosmetic Act*

(i) *In general*. —With respect to property contributed under this section which is subject to the Federal Food, Drug, and Cosmetic Act (as amended), and regulations thereunder, the contributed property must comply with the applicable provisions of that Act and regulations thereunder at the date of the contribution and for the immediately preceding 180 days. In the case of specific items of contributed property not in existence for the entire period of 180 days immediately preceding the date of contribution, the requirement of this paragraph (b)(5) is considered met if the contributed property complied with that Act and the regulations thereunder during the period of its existence and at the date of contribution and if, for the 180 day period prior to contribution other property (if any) held by the taxpayer at any time during that period, which property was fungible with the contributed property, complied with that Act and the regulations thereunder during the period held by the taxpayer.

(ii) *Example*. —The rule of this paragraph (b)(5) may be illustrated by the following example.

Example. Corporation X, a grocery store, contributes 12 crates of navel oranges. The oranges were picked and placed in the grocery store's stock two weeks prior to the date of contribution. The contribution satisfies the requirements of this paragraph (b)(5) if X complied with the Act and regulations thereunder for 180 days prior to the date of contribution with respect to all navel oranges in stock during that period.

(c) *Amount of reduction*

(1) *In general*. —Section 170(e)(3)(B) requires that the amount of the charitable contribution subject to this section which would be taken into account under section 170(a), without regard to section 170(e), must be reduced before applying the percentage limitations under section 170(b). The amount of the first reduction is equal to one-half of the amount of gain which would not have been long-term capital gain if the property had been sold by the donor-taxpayer at its fair market value on the date of its contribution, excluding, however, any amount described in paragraph (d) of this section. If the amount of the charitable contribution which remains after this reduction exceeds twice the basis of the contributed property, then the amount of the charitable contribution is reduced a second time to an amount which is equal to twice the amount of the basis of the property.

(2) *Basis of contributed property which is inventory*. —For the purposes of this section,

notwithstanding the rules of §1.170A-1(c)(4), the basis of contributed property which is inventory must be determined under the donor's method of accounting for inventory for purposes of United States income tax. The donor must use as the basis of the contributed item the inventoriable carrying cost assigned to any similar item not included in closing inventory. For example, under the LIFO dollar value method of accounting for inventory, where there has been an invasion of a prior year's layer, the donor may choose to treat the item contributed as having a basis of the unit's cost with reference to the layer(s) of prior year(s) cost or with reference to the current year cost.

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

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

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

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

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

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

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

(e) *Effective date*. —This section applies to qualified contributions made after October 4, 1976. [Reg. §1.170A-4A.]

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

(a) *In general*

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

(i) Have expired, or

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

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

(3) Section 170(a)(3) and this section have no application in respect of a transfer of a future interest in intangible personal property or in real property. However, a fixture which is intended to be severed from real property shall be treated as tangible personal property. For example, a contribution of a future interest in a chandelier which is attached to a building is considered a contribution which consists of a future interest in tangible personal property if the transferor intends that it be detached from the building at or prior to the time when the charitable organization's right to possession or enjoyment of the chandelier is to commence.

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

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

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

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

in which the donor has retained an intervening interest, no contribution is considered to have been made in 1970.

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

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

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

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

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

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

(c) *Effective date*. —This section applies only to contributions paid in taxable years beginning after December 31, 1969. [Reg. §1.170A-5.]

§1.170A-6. Charitable contributions in trust

(a) *In general*

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

(2) A deduction is allowed without regard to this section for a contribution of a partial interest in property if such interest is the taxpayer's entire interest in the property, such as an income interest or a remainder interest. If, however, the property in which such partial interest exists was divided in order to create such interest and thus avoid section 170(f)(2), the deduction will not be allowed. Thus, for example, assume that a taxpayer desires to contribute to a charitable organization the reversionary interest in certain stocks and bonds which he owns. If the taxpayer transfers such property in trust with the requirement that the income of the trust be paid to his son for life and that the reversionary interest be paid to himself and immediately after creating the trust contributes the reversionary interest to a charitable organization, no deduction will be allowed under section 170 for the contribution of the taxpayer's entire interest consisting of the reversionary interest in the trust.

(b) *Charitable contribution of a remainder interest in trust*

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

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

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

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

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

(c) *Charitable contribution of an income interest in trust*

(1) *In general*. —No deduction is allowed under section 170 for the fair market value of a charitable contribution of an income interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust unless the income interest is either a guaranteed annuity interest or a unitrust interest, as defined in paragraph (c) (2) of this section, and the grantor

is treated as the owner of such interest for purposes of applying section 671, relating to grantors and others treated as substantial owners. See section 4947(a)(2) for the application to such income interests in trust of the provisions relating to private foundations and section 508(e) for rules relating to provisions required in the governing instruments.

(2) *Definitions*. —For purposes of this paragraph —

(i) *Guaranteed annuity interest*

(A) An income interest is a "guaranteed annuity interest" only if it is an irrevocable right pursuant to the governing instrument of the trust to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term of years or for the life or lives of certain individuals, each of whom must be living at the date of transfer and can be ascertained at such date. Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in section 170, 2055, or 2522), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. A trust will satisfy the requirement that all noncharitable remainder beneficiaries are lineal descendants of the individual who is the measuring life, or that individual's spouse, if there is less than a 15% probability that individuals who are not lineal descendants will receive any trust corpus. This probability must be computed, based on the current applicable Life Table contained in §20.2031-7, at the time property is transferred to the trust taking into account the interests of all primary and contingent remainder beneficiaries who are living at that time. An interest payable for a specified term of years can qualify as a guaranteed annuity interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. The rule in this paragraph that a charitable interest may be payable for the life or lives of only certain specified individuals does not apply in the case of a charitable guaranteed annuity interest payable under a charitable remainder trust described in section 664. An amount is determinable if the exact amount which must be paid under the conditions specified in the governing instrument of the trust can be ascertained as of the date of transfer. For example, the amount to be paid may be a stated sum for a term of years, or for the life of the donor, at the expiration of which it may be changed by a specified amount, but it may not be redetermined by reference to a fluctuating index such as the cost of living index. In further illustration, the amount to be paid may be expressed in terms of a fraction or percentage of the cost of living index on the date of transfer.

(B) An income interest is a guaranteed annuity interest only if it is a guaranteed annuity interest in every respect. For example, if the income interest is the right to receive from a trust each year a payment equal to the lesser of a sum certain or a fixed percentage of the net fair market value of the trust assets, determined annually, such interest is not a guaranteed annuity interest.

(C) Where a charitable interest is in the form of a guaranteed annuity interest, the governing instrument of the trust may provide that income of the trust which is in excess of the amount required to pay the guaranteed annuity interest shall be paid to or for the use of a charitable organization. Nevertheless, the amount of the deduction under section 170(f)(2)(B) shall be limited to the fair market value of the guaranteed annuity interest as determined under paragraph (c)(3) of this section. For a rule relating to treatment by the grantor of any

contribution made by the trust in excess of the amount required to pay the guaranteed annuity interest, see paragraph (d)(2)(ii) of this section.

(D) If the present value on the date of transfer of all the income interests for a charitable purpose exceeds 60 percent of the aggregate fair market value of all amounts in the trust (after the payment of liabilities), the income interest will not be considered a guaranteed annuity interest unless the governing instrument of the trust prohibits both the acquisition and the retention of assets which would give rise to a tax under section 4944 if the trustee had acquired such assets. The requirement in this subdivision (D) for a prohibition in the governing instrument against the retention of assets which would give rise to a tax under section 4944 if the trustee had acquired the assets shall not apply to a transfer in trust made on or before May 21, 1972.

(E) Where a charitable interest in the form of a guaranteed annuity interest is transferred after May 21, 1972, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(i)(E), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See §53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

(F) For rules relating to certain governing instrument requirements and to the imposition of certain excise taxes where the guaranteed annuity interest is in trust and for rules governing payment of private income interests by a split-interest trust, see section 4947(a)(2) and (b)(3)(A), and the regulations thereunder.

(ii) *Unitrust interest*

(A) An income interest is a “unitrust interest” only if it is an irrevocable right pursuant to the governing instrument of the trust to receive payment, not less often than annually, of a fixed percentage of the net fair market value of the trust assets, determined annually. In computing the net fair market value of the trust assets, all assets and liabilities shall be taken into account without regard to whether particular items are taken into account in determining the income of the trust. The net fair market value of the trust assets may be determined on any one date during the year or by taking the average of valuations made on more than one date during the year, provided that the same valuation date or dates and valuation methods are used each year. Where the governing instrument of the trust does not specify the valuation date or dates, the trustee shall select such date or dates and shall indicate his selection on the first return on Form 1041 which the trust is required to file. Payments under a unitrust interest may be paid for a specified term of years or for the life or lives of certain individuals, each of whom must be living at the date of transfer and can be ascertained at such date. Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in section 170, 2055, or 2522), is either a lineal ancestor or the spouse of a lineal

ancestor of those beneficiaries. A trust will satisfy the requirement that all noncharitable remainder beneficiaries are lineal descendants of the individual who is the measuring life, or that individual's spouse, if there is less than a 15% probability that individuals who are not lineal descendants will receive any trust corpus. This probability must be computed, based on the current applicable Life Table contained in §20.2031-7, at the time property is transferred to the trust taking into account the interests of all primary and contingent remainder beneficiaries who are living at that time. An interest payable for a specified term of years can qualify as a unitrust interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. The rule in this paragraph that a charitable interest may be payable for the life or lives of only certain specified individuals does not apply in the case of a charitable unitrust interest payable under a charitable remainder trust described in section 664.

(B) An income interest is a unitrust interest only if it is a unitrust interest in every respect. For example, if the income interest is the right to receive from a trust each year a payment equal to the lesser of a sum certain or a fixed percentage of the net fair market value of the trust assets, determined annually, such interest is not a unitrust interest.

(C) Where a charitable interest is in the form of a unitrust interest, the governing instrument of the trust may provide that income of the trust which is in excess of the amount required to pay the unitrust interest shall be paid to or for the use of a charitable organization. Nevertheless, the amount of the deduction under section 170(f)(2)(B) shall be limited to the fair market value of the unitrust interest as determined under paragraph (c)(3) of this section. For a rule relating to treatment by the grantor of any contribution made by the trust in excess of the amount required to pay the unitrust interest, see paragraph (d)(2)(ii) of this section.

(D) Where a charitable interest is in the form of a unitrust interest, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(ii)(D), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See §53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

(E) For rules relating to certain governing instrument requirements and to the imposition of certain excise taxes where the unitrust interest is in trust and for rules governing payment of private income interests by a split-interest trust, see section 4947(a)(2) and (b)(3)(A), and the regulations thereunder.

(3) *Valuation of income interest*

(i) The deduction allowed by section 170(f)(2)(B) for a charitable contribution of a guaranteed annuity interest is limited to the fair market value of such interest on the date of contribution, as

computed under §20.2031-7 or, for certain prior periods, §20.2031-7A of this chapter (Estate Tax Regulations).

(ii) The deduction allowed under section 170(f)(2)(B) for a charitable contribution of a unitrust interest is limited to the fair market value of the unitrust interest on the date of contribution. The fair market value of the unitrust interest shall be determined by subtracting the present value of all interests in the transferred property other than the unitrust interest from the fair market value of the transferred property.

(iii) If by reason of all the conditions and circumstances surrounding a transfer of an income interest in property in trust it appears that the charity may not receive the beneficial enjoyment of the interest, a deduction will be allowed under paragraph (c) (1) of this section only for the minimum amount it is evident the charity will receive. The application of this subdivision may be illustrated by the following examples:

Example (1). In 1972, B transfers $20,000 in trust with the requirement that M Church be paid a guaranteed annuity interest (as defined in subparagraph (2)(i) of this paragraph) of $4,000, payable annually at the end of each year for 9 years, and that the residue revert to himself. Since the fair market value of an annuity of $4,000 a year for a period of 9 years, as determined under §20.2031-7A(c) of this chapter, is $27,206.80 ($4,000 ´ 6.8017), it appears that M will not receive the beneficial enjoyment of the income interest. Accordingly, even though B is treated as the owner of the trust under section 673, he is allowed a deduction under subparagraph (1) of this paragraph for only $20,000, which is the minimum amount it is evident M will receive.

Example (2). In 1975, C transfers $40,000 in trust with the requirement that D, an individual, and X Charity be paid simultaneously guaranteed annuity interests (as defined in subparagraph (2)(i) of this paragraph) of $5,000 a year each, payable annually at the end of each year, for a period of 5 years and that the remainder be paid to C's children. The fair market value of two annuities of $5,000 each a year for a period of 5 years is $42,124 ([$5,000 ´ 4.2124] ´ 2), as determined under §20.2031-7A(c) of this chapter. The trust instrument provides that in the event the trust fund is insufficient to pay both annuities in a given year, the trust fund will be evenly divided between the charitable and private annuitants. The deduction under subparagraph (1) of this paragraph with respect to the charitable annuity will be limited to $20,000, which is the minimum amount it is evident X will receive.

Example (3). In 1975, D transfers $65,000 in trust with the requirement that a guaranteed annuity interest (as defined in subparagraph (2)(i) of this paragraph) of $5,000 a year, payable annually at the end of each year, be paid to Y Charity for a period of 10 years and that a guaranteed annuity interest (as defined in subparagraph (2)(i) of this paragraph) of $5,000 a year, payable annually at the end of each year, be paid to W, his wife, aged 62, for 10 years or until her prior death. The annuities are to be paid simultaneously, and the remainder is to be paid to D's children. The fair market value of the private annuity is $33,877 ($5,000 ´ 6.7754), as determined pursuant to §20.2031-7A(c) of this chapter and by the use of factors involving one life and a term of years as published in Publication 723A (12-70). The fair market value of the charitable annuity is $36,800.50 ($5,000 ´ 7.3601), as determined under §20.2031-7A(c) of this chapter. It is not evident from the governing instrument of the trust or from local law that the trustee would be required to apportion the trust fund between the wife and charity in the event the fund were insufficient to pay both annuities in a given year. Accordingly, the deduction under subparagraph (1) of this paragraph with respect to the charitable annuity will be limited to $31,123 ($65,000 less $33,877 [the value of the private annuity]), which is the minimum amount it is evident Y will receive.

(iv) See paragraph (b)(1) of §1.170A-4 for rule that the term "ordinary income property" for purposes of section 170(e) does not include an income interest in respect of which a deduction is allowed under section 170(f)(2)(B) and this paragraph.

(4) *Recapture upon termination of treatment as owner*. —If for any reason the donor of an income interest in property ceases at any time before the termination of such interest to be treated as the owner of such interest for purposes of applying section 671, as for example, where he dies before the termination of such interest, he shall for purposes of this chapter be considered as having received, on the date he ceases to be so treated, an amount of income equal to (i) the amount of any deduction he was allowed under section 170 for the contribution of such interest reduced by (ii) the discounted value of all amounts which were required to be, and actually were, paid with respect to such interest under the terms of trust to the charitable organization before the time at which he ceases to be treated as the owner of the interest. The discounted value of the amounts described in subdivision (ii) of this subparagraph shall be computed by treating each such amount as a contribution of a remainder interest after a term of years and valuing such amount as of the date of contribution of the income interest by the donor, such value to be determined under §20.2031-7 of this chapter consistently with the manner in which the fair market value of the income interest was determined pursuant to subparagraph (3)(i) of this paragraph. The application of this subparagraph will not be construed to disallow a deduction to the trust for amounts paid by the trust to the charitable organization after the time at which the donor ceased to be treated as the owner of the trust.

(5) *Illustrations*. —The application of this paragraph may be illustrated by the following examples:

Example (1). On January 1, 1971, A contributes to a church in trust a 9-year irrevocable income interest in property. Both A and the trust report income on a calendar year basis. The fair market value of the property placed in trust is $10,000. The trust instrument provides that the church will receive an annuity of $500, payable annually at the end of each year for 9 years. The income interest is a guaranteed annuity interest as defined in subparagraph (2)(i) of this paragraph; upon termination of such interest the residue of the trust is to revert to A. By reference to §20.2031-7A(c) of this chapter, it is found that the figure in column (2) opposite 9 years is 6.8017. The present value of the annuity is therefore $3,400.85 ($500 ´ 6.8017). The present value of the income interest and A's charitable contribution for 1971 is $3,400.85.

Example (2). (a) On January 1, B contributes to a church in trust a 9-year irrevocable income interest in property. Both B and the trust report income on a calendar year basis. The fair market value of the property placed in trust is $10,000. The trust instrument provides that the trust will pay to the church at the end of each year for 9 years 5 percent of the fair market value of all property in the trust at the beginning of the year. The income interest is a unitrust interest as defined in subparagraph (2)(ii) of this paragraph; upon termination of such interest the residue of the trust is to revert to B.

(b) The section 7520 rate at the time of the transfer was 6.0 percent. By reference to Table F(6.0) in §1.664-4(e)(6), the adjusted payout rate is 4.717% (5% ´ 0.943396). The present value of the reversion is $6,473.75, computed by reference to Table D in §1.664-4(e)(6), as follows:

Factor at 4.6 percent for 9 years	0.654539
Factor at 4.8 percent for 9 years	.642292

Difference ..... .012247
Interpolation adjustment:

$$\frac{4.717\% - 4.6\%}{0.2\%} = \frac{x}{0.012247}$$

$$x = 0.007164$$

Factor at 4.6 percent for 9 years 0.654539
Less: Interpolation adjustment ..... .007164

Interpolated factor ..... .647375
Present value of reversion
($10,000 ´ 0.647375) $6,473.75

(c) The present value of the income interest and B's charitable contribution is $3,526.25 ($10,000 - $6,473.75).

Example (3). (a) On January 1, 1971, C contributes to a church in trust a 9-year irrevocable income interest in property. Both C and the trust report income on a calendar year basis. The fair market value of the property placed in trust is $10,000. The trust instrument provides that the church will receive an annuity of $500, payable annually at the end of each year for 9 years. The income interest is a guaranteed annuity interest as defined in subparagraph (2)(i) of this paragraph; upon termination of such interest the residue of the trust is to revert to C. C's charitable contribution for 1971 is $3,400.85, determined as provided in example (1). The trust earns income of $600 in 1971, $400 in 1972, and $500 in 1973, all of which is taxable to C under section 671. The church is paid $500 at the end of 1971, 1972, and 1973, respectively. On December 31, 1973, C dies and ceases to be treated as the owner of the income interest under section 673.

(b) Pursuant to subparagraph (4) of this paragraph, the discounted value as of January 1, 1971, of the amounts paid to the church by the trust is $1,336.51, determined by reference to column (4) of Table B in §20.2031-7A(c) of this chapter, as follows:

Annuity Payment date	*Amount paid*	*Years from 1/1/71 to payment date*	*Discount factor*	*Discounted value as of 1/1/71*
12/31/71	$500	1	.943396	$471.70
12/31/72	500	2	.889996	445.00
12/31/73	500	3	.839619	419.81

Total discounted value $1,336.51

(c) Pursuant to subparagraph (4) of this paragraph, there must be included in C's gross income for 1973 the amount of $2,064.34 ($3,400.85 less $1,336.51).

(d) For deduction by the trust for amounts paid to the church after December 31, 1973, see section 642(c)(1) and the regulations thereunder.

(d) *Denial of deduction for certain contributions by a trust*

(1) If by reason of section 170(f)(2)(B) and paragraph (c) of this section a charitable contributions deduction is allowed under section 170 for the fair market value of an income interest transferred in trust, neither the grantor of the income interest, the trust, nor any other person shall be allowed a deduction under section 170 or any other section for the amount of any charitable contribution made by the trust with respect to, or in fulfillment of, such income interest.

(2) Section 170(f)(2)(C) and subparagraph (1) of this paragraph shall not be construed, however, to —

(i) Disallow a deduction to the trust, pursuant to section 642(c)(1) and the regulations thereunder, for amounts paid by the trust after the grantor ceases to be treated as the owner of the income interest for purposes of applying section 671 and which are not taken into account in determining the amount of recapture under paragraph (c)(4) of this section, or

(ii) Disallow a deduction to the grantor under section 671 and §1.671-2(c) for a charitable contribution made by the trust in excess of the contribution required to be made by the trust under the terms of the trust instrument with respect to, or in fulfillment of, the income interest.

(3) Although a deduction for the fair market value of an income interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust is disallowed under section 170 because such interest is not a guaranteed annuity interest, or a unitrust interest, as defined in paragraph (c)(2) of this section, the donor may be entitled to a deduction under section 671 and §1.671-2(c) for any charitable contributions made by the trust if he is treated as the owner of such interest for purposes of applying section 671.

(e) *Effective date*. —This section applies only to transfers in trust made after July 31, 1969. In addition, the rule in paragraphs (c)(2)(i)(A) and (ii)(A) of this section that guaranteed annuity interests and unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals applies to transfers made on or after April 4, 2000. If a transfer is made to a trust on or after April 4, 2000 that uses an individual other than one permitted in paragraphs (c)(2)(i)(A) and (ii)(A) of this section, the trust may be reformed to satisfy this rule. As an alternative to reformation, rescission may be available for a transfer made on or before March 6, 2001. See §25.2522(c)-3(e) of this chapter for the requirements concerning reformation or possible rescission of these interests. [Reg. §1.170A-6.]

§1.170A-7. Contributions not in trust of partial interests in property

(a) *In general*

(1) In the case of a charitable contribution, not made by a transfer in trust, of any interest in property

which consists of less than the donor's entire interest in such property, no deduction is allowed under section 170 for the value of such interest unless the interest is an interest described in paragraph (b) of this section. See section 170(f)(3)(A). For purposes of this section, a contribution of the right to use property which the donor owns, for example, a rent-free lease, shall be treated as a contribution of less than the taxpayer's entire interest in property.

(2)

(i) A deduction is allowed without regard to this section for a contribution of a partial interest in property if such interest is the taxpayer's entire interest in the property, such as an income interest or a remainder interest. Thus, if securities are given to A for life, with the remainder over to B, and B makes a charitable contribution of his remainder interest to an organization described in section 170(c), a deduction is allowed under section 170 for the present value of B's remainder interest in the securities. If, however, the property in which such partial interest exists was divided in order to create such interest and thus avoid section 170(f)(3)(A), the deduction will not be allowed. Thus, for example, assume that a taxpayer desires to contribute to a charitable organization an income interest in property held by him, which is not of a type described in paragraph (b)(2) of this section. If the taxpayer transfers the remainder interest in such property to his son and immediately thereafter contributes the income interest to a charitable organization, no deduction shall be allowed under section 170 for the contribution of the taxpayer's entire interest consisting of the retained income interest. In further illustration, assume that a taxpayer desires to contribute to a charitable organization the reversionary interest in certain stocks and bonds held by him, which is not of a type described in paragraph (b)(2) of this section. If the taxpayer grants a life estate in such property to his son and immediately thereafter contributes the reversionary interest to a charitable organization, no deduction will be allowed under section 170 for the contribution of the taxpayer's entire interest consisting of the reversionary interest.

(ii) A deduction is allowed without regard to this section for a contribution of a partial interest in property if such contribution constitutes part of a charitable contribution not in trust in which all interests of the taxpayer in the property are given to a charitable organization described in section 170(c). Thus, if on March 1, 1971, an income interest in property is given not in trust to a church and the remainder interest in the property is given not in trust to an educational organization described in section 170(b)(1)(A), a deduction is allowed for the value of such property.

(3) A deduction shall not be disallowed under section 170(f)(3)(A) and this section merely because the interest which passes to, or is vested in, the charity may be defeated by the performance of some act or the happening of some event, if on the date of the gift it appears that the possibility that such act or event will occur is so remote as to be negligible. See paragraph (e) of §1.170A-1.

(b) *Contributions of certain partial interests in property for which a deduction is allowed*. —A deduction is allowed under section 170 for a contribution not in trust of a partial interest which is less than the donor's entire interest in property and which qualifies under one of the following subparagraphs:

(1) *Undivided portion of donor's entire interest*

(i) A deduction is allowed under section 170 for the value of a charitable contribution not in trust of an undivided portion of a donor's entire interest in property. An undivided portion of a donor's entire interest in property must consist of a fraction or percentage or each and every substantial interest or right owned by the donor in such property and must extend over the entire term of the donor's interest in such property and in other property into which such property is converted. For

example, assuming that in 1967 B has been given a life estate in an office building for the life of A and that B has no other interest in the office building, B will be allowed a deduction under section 170 for his contribution in 1972 to charity of a one-half interest in such life estate in a transfer which is not made in trust. Such contribution by B will be considered a contribution of an undivided portion of the donor's entire interest in property. In further illustration, assuming that in 1968 C has been given the remainder interest in a trust created under the will of his father and C has no other interest in the trust, C will be allowed a deduction under section 170 for his contribution in 1972 to charity of a 20-percent interest in such remainder interest in a transfer which is not made in trust. Such contribution by C will be considered a contribution of an undivided portion of the donor's entire interest in property. If a taxpayer owns 100 acres of land and makes a contribution of 50 acres to a charitable organization, the charitable contribution is allowed as a deduction under section 170. A deduction is allowed under section 170 for a contribution of property to a charitable organization whereby such organization is given the right, as a tenant in common with the donor, to possession, dominion, and control of the property for a portion of each year appropriate to its interest in such property. However, for purposes of this subparagraph a charitable contribution in perpetuity of an interest in property not in trust where the donor transfers some specific rights and retains other substantial rights will not be considered a contribution of an undivided portion of the donor's entire interest in property to which section 170(f)(3)(A) does not apply. Thus, for example, a deduction is not allowable for the value of an immediate and perpetual gift not in trust of an interest in original historic motion picture films to a charitable organization where the donor retains the exclusive right to make reproductions of such films and to exploit such reproductions commercially.

(ii) With respect to contributions made on or before December 17, 1980, for purposes of this subparagraph a charitable contribution of an open space easement in gross in perpetuity shall be considered a contribution of an undivided portion of the donor's entire interest in property to which section 170(f)(3)(A) does not apply. For this purpose an easement in gross is a mere personal interest in, or right to use, the land of another; it is not supported by a dominant estate but is attached to, and vested in, the person to whom it is granted. Thus, for example, a deduction is allowed under section 170 for the value of a restrictive easement gratuitously conveyed to the United States in perpetuity whereby the donor agrees to certain restrictions on the use of his property, such as, restrictions on the type and height of buildings that may be erected, the removal of trees, the erection of utility lines, the dumping of trash, and the use of signs. For the deductibility of a qualified conservation contribution, see §1.170A-14.

(2) *Partial interests in property which would be deductible in trust*. —A deduction is allowed under section 170 for the value of a charitable contribution not in trust of a partial interest in property which is less than the donor's entire interest in the property and which would be deductible under section 170(f)(2) and §1.170A-6 if such interest had been transferred in trust.

(3) *Contribution of a remainder interest in a personal residence*. —A deduction is allowed under section 170 for the value of a charitable contribution not in trust of an irrevocable remainder interest in a personal residence which is not the donor's entire interest in such property. Thus, for example, if a taxpayer contributes not in trust to an organization described in section 170(c) a remainder interest in a personal residence and retains an estate in such property for life or for a term of years, a deduction is allowed under section 170 for the value of such remainder interest not transferred in trust. For purposes of section 170(f)(3)(B)(i) and this subparagraph, the term “personal residence” means any property used by the taxpayer as his personal residence even though it is not used as his principal residence. For example, the taxpayer's vacation home may be a personal residence for purposes of this subparagraph. The term “personal residence” also includes stock owned by a taxpayer as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in

section 216(b)(1) and (2)) if the dwelling which the taxpayer is entitled to occupy as such stockholder is used by him as his personal residence.

(4) *Contribution of a remainder interest in a farm*. —A deduction is allowed under section 170 for the value of a charitable contribution not in trust of an irrevocable remainder interest in a farm which is not the donor's entire interest in such property. Thus, for example, if a taxpayer contributes not in trust to an organization described in section 170(c) a remainder interest in a farm and retains an estate in such farm for life or for a term of years, a deduction is allowed under section 170 for the value of such remainder interest not transferred in trust. For purposes of section 170(f)(3)(B)(i) and this subparagraph, the term "farm" means any land used by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. The term "livestock" includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive fur-bearing animals, chickens, turkeys, pigeons, and other poultry. A farm includes the improvements thereon.

(5) *Qualified conservation contribution*. —A deduction is allowed under section 170 for the value of a qualified conservation contribution. For the definition of a qualified conservation contribution, see §1.170A-14.

(c) *Valuation of a partial interest in property*. —Except as provided in §1.170A-14, the amount of the deduction under 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. [Reg. §1.170A-7.]

§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 an organization described in section 170(c) is 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 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 returns 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)(ii) 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 (d) 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 contribution 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] plus [$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 carry over 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 of 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 carry over to 1971 $2,000 ($8,000-$6,000) of his contribution of 30-percent capital gain property.

Example (8). (a) In 1972, F, a 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´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% 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% 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% 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 [$50,000 ´ 50%]). 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 ($50,000 ´ 20%) or $0 ([$50,000 ´ 50%] - $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 ([$100,000 ´ 50%] - $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 ´ 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. [Reg. §1.170A-8.]

§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 paragraph (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 of two or more of such sources. For such purposes, the term "support" does not include income received in the exercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a). An example of an indirect contribution from the public is the receipt by the organization of its share of the proceeds of an annual collection campaign of a community chest, community fund, or united fund. In determining the amount of support received by such organization with respect to a contribution of property which is subject to reduction under section 170(e), the fair market value of the property shall be taken into account.

(iii) The college or university (including a land grant college or university) to be benefited must be an educational organization referred to in section 170(b)(1)(A)(ii) and subparagraph (1) of this paragraph which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one more States or political subdivisions.

(c) *Hospitals and medical research organizations*

(1) *Hospitals*. —An organization (other than one described in subparagraph (2) of this paragraph) is described in section 170(b)(1)(A)(iii) if:

(i) It is a hospital, and

(ii) Its principal purpose or function is the providing of medical or hospital care or medical education or medical research.

The term "hospital" includes (A) Federal hospitals and (B) State, county, and municipal hospitals which are instrumentalities of governmental units referred to in section 170(c)(1) and otherwise come within the definition. A rehabilitation institution, outpatient clinic, or community mental health or drug treatment center may qualify as a "hospital" within the meaning of subdivision (i) of this subparagraph if its principal purpose or function is the providing of hospital or medical care. For purposes of this subdivision, the term "medical care" shall include the treatment of any physical or mental disability or condition, whether on an inpatient or outpatient basis, provided the cost of such treatment is deductible under section 213 by the person treated. An organization, all the

accommodations of which qualify as being part of a “skilled nursing facility” within the meaning of 42 U.S.C. 1395x(j), may qualify as a “hospital” within the meaning of subdivision (i) of this subparagraph if its principal purpose or function is the providing of hospital or medical care. For taxable years ending after June 28, 1968, the term “hospital” also includes cooperative hospital service organizations which meet the requirements of section 501(e) and §1.501(e)-1. The term “hospital” does not, however, include convalescent homes or homes for children or the aged, nor does the term include institutions whose principal purpose or function is to train handicapped individuals to pursue some vocation. An organization whose principal purpose or function is the providing of medical education or medical research will not be considered a “hospital” within the meaning of subdivision (i) of this subparagraph, unless it is also actively engaged in providing medical or hospital care to patients on its premises or in its facilities, on an inpatient or outpatient basis, as an integral part of its medical education or medical research functions. See, however, subparagraph (2) of this paragraph with respect to certain medical research organizations.

(2) *Certain medical research organizations*

(i) *Introduction*. —A medical research organization is described in section 170(b)(1)(A)(iii) if the principal purpose or functions of such organization are medical research and if it is directly engaged in the continuous active conduct of medical research in conjunction with a hospital. In addition, for purposes of the 50 percent limitation of section 170(b)(1)(A) with respect to a contribution, during the calendar year in which the contribution is made such organization must be committed to spend such contribution for such research before January 1 of the fifth calendar year which begins after the date such contribution is made. An organization need not receive contributions deductible under section 170 to qualify as a medical research organization and such organization need not be committed to spend amounts to which the limitation of section 170(b)(1)(A) does not apply within the 5-year period referred to in this subdivision. However, the requirement of continuous active conduct of medical research indicates that the type of organization contemplated in this subparagraph is one which is primarily engaged directly in the continuous active conduct of medical research, as compared to an inactive medical research organization or an organization primarily engaged in funding the programs of other medical research organizations. As in the case of a hospital, since an organization is ordinarily not described in section 170(b)(1)(A)(iii) as a hospital unless it functions primarily as a hospital, similarly a medical research organization is not so described unless it is primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital. Accordingly, the rules of this subparagraph shall only apply with respect to such medical research organizations.

(ii) *General rule*. —An organization (other than a hospital described in subparagraph (1) of this paragraph) is described in section 170(b)(1)(A)(iii) only if within the meaning of this subparagraph:

(a) The principal purpose or functions of such organization are to engage primarily in the conduct of medical research, and

(b) It is primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital which is *(1)* described in section 501(c)(3), *(2)* a federal hospital, or *(3)* an instrumentality of a governmental unit referred to in section 170(c)(1).

However, in order for a contribution to such organization to qualify for purposes of the 50 percent limitation of section 170(b)(1)(A), during the calendar year in which such contribution is made or treated as made, such organization must be committed (within the meaning of subdivision (viii)

of this subparagraph) to spend such contribution for such active conduct of medical research before January 1 of the fifth calendar year beginning after the date such contribution is made. For the meaning of the term "medical research" see subdivision (iii) of this subparagraph. For the meaning of the term "principal purpose or functions" see subdivision (iv) of this subparagraph. For the meaning of the term "primarily engaged directly in the continuous active conduct of medical research" see subdivision (v) of this subparagraph. For the meaning of the term "medical research in conjunction with a hospital" see subdivision (vii) of this subparagraph.

(iii) *Definition of medical research*. —Medical research means the conduct of investigations, experiments, and studies to discover, develop, or verify knowledge relating to the causes, diagnosis, treatment, prevention, or control of physical or mental diseases and impairments of man. To qualify as a medical research organization, the organization must have or must have continuously available for its regular use the appropriate equipment and professional personnel necessary to carry out its principal function. Medical research encompasses the associated disciplines spanning the biological, social and behavioral sciences. Such disciplines include chemistry (biochemistry, physical chemistry, bio-organic chemistry, etc.), behavioral sciences (psychiatry, physiological psychology, neurophysiology, neurology, neurobiology, and social psychology, etc.), biomedical engineering (applied biophysics, medical physics, and medical electronics, *e.g.*, developing pacemakers and other medically related electrical equipment), virology, immunology, biophysics, cell biology, molecular biology, pharmacology, toxicology, genetics, pathology, physiology, microbiology, parasitology, endocrinology, bacteriology, and epidemiology.

(iv) *Principal purpose or functions*. —An organization must be organized for the principal purpose of engaging primarily in the conduct of medical research in order to be an organization meeting the requirements of this subparagraph. An organization will normally be considered to be so organized if it is expressly organized for the purpose of conducting medical research and is actually engaged primarily in the conduct of medical research. Other facts and circumstances, however, may indicate that an organization does not meet the principal purpose requirement of this subdivision even where its governing instrument so expressly provides. An organization that otherwise meets all of the requirements of this subparagraph (including this subdivision) to qualify as a medical research organization will not fail to so qualify solely because its governing instrument does not specifically state that its principal purpose is to conduct medical research.

(v) *Primarily engaged directly in the continuous active conduct of medical research*

(a) In order for an organization to be primarily engaged directly in the continuous active conduct of medical research, the organization must either devote a substantial part of its assets to, or expend a significant percentage of its endowment for, such purposes, or both. Whether an organization devotes a substantial part of its assets to, or makes significant expenditures for, such continuous active conduct depends upon the facts and circumstances existing in each specific case. An organization will be treated as devoting a substantial part of its assets to, or expending a significant percentage of its endowment for, such purposes if it meets the appropriate test contained in paragraph (c)(2)(v)(*b*) of this section. If an organization fails to satisfy both of such tests, in evaluating the facts and circumstances, the factor given most weight is the margin by which the organization failed to meet such tests. Some of the other facts and circumstances to be considered in making such a determination are:

(1) If the organization fails to satisfy the tests because it failed to properly value its assets or endowment, then upon determination of the improper valuation it devotes additional assets to, or makes additional expenditures for, such purposes, so that it satisfies such tests on an

aggregate basis for the prior year in addition to such tests for the current year.

(2) The organization acquires new assets or has a significant increase in the value of its securities after it had developed a budget in a prior year based on the assets then owned and the then current values.

(3) The organization fails to make expenditures in any given year because of the interrelated aspects of its budget and long-term planning requirements, for example, where an organization prematurely terminates an unsuccessful program and because of long-term planning requirements it will not be able to establish a fully operational replacement program immediately.

(4) The organization has as its objective to spend less than a significant percentage in a particular year but make up the difference in the subsequent few years, or to budget a greater percentage in an earlier year and a lower percentage in a later year.

(b) For purposes of this section, an organization which devotes more than one-half of its assets to the continuous active conduct of medical research will be considered to be devoting a substantial part of its assets to such conduct within the meaning of paragraph (c)(2)(v)(*a*) of this section. An organization which expends funds equaling 3.5 percent or more of the the fair market value of its endowment for the continuous active conduct of medical research will be considered to have expended a significant percentage of its endowment for such purposes within the meaning of paragraph (c)(2)(v)(*a*) of this section.

(c) Engaging directly in the continuous active conduct of medical research does not include the disbursing of funds to other organizations for the conduct of research by them or the extending of grants or scholarships to others. Therefore, if an organization's primary purpose is to disburse funds to other organizations for the conduct of research by them or to extend grants or scholarships to others, it is not primarily engaged directly in the continuous active conduct of medical research.

(vi) *Special rules*. —The following rules shall apply in determining whether a substantial part of an organization's assets are devoted to, or its endowment is expended for, the continuous active conduct of medical research activities:

(a) An organization may satisfy the tests of paragraph (c)(2)(v)(*b*) of this section by meeting such tests either for a computation period consisting of the immediately preceding taxable year, or for the computation period consisting of the immediately preceding four taxable years. In addition, for taxable years beginning in 1970, 1971, 1972, 1973, and 1974, if an organization meets such tests for the computation period consisting of the first four taxable years beginning after December 31, 1969, an organization will be treated as meeting such tests, not only for the taxable year beginning in 1974, but also for the preceding four taxable years. Thus, for example, if a calendar year organization failed to satisfy such tests for a computation period consisting of 1969, 1970, 1971, or 1972, but on the basis of a computation period consisting of the years 1970 through 1973, it expended funds equalling 3.5 percent or more of the fair market value of its endowment for the continuous active conduct of medical research, such organization will be considered to have expended a significant percentage of its endowment for such purposes for the taxable years 1970 through 1974. In applying such tests for a four-year computation period, although the organization's expenditures for the entire four-year period shall be aggregated, the fair market value of its endowment for each year shall be summed, even though, in the case of an asset held throughout the four-year period, the fair

market value of such an asset will be counted four times. Similarly, the fair market value of an organization's assets for each year of a four-year computation period shall be summed.

(b) Any property substantially all the use of which is "substantially related" (within the meaning of section 514(b)(1)(A)) to the exercise or performance of the organization's medical research activities will not be treated as part of its endowment.

(c) The valuation of assets must be made with commonly accepted methods of valuation. A method of valuation made in accordance with the principles stated in the regulations under section 2031 constitutes an acceptable method of valuation. Assets may be valued as of any day in the organization's taxable year to which such valuation applies, provided the organization follows a consistent practice of valuing such asset as of such date in all taxable years. For purposes of paragraph (c)(2)(v) of this section, an asset held by the organization for part of a taxable year shall be taken into account by multiplying the fair market value of such asset by a fraction, the numerator of which is the number of days in such taxable year that the foundation held such asset and the denominator of which is the number of days in such taxable year.

(vii) *Medical research in conjunction with a hospital*. —The organization need not be formally affiliated with a hospital to be considered primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital, but in any event there must be a joint effort on the part of the research organization and the hospital pursuant to an understanding that the two organizations will maintain continuing close cooperation in the active conduct of medical research. For example, the necessary joint effort will normally be found to exist if the activities of the medical research organization are carried on in space located within or adjacent to a hospital, the organization is permitted to utilize the facilities (including equipment, case studies, etc.) of the hospital on a continuing basis directly in the active conduct of medical research, and there is substantial evidence of the close cooperation of the members of the staff of the research organization and members of the staff of the particular hospital or hospitals. The active participation in medical research by members of the staff of the particular hospital or hospitals will be considered to be evidence of such close cooperation. Because medical research may involve substantial investigation, experimentation and study not immediately connected with hospital or medical care, the requisite joint effort will also normally be found to exist if there is an established relationship between the research organization and the hospital which provides that the cooperation of appropriate personnel and the use of facilities of the particular hospital or hospitals will be required whenever it would aid such research.

(viii) *Commitment to spend contributions*. —The organization's commitment that the contribution will be spent within the prescribed time only for the prescribed purposes must be legally enforceable. A promise in writing to the donor in consideration of his making a contribution that such contribution will be so spent within the prescribed time will constitute a commitment. The expenditure of contributions received for plant, facilities, or equipment, used solely for medical research purposes (within the meaning of subdivision (ii) of this subparagraph), shall ordinarily be considered to be an expenditure for medical research. If a contribution is made in other than money, it shall be considered spent for medical research if the funds from the proceeds of a disposition thereof are spent by the organization within the five-year period for medical research; or, if such property is of such a kind that it is used on a continuing basis directly in connection with such research, it shall be considered spent for medical research in the year in which it is first so used. A medical research organization will be presumed to have made the commitment required under this subdivision with respect to any contribution if its governing instrument or by-laws require that every contribution be spent for medical research before January 1 of the fifth

year which begins after the date such contribution is made.

(ix) *Organizational period for new organizations*. —A newly created organization, for its "organizational" period, shall be considered to be primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital within the meaning of subdivisions (v) and (vii) of this subparagraph if during such period the organization establishes to the satisfaction of the Commissioner that it reasonably can be expected to be so engaged by the end of such period. The information to be submitted shall include detailed plans showing the proposed initial medical research program, architectural drawings for the erection of buildings and facilities to be used for medical research in accordance with such plans, plans to assemble a professional staff and detailed projections showing the timetable for the expected accomplishment of the foregoing. The "organizational" period shall be that period which is appropriate to implement the proposed plans, giving effect to the proposed amounts involved and the magnitude and complexity of the projected medical research program, but in no event in excess of three years following organization.

(x) *Examples*. —The application of this subparagraph may be illustrated by the following examples:

Example (1). N, an organization referred to in section 170(c)(2), was created to promote human knowledge within the field of medical research and medical education. All of N's assets were contributed to it by A and consist of a diversified portfolio of stocks and bonds. N's endowment earns 3.5 percent annually, which N expends in the conduct of various medical research programs in conjunction with Y hospital. N is located adjacent to Y hospital makes substantial use of Y's facilities and there is close cooperation between the staffs of N and Y. N is directly engaged in the continuous active conduct of medical research in conjunction with a hospital, meets the principal purpose test described in subdivision (iv) of this subparagraph, and is therefore an organization described in section 170(b)(1)(A)(iii).

Example (2). O, an organization referred to in section 170(c)(2), was created to promote human knowledge within the field of medical research and medical education. All of O's assets consist of a diversified portfolio of stocks and bonds. O's endowment earns 3.5 percent annually, which O expends in the conduct of various medical research programs in conjunction with certain hospitals. However, in 1974, O receives a substantial bequest of additional stocks and bonds. O's budget for 1974 does not take into account the bequest and as a result O expends only 3.1 percent of its endowment in 1974. However, O establishes that it will expend at least 3.5 percent of its endowment for the active conduct of medical research for taxable years 1975 through 1978. O is therefore directly engaged in the continuous active conduct of medical research in conjunction with a hospital for taxable year 1975. Since O also meets the principal purpose test described in subdivision (iv) of this subparagraph, it is therefore an organization described in section 170(b)(1)(A)(iii) for taxable year 1975.

Example (3). M, an organization referred to in section 170(c)(2), was created to promote human knowledge within the field of medical research and medical education. M's activities consist of the conduct of medical research programs in conjunction with various hospitals. Under such programs, researchers employed by M engage in research at laboratories set aside for M within the various hospitals. Substantially all of M's assets consists of 100 percent of the stock of X corporation, which has a fair market value of approximately 100 million dollars. X pays M approximately 3.3 million dollars in dividends annually, which M expends in the conduct of its medical research programs. Since M expends only 3.3 percent of its endowment, which does not constitute a significant percentage, in the active conduct of medical research, M is not an

organization described in section 170(b)(1)(A)(iii) because M is not engaged in the continuous active conduct of medical research.

(xi) *Special rule for organizations with existing ruling*. —This subdivision shall apply to an organization that prior to January 1, 1970, had received a ruling or determination letter which has not been expressly revoked holding the organization to be a medical research organization described in section 170(b)(1)(A)(iii) and with respect to which the facts and circumstances on which the ruling was based have not substantially changed. An organization to which this subdivision applies shall be treated as an organization described in section 170(b)(1)(A)(iii) for a period not ending prior to 90 days after February 13, 1976 (or, where appropriate, for taxable years beginning before such 90th day). In addition, with respect to a grantor or contributor under sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, the status of an organization to which this subdivision applies will not be affected until notice of change of status under section 170(b)(1)(A)(iii) is made to the public (such as by publication in the Internal Revenue Bulletin). The preceding sentence shall not apply if the grantor or contributor had previously acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from classification as a section 170(b)(1)(A)(iii) organization.

(d) *Governmental unit*. —A governmental unit is described in section 170(b)(1)(A)(v) if it is referred to in section 170(c)(1).

(e) *Definition of section 170(b)(1)(A)(vi) organization.*

(1) *In general*. —An organization is described in section 170(b)(1)(A)(vi) if it is:

(i) A corporation, trust, or community chest, fund, or foundation, referred to in section 170(c)(2) (other than an organization specifically described in paragraphs (a) through (d) of this section), and

(ii) A "publicly supported" organization. For purposes of this paragraph, an organization is "publicly supported" if it normally receives a substantial part of its support from a governmental unit referred to in section 170(c)(1) or from direct or indirect contributions from the general public. An organization will be treated as being "publicly supported" if it meets the requirements of either subparagraph (2) or subparagraph (3) of this paragraph. Types of organizations which, subject to the provisions of this paragraph, generally qualify under section 170(b)(1)(A)(vi) as "publicly supported" are publicly or governmentally supported museums of history, art, or science, libraries, community centers to promote the arts, organizations providing facilities for the support of an opera, symphony orchestra, ballet, or repertory drama or for some other direct service to the general public, and organizations such as the American Red Cross or the United Givers Fund.

(2) *Determination whether an organization is "publicly supported"; $33^1/_3$ percent-of-support test*. —An organization will be treated as a "publicly supported" organization if the total amount of support which the organization "normally" (as defined in subparagraph (4) of this paragraph) receives from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources, equals at least $33^1/_3$ percent of the total support "normally" received by the organization. See subparagraphs (6), (7), and (8) of this paragraph for the definition of "support." The application of this test is illustrated by Example (1) of subparagraph (9) of this paragraph.

(3) *Determination whether an organization is "publicly supported"; facts and circumstances test for organizations failing to meet 33$^{1}/_{3}$ percent-of-support test*. —Even if an organization fails to meet the 33$^{1}/_{3}$ percent-of-support test described in subparagraph (2) of this paragraph, it will be treated as a "publicly supported" organization if it normally receives a substantial part of its support from government units, from direct or indirect contributions from the general public, or from a combination of these sources, and meets the other requirements of this subparagraph. In order to satisfy this subparagraph, an organization must meet the requirements of subdivisions (i) and (ii) of this subparagraph in order to establish, under all the facts and circumstances, that it normally receives a substantial part of its support from governmental units or from direct or indirect contributions from the general public, and it must be in the nature of a "publicly supported" organization, taking into account the factors described in subdivisions (iii) through (vii) of this subparagraph. The requirements and factors referred to in the preceding sentence with respect to a "publicly supported" organization (other than one described in subparagraph (2) or (10) of this paragraph) are:

(i) *Ten percent-of-support limitation*. —The percentage of support "normally" (as defined in subparagraph (4) of this paragraph) received by an organization from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources, must be "substantial."

For purposes of this subparagraph, an organization will not be treated as "normally" receiving a "substantial" amount of governmental or public support unless the total amount of governmental and public support "normally" received equals at least 10 percent of the total support "normally" received by such organization. See subparagraphs (6), (7), and (8) of this paragraph for the definition of "support."

(ii) *Attraction of public support*. —An organization must be so organized and operated as to attract new and additional public or governmental support on a continuous basis. An organization will be considered to meet this requirement if it maintains a continuous and bona fide program for solicitation of funds from the general public, community, or membership group involved, or if it carries on activities designed to attract support from governmental units or other organizations described in section 170(b)(1)(A)(i) through (vi). In determining whether an organization maintains a continuous and bona fide program for solicitation of funds from the general public or community, consideration will be given to whether the scope of its fund-raising activities is reasonable in light of its charitable activities. Consideration will also be given to the fact that an organization may, in its early years of existence, limit the scope of its solicitation to persons deemed most likely to provide seed money in an amount sufficient to enable it to commence its charitable activities and expand its solicitation program.

In addition to the requirements set forth in subdivisions (i) and (ii) of this subparagraph which must be satisfied, all pertinent facts and circumstances, including the following factors, will be taken into consideration in determining whether an organization is "publicly supported" within the meaning of subparagraph (1) of this paragraph. However, an organization is not generally required to satisfy all of the factors in subdivisions (iii) through (vii) of this subparagraph. The factors relevant to each case and the weight accorded to any one of them may differ depending upon the nature and purpose of the organization and the length of time it has been in existence.

(iii) *Percentage of financial support*. —The percentage of support received from public or governmental sources will be taken into consideration in determining whether an organization is "publicly supported." The higher the percentage of support above the 10 percent requirement of subdivision (i) of this subparagraph from public or governmental sources the lesser will be the

burden of establishing the publicly supported nature of the organization through other factors described in this subparagraph, while the lower the percentage, the greater will be the burden. If the percentage of the organization's support from public or governmental sources is low because it receives a high percentage of its total support from investment income on its endowment funds, such fact will be treated as evidence of compliance with this subdivision if such endowment funds were originally contributed by a governmental unit or by the general public. However, if such endowment funds were originally contributed by a few individuals or members of their families, such fact will increase the burden on the organization of establishing compliance with the other factors described in this subparagraph.

(iv) *Sources of support*. —The fact that an organization meets the requirement of subdivision (i) of this subparagraph through support from governmental units or directly or indirectly from a representative number of persons, rather than receiving almost all of its support from the members of a single family, will be taken into consideration in determining whether an organization is "publicly supported." In determining what is a "representative number of persons," consideration will be given to the type of organization involved, the length of time it has been in existence, and whether it limits its activities to a particular community or region or to a special field which can be expected to appeal to a limited number of persons.

(v) *Representative governing body*. —The fact that an organization has a governing body which represents the broad interests of the public, other than the personal or private interests of a limited number of donors (or persons standing in a relationship to such donors which is described in section 4946(a)(1)(C) through (G)), will be taken into account in determining whether an organization is "publicly supported." An organization will be treated as meeting this requirement if it has a governing body (whether designated in the organization's governing instrument or bylaws as a Board of Directors, Board of Trustees, etc.) which is comprised of public officials acting in their capacities as such; of individuals selected by public officials acting in their capacities as such; of persons having special knowledge or expertise in the particular field or discipline in which the organization is operating; of community leaders, such as elected or appointed officials, clergymen, educators, civic leaders, or other such persons representing a broad cross-section of the views and interests of the community; or, in the case of a membership organization, of individuals elected pursuant to the organization's governing instrument or by-laws by a broadly based membership.

(vi) *Availability of public facilities or services; public participation in programs or policies*

(a) The fact that an organization is of the type which generally provides facilities or services directly for the benefit of the general public on a continuing basis (such as a museum or library which holds open its building to the public, a symphony orchestra which gives public performances, a conservation organization which provides educational services to the public through the distribution of educational materials, or an old age home which provides domiciliary or nursing services for members of the general public) will be considered evidence that such organization is "publicly supported."

(b) The fact that an organization is an educational or research institution which regularly publishes scholarly studies that are widely used by colleges and universities or by members of the general public will also be considered evidence that such organization is "publicly supported."

(c) Similarly, the following factors will also be considered evidence that an organization is "publicly supported":

(1) The participation in, or sponsorship of, the programs of the organization by members of the public having special knowledge or expertise, public officials, or civic or community leaders;

(2) The maintenance of a definitive program by an organization to accomplish its charitable work in the community, such as slum clearance or defeloping employment opportunities; and

(3) The receipt of a significant part of its funds from a public charity or governmental agency to which it is in some way held accountable as a condition of the grant, contract, or contribution.

(vii) *Additional factors pertinent to membership organizations*. —The following are additional factors to be considered in determining whether a membership organization is "publicly supported":

(a) Whether the solicitation for dues-paying members is designed to enroll a substantial number of persons in the community or area, or in a particular profession or field of special interest (taking into account the size of the area and the nature of the organization's activities);

(b) Whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make membership available to a broad cross-section of the interested public, rather than to restrict membership to a limited number of persons; and

(c) Whether the activities of the organization will be likely to appeal to persons having some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities, symphony societies, or civic affairs in the case of parent-teacher associations. See Examples (2) through (5) contained in subparagraph (9) of this paragraph for illustration of this subparagraph.

(4) *Definition of "normally"; general rule*

(i) *Normally;* 1/3 *support test*. —For purposes of subparagraph (2) of this paragraph, an organization will be considered as "normally" meeting the $33^1/_3$ percent-of-support test for its current taxable year and the taxable year immediately succeeding its current year, if, for the four taxable years immediately preceding the current taxable year, the organization meets the $33^1/_3$ percent-of-support test described in subparagraph (2) of this paragraph on an aggregate basis.

(ii) *Normally; facts and circumstances test*. —For purposes of subparagraph (3) of this paragraph, an organization will be considered as "normally" meeting the requirements of subparagraph (3) of this paragraph for its current taxable year and the taxable year immediately succeeding its current year, if, for the four taxable years immediately preceding the current taxable year, the organization meets the requirements of subparagraph (3)(i) and (ii) of this paragraph on an aggregate basis and satisfies a sufficient combination of the factors set forth in subparagraph (3)(iii) through (vii) of this paragraph. In the case of subparagraph (3)(iii) and (iv) of this paragraph, facts pertinent to years preceding four taxable years immediately preceding the current taxable year may also be taken into consideration. The combination of factors set forth in subparagraph (3)(iii) through (vii) of this paragraph which an organization "normally" must meet does not have to be the same for each four-year period so long as there exists a sufficient combination of factors to show compliance with subparagraph (3) of this paragraph.

(iii) *Special rule*. —The fact that an organization has "normally" met the requirements of subparagraph (2) of this paragraph for a current taxable year, but is unable "normally" to meet such requirements for a succeeding taxable year, will not in itself prevent such organization from meeting the requirements of subparagraph (3) of this paragraph for such succeeding taxable year.

(iv) *Illustration*. —The application of subdivisions (i), (ii), and (iii) of this subparagraph may be illustrated by the following example:

Example. X, an organization described in section 170(c)(2), meets the $33^1/_3$ percent-of-support test described in subparagraph (2) of this paragraph in taxable year 1975 on the basis of support received during taxable years 1971, 1972, 1973, and 1974. It therefore "normally" meets the requirements of subparagraph (2) of this paragraph for 1975 and 1976 (the taxable year immediately succeeding 1975, the current taxable year). For the taxable year 1976, X is unable to meet the $33^1/_3$ percent-of-support test described in subparagraph (2) of this paragraph on the basis of support received during taxable years 1972, 1973, 1974, and 1975. If X can meet the requirements of subparagraph (3) of this paragraph on the basis of taxable years 1972, 1973, 1974, and 1975, X will meet the requirements of subparagraph (3) of this paragraph for 1977 (the taxable year immediately succeeding 1976, the current taxable year) under subdivision (ii) of this subparagraph. However, if on the basis of both the taxable years 1972 through 1975 and 1973 through 1976, X fails to meet the requirements of both subparagraphs (2) and (3) of this paragraph, X will not be described in section 170(b)(1)(A)(vi) for 1977. However, X will not be disqualified as a section 170(b)(1)(A)(vi) organization for taxable year 1976, because it "normally" met the requirements of subparagraph (2) of this paragraph on the basis of the taxable years 1971 through 1974, unless the provisions of subdivision (v) of this subparagraph become applicable.

(v) *Exception for material changes in sources of support*

(a) In general. —If for the current taxable year there are substantial and material changes in an organization's sources of support other than changes arising from unusual grants excluded under subparagraph (6)(ii) of this paragraph, then in applying subparagraph (2) or (3) of this paragraph, neither the 4-year computation period applicable to such year as an immediately succeeding taxable year or as a current taxable year shall apply, and in lieu of such computation periods there shall be applied a computation period consisting of the taxable year of substantial and material changes and the four taxable years immediately preceding such year. Thus, for example, if there are substantial and material changes in an organization's sources of support for taxable year 1976, then even though such organization meets the requirements of subparagraph (2) or (3) of this paragraph based on a computation period of taxable years 1971 —1974 or 1972 —1975, such an organization will not meet the requirements of section 170(b)(1)(A)(vi) unless it meets the requirements of subparagraph (2) or (3) of this paragraph for a computation period consisting of the taxable years 1972 —1976. See Example (3) in §1.509(a)-3(c)(6) for an illustration of a similar rule. An example of a substantial and material change is the receipt of an unusually large contribution or bequest which does not qualify as an unusual grant under subparagraph (6)(ii) of this paragraph. See subparagraph (6)(iv)(*b*) of this paragraph as to the procedure for obtaining a ruling whether an unusually large grant may be excluded as an unusual grant.

(b) Status of grantors and contributors. —If as a result of *(a)* of this subdivision, an organization is not able to meet the requirements of either the $33^1/_3$ percent-of-support test described in subparagraph (2) of this paragraph, or the facts and circumstances test described

in subparagraph (3) of this paragraph for its current taxable year, its status (with respect to a grantor or contributor under sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522) will not be affected until notice of change of status under section 170(b)(1)(A)(vi) is made to the public (such as by publication in the Internal Revenue Bulletin). The preceding sentence shall not apply, however, if the grantor or contributor was responsible for, or was aware of, the substantial and material change referred to in *(a)* of this subdivision, or acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from classification as a section 170(b)(1)(A)(vi) organization.

(c) Reliance by grantors and contributors. —A grantor or contributor (other than one of the organization's founders, creators, or foundation managers (within the meaning of section 4946(b))) will not be considered to be responsible for, or aware of, the substantial and material change referred to in *(a)* of this subdivision, if such grantor or contributor has made such grant or contribution in reliance upon a written statement by the grantee organization that such grant or contribution will not result in the loss of such organization's classification as a publicly supported organization as described in section 170(b)(1)(A)(vi). Such statement must be signed by a responsible officer of the grantee organization and must set forth sufficient information, including a summary of the pertinent financial data for the four preceding years, to assure a reasonably prudent man that his grant or contribution will not result in the loss of the grantee organization's classification as a publicly supported organization as described in section 170(b)(1)(A)(vi). If a reasonable doubt exists as to the effect of such grant or contribution, or if the grantor or contributor is one of the organizations' founders, creators, or foundation managers, the procedure set forth in subparagraph (6)(vi)(*b*) of this paragraph may be followed by the grantee organization for the protection of the grantor or contributor.

(vi) *Special rule for new organizations.* —If an organization has been in existence for at least one taxable year consisting of at least 8 months, but for fewer than 5 taxable years, the number of years for which the organization has been in existence immediately preceding each current taxable year being tested will be substituted for the 4-year period described in subdivision (i) or (ii) of this subparagraph to determine whether the organization "normally" meets the requirements of subparagraph (2) or (3) of this paragraph. However, if subdivision (v) *(a)* of this subparagraph applies, then the period consisting of the number of years for which the organization has been in existence (up to and including the current year) will be substituted for the 4-year period described in subdivision (i) or (ii) of this subparagraph. An organization which has been in existence for at least one taxable year, consisting of 8 or more months, may be issued a ruling or determination letter if it "normally" meets the requirements of subparagraph (2) or (3) of this paragraph for the number of years described in this subdivision. Such an organization may apply for a ruling or determination letter under the provisions of this subparagraph, rather than under the provisions of subparagraph (5) of this paragraph. The issuance of a ruling or determination letter will be discretionary with the Commissioner. See subparagraph (5)(v) of this paragraph as to the initial determination of the status of a newly created organization. This subdivision shall not apply to those organizations receiving an extended advance ruling under subparagraph (5)(iv) of this paragraph.

(vii) *Special rule for organizations with existing ruling.* —This subdivision shall apply to an organization that prior to January 1, 1970, had received a ruling or determination letter which has not been expressly revoked holding the organization to be a publicly supported organization described in section 170(b)(1)(A)(vi) and with respect to which the facts and circumstances on which the ruling was based have not substantially changed. An organization to which this subdivision applies shall be treated as an organization described in section 170(b)(1)(A)(vi) for a

period not ending prior to 90 days after December 29, 1972. In addition, with respect to a grantor or contributor under sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, the status of an organization to which this subdivision applies will not be affected until notice of change of status under section 170(b)(1)(A)(vi) is made to the public (such as by publication in the Internal Revenue Bulletin). The preceding sentence shall not apply if the grantor or contributor had previously acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from classification as a section 170(b)(1)(A)(vi) organization.

(viii) *Termination of status*. —For the transitional rules applicable to an organization that is unable to meet the requirements of this paragraph for its first taxable year beginning after December 31, 1969 (as extended by §1.507-2(j)) and wishes to terminate its private foundation status, see §1.507-2(c)(2) and (3).

(ix) *Status of ruling*. —The provisions of this subparagraph do not require an organization to file a new application with the Internal Revenue Service every two years in order to maintain or reaffirm its status as a "publicly supported" organization described in section 170(b)(1)(A)(vi).

(5) *Advance rulings to newly created organizations*

(i) *In general*. —A ruling or determination letter that an organization is described in section 170(b)(1)(A)(vi) will not be issued to a newly created organization prior to the close of its first taxable year consisting of at least 8 months. However, such organization may request a ruling or determination letter that it will be treated as a section 170(b)(1)(A)(vi) organization for its first 2 taxable years (or its first 3 taxable years, if its first taxable year consists of less than 8 months). For purposes of this section, such 2- or 3-year period, whichever is applicable, shall be referred to as the advance ruling period. Such an advance ruling or determination letter may be issued if the organization can reasonably be expected to meet the requirements of subparagraph (2) or (3) of this paragraph during the advance ruling period. The issuance of a ruling or determination letter will be discretionary with the Commissioner.

(ii) *Basic consideration*. —In determining whether an organization can reasonably be expected (within the meaning of subdivision (i) of this subparagraph) to meet the requirements of subparagraph (2) or (3) of this paragraph for its advance ruling period or extended advance ruling period as provided in subdivision (iv) of this subparagraph, if applicable, the basic consideration is whether its organizational structure, proposed programs or activities, and intended method of operation are such as to attract the type of broadly based support from the general public, public charities, and governmental units which is necessary to meet such tests. The information to be considered for this purpose shall consist of all pertinent facts and circumstances relating to the requirements set forth in subparagraph (3) of this paragraph.

(iii) *Status of newly created organizations*

(a) Advance ruling. —This subdivision shall apply to a newly created organization which has received an advance ruling or determination letter under subdivision (i) of this subparagraph, or an extended advance ruling or determination letter under subdivision (iv) of this subparagraph, that it will be treated as a section 170(b)(1)(A)(vi) organization for its advance or extended advance ruling period. So long as such an organization's ruling or determination letter has not been terminated by the Commissioner before the expiration of the advance or extended advance ruling period, then whether or not such organization has satisfied the requirements of subparagraph (2) or (3) of this paragraph during such advance or extended

advance ruling period, such an organization will be treated as an organization described in section 170(b)(1)(A)(vi) in accordance with *(b)* and *(c)* of this subdivision, both for purposes of the organization and any grantor or contributor to such organization.

(b) Reliance period. —Except as provided in *(a)* and *(c)* of this subdivision, an organization described in *(a)* of this subdivision will be treated as an organization described in section 170(b)(1)(A)(vi) for all purposes other than sections 507(d) and 4940 for the period beginning with its inception and ending 90 days after its advance or extended advance ruling period. Such period will be extended until a final determination is made of such an organization's status only if the organization submits, within the 90-day period, information needed to determine whether it meets the requirements of subparagraph (2) or (3) of this paragraph for its advance or extended advance ruling period (even if such organization fails to meet the requirements of such subparagraph (2) or (3)). However, since this subparagraph does not apply to the tax imposed by section 4940, if it is subsequently determined that the organization was a private foundation from its inception, then the tax imposed by section 4940 shall be due without regard to the advance or extended advance ruling or determination letter. Consequently, if any amount of tax under section 4940 in such a case is not paid on or before the last date prescribed for payment, the organization is liable for interest in accordance with section 6601. However, since any failure to pay such tax during the period referred to in this subparagraph is due to reasonable cause, the penalty under section 6651 with respect to the tax imposed by section 4940 shall not apply.

(c) Grantors or contributors. —If a ruling or determination letter is terminated by the Commissioner prior to the expiration of the period described in *(b)* of this subdivision, for purposes of sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, the status of grants or contributions with respect to grantors or contributors to such organizations will not be affected until notice of change of status of such organization is made to the public (such as by publication of the Internal Revenue Bulletin). The preceding sentence shall not apply, however, if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification under section 170(b)(1)(A)(vi) or acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from such classification. Prior to the making of any grant or contribution which allegedly will not result in the grantee's loss of classification under section 170(b)(1)(A)(vi), a potential grantee organization may request a ruling whether such grant or contribution may be made without such loss of classification. A request for such ruling may be filed by the grantee organization with the district director. The issuance of such ruling will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination on the factors referred to in subparagraph (6)(iii) of this paragraph. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522 and by the grantee organization for purposes of subparagraph (6)(ii) of this paragraph.

(iv) *Extension of advance ruling period*

(a) The advance ruling period described in subdivision (i) of this subparagraph shall be extended for a period of three taxable years after the close of the unextended advance ruling period if the organization so requests, but only if such organization's request accompanies its request for an advance ruling and is filed with a consent under section 6501(c)(4) to the effect that the period of limitation upon assessment under section 4940 for any taxable year within the extended advance ruling period shall not expire prior to one year after the date of the

expiration of the time prescribed by law for the assessment of a deficiency for the last taxable year within the extended advance ruling period. An organization's extended advance ruling period is 5 taxable years if its first taxable year consists of at least 8 months, or is 6 years if its first taxable year is less than 8 months.

(b) Notwithstanding *(a)* of this subdivision, an organization which has received or applied for an advance ruling prior to January 29, 1973, may file its request for the 3-year extension within 90 days from such date, but only if it files the consents required in this section.

(c) See subdivision (v) of this subparagraph for the effect upon the initial determination of status of an organization which receives a ruling for an extended advance ruling period.

(v) *Initial determination of status*

(a) The initial determination of status of a newly created organization is the first determination (other than by issuance of an advance ruling or determination letter under subdivision (i) of this subparagraph or an extended advance ruling or determination letter under subdivision (iv) of this subparagraph) that the organization will be considered as "normally" meeting the requirements of subparagraph (2) or (3) of this paragraph for a period beginning with its first taxable year.

(b) In the case of a new organization whose first taxable year is at least eight months, except as provided for in subdivision (v)(*d*) of this subparagraph, the initial determination of status shall be based on a computation period of either the first taxable year or the first and second taxable years.

(c) In the case of a new organization whose first taxable year is less than eight taxable months, except as provided for in subdivision (v)(*d*) of this subparagraph, the initial determination of status shall be based on a computation period of either the first and second taxable years or the first, second and third taxable years.

(d) In the case of an organization which has received a ruling or determination letter for an extended advance ruling period under subdivision (iv) of this subparagraph, the initial determination of status shall be based on a computation period of all of the taxable years in the extended advance ruling period. However, where the ruling or determination letter for an extended advance ruling period under subdivision (iv) of this subparagraph is terminated by the Commissioner prior to the expiration of the relevant period described in subdivision (iii)(*b*) of this subparagraph, the initial determination of status shall be based on a computation period of the period provided in *(b)* or *(c)* of this subdivision or, if greater, the number of years to which the advance ruling applies.

(e) An initial determination that an organization will be considered as "normally" meeting the requirements of subparagraph (2) or (3) of this paragraph shall be effective for each taxable year in the computation period plus (except as provided by subparagraph (4)(v)(*a*) of this paragraph, relating to material changes in sources of support) the two taxable years immediately succeeding the computation period. Therefore, in the case of an organization referred to in *(b)* of this subdivision to which subparagraph (4)(v)(*a*) of this paragraph does not apply, with respect to its first, second and third taxable years, such an organization shall be described in section 170(b)(1)(A)(vi) if it meets the requirements of subparagraph (2) or (3) of this paragraph for either its first taxable year or for its first and second taxable years on an aggregate basis. In addition, if it meets the requirements of subparagraph (2) or (3) of this

paragraph for its first and second taxable years, it shall be described in section 170(b)(1)(A)(vi) for its fourth taxable year. Once an organization is considered as "normally" meeting the requirements of subparagraph (2) or (3) of this paragraph for a period specified under this subdivision, subparagraph (4)(i), (ii), (v) or (vi) of this paragraph shall apply.

(f) The provisions of this subdivision may be illustrated by the following examples:

Example (1). X, a calendar year organization described in section 501(c)(3), is created in February 1972. The support received from the public in 1972 by X will satisfy the one-third support test described in subparagraph (4)(i) of this paragraph over its first taxable year, 1972. X may therefore get an initial determination that it meets the requirements of subparagraph (2) of this paragraph for its first taxable year beginning in February 1972 and ending on December 31, 1972. This determination will be effective for taxable years 1972, 1973 and 1974.

Example (2). Assume the same facts as in example (1) except that X also receives a substantial contribution from one individual in 1972 which is not excluded from the denominator of the one-third support fraction described in subparagraph (4)(i) of this paragraph by reason of the unusual grant provision of subparagraph (6)(ii) of this paragraph. Because of this substantial contribution, X fails to satisfy the one-third support test over its first taxable year, 1972. X also fails to satisfy the "facts and circumstances" test described in subparagraph (4)(ii) of this paragraph for its first taxable year, 1972. However, the support received from the public over X's first and second taxable years in the aggregate will satisfy the one-third support test. X may therefore get an initial determination that it meets the requirements of subparagraph (2) of this paragraph for its first and second taxable years in the aggregate beginning in Febuary 1972 and ending on December 31, 1973. This determination will be effective for taxable years 1972, 1973, 1974 and 1975.

Example (3). Y, a calendar year organization described in section 501(c)(3), is created in July 1972. Y requests and receives an extended advance ruling period of five full taxable years plus its initial short taxable year of six months under subparagraph (5)(iv) of this paragraph. The extended advance ruling period begins in July 1972 and ends on December 31, 1977. The support received from the public over Y's first through sixth taxable years in the aggregate will satisfy the one-third support test described in subparagraph (4)(i) of this paragraph. Therefore, Y in 1978 may get an initial determination that it meets the requirements of subparagraph (2) of this paragraph in the aggregate over all the taxable years in its extended advance ruling period beginning in July 1972 and ending on December 31, 1977. This determination will be effective for taxable years 1972 through 1979.

Example (4). Assume the same facts as in example (3) except that the ruling for the extended advance ruling period is terminated prospectively at the end of 1975, so that Y may not rely upon such ruling for 1976 or any succeeding year. The support received from the public over Y's first through fourth taxable years (1972 through 1975) will not satisfy either the one-third support test described in subparagraph (4)(i) of this paragraph, or the "facts and circumstances" test described in subparagraph (4)(ii) of this paragraph. Because the ruling was terminated, the computation period for Y's initial determination of status is the period 1972 through 1975. Since Y has not met the requirements of either subparagraph (2) or (3) of this paragraph for such computation period, Y is not described in section 170(b)(1)(A)(vi) for purposes of its initial determination of status. If Y is not described in section 170(b)(1)(A)(i) through (v) or section 509(a)(2), (3), or (4), then Y is a private foundation. As of 1976, Y shall be treated as a private foundation for all purposes (except as provided in subdivision (iii)(*c*) of this subparagraph with respect to grantors and contributors), and as of July 1972 for purposes

of the tax imposed by section 4940 and for purposes of section 507(d) (relating to aggregate tax benefit).

(vi) *Failure to obtain advance ruling*

(a) Unless a newly created organization has obtained an advance ruling or determination letter under subdivision (i) of this subparagraph, or an extended advance ruling or determination letter under subdivision (iv) of this subparagraph, that it will be treated as a section 170(b)(1)(A)(vi) organization for its advance or extended advance ruling period, it cannot rely upon the possibility it will meet the requirements of subparagraph (2) or (3) of this paragraph for a taxable year which begins before the close of either applicable computation period provided for in subdivision (v)(*b*) or *(c)* of this subparagraph. Therefore, such an organization, in order to avoid the risk of subsequently being determined to be a private foundation because of failure to qualify under section 170(b)(1)(A)(vi) and therefore under section 509(a)(1), may comply with the rules applicable to private foundations and may pay, for example, the tax imposed by section 4940. In that event, if the organization subsequently meets the requirements of subparagraph (2) or (3) of this paragraph for either applicable computation period, it shall be treated as a section 170(b)(1)(A)(vi) organization from its inception and, therefore, any tax imposed under chapter 42 shall be refunded and section 509(b) shall not apply.

(b) if a newly created organization fails to obtain an advance ruling or determination letter under subdivision (i) of this subparagraph, or an extended advance ruling or determination letter under subdivision (iv) of this subparagraph, and fails to meet the requirements of subparagraph (2) or (3) of this paragraph for the first applicable computation period provided for in subdivision (v)(*b*) or *(c)* of this subparagraph, see section 6651 for penalty for failure to file return and pay tax.

(6) *Definition of support; meaning of general public*

(i) *In general*. —In determining whether the $33^1/_3$ percent-of-support test described in subparagraph (2) of this paragraph or the 10 percent-of-support limitation described in subparagraph (3)(i) of this paragraph is "normally" met, contributions by an individual, trust, or corporation shall be taken into account as "support" from direct or indirect contributions from the general public only to the extent that the total amount of the contributions by any such individual, trust, or corporation during the period described in subparagraph (4)(i), (ii), (v) or (vi) or (5)(v) of this paragraph does not exceed 2 percent of the organization's total support for such period, except as provided in subdivision (ii) of this subparagraph. Therefore, any contribution by one individual will be included in full in the denominator of the fraction determining the $33^1/_3$ percent-of-support or the 10 percent-of-support limitation, but will only be includible in the numerator of such fraction to the extent that such amount does not exceed 2 percent of the denominator. In applying the 2 percent limitation, all contributions made by a donor and by any person or persons standing in a relationship to the donor which is described in section 4946(a)(1)(C) through (G) and the regulations thereunder shall be treated as made by one person. The 2 percent limitation shall not apply to support received from governmental units referred to in section 170(c)(1) or to contributions from organizations described in section 170(b)(1)(A)(vi), except as provided in subdivision (v) of this subparagraph. For purposes of subparagraphs (2), (3)(i) and (7)(ii)(*b*) of this paragraph, the term "indirect contributions from the general public" includes contributions received by the organization from organizations (such as section 170(b)(1)(A)(vi) organizations) which normally receive a substantial part of their support from direct contributions from the general public, except as provided in subdivision (v) of this

subparagraph. See the examples in subparagraph (9) of this paragraph for the application of this subdivision. For purposes of this paragraph (e), the term *contributions* includes qualified sponsorship payments (as defined in §1.513-4) in the form of money or property (but not services).

(ii) *Exclusion of unusual grants*. —For purposes of applying the 2 percent limitation described in subdivision (i) of this subparagraph to determine whether the $33^1/_3$ percent-of-support test in subparagraph (2) of this paragraph or the 10 percent-of-support limitation in subparagraph (3)(i) of this paragraph is satisfied, one or more contributions may be excluded from both the numerator and the denominator of the applicable percent-of-support fraction if such contributions meet the requirements of subdivision (iii) of this subparagraph. The exclusion provided by this subdivision is generally intended to apply to substantial contributions or bequests from disinterested parties which contributions or bequests:

(a) Are attracted by reason of the publicly supported nature of the organization;

(b) Are unusual or unexpected with respect to the amount thereof; and

(c) Would, by reason of their size, adversely affect the status of the organization as normally being publicly supported for the applicable period described in subparagraph (4) or (5) of this paragraph. In the case of a grant (as defined in §1.509(a)-3(g)) which meets the requirements of this subdivision, if the terms of the granting instrument (whether executed before or after 1969) require that the funds be paid to the recipient organization over a period of years, the amount received by the organization each year pursuant to the terms of such grant may be excluded for such year. However, no item of gross investment income may be excluded under this subparagraph. The provisions of this subparagraph shall apply to exclude unusual grants made during any of the applicable periods described in subparagraph (4), (5), or (6) of this paragraph. See subdivision (iv) of this subparagraph as to reliance by a grantee organization upon an unusual grant ruling under this subparagraph.

(iii) *Determining factors*. —In determining whether a particular contribution may be excluded under subdivision (ii) of this subparagraph all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. For some of the factors similar to the factors to be considered, see §1.509(a)-3(c)(4).

(iv) *Grantors and contributors*

(a) As to the status of grants and contributions which result in substantial and material changes in the organization (as described in subparagraph (4)(v)(*a*) of this paragraph) and which fail to meet the requirements for exclusion under subdivision (ii) of this subparagraph, see the rules prescribed in subparagraph (4)(v)(*b*) and *(c)* of this paragraph.

(b) Prior to the making of any grant or contribution which will allegedly meet the requirements for exclusion under subdivision (ii) of this subparagraph, a potential grantee organization may request a ruling whether such grant or contribution may be so excluded. Requests for such ruling may be filed by the grantee organization with the district director. The issuance of such ruling will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination on the factors referred to in subdivision (iii) of this subparagraph. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522 and by the grantee

organization for purposes of subdivision (ii) of this subparagraph.

(v) *Grants from public charities*. —Pursuant to subdivision (i) of this subparagraph, contributions received from a governmental unit or from a section 170(b)(1)(A)(vi) organization are not subject to the 2 percent limitation described in that subdivision unless such contributions represent amounts which have been expressly or impliedly earmarked by a donor to such governmental unit or section 170(b)(1)(A)(vi) organization as being for, or for the benefit of, the particular organization claiming section 170(b)(1)(A)(vi) status. See §1.509(a)-3(j)(3) for examples illustrating the rules of this subdivision.

(7) *Definition of support; special rules and meaning of terms*

(i) *Definition of support*. —For purposes of this paragraph, the term "support" shall be as defined in section 509(d) (without regard to section 509(d)(2)). The term "support" does not include:

(a) Any amounts received from the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a). In general, such amounts include amounts received from any activity the conduct of which is substantially related to the furtherance of such purpose of function (other than through the production of income), or

(b) Contributions of services for which a deduction is not allowable.

For purposes of the $33^1/_3$ percent-of-support test in subparagraph (2) of this paragraph and the 10 percent-of-support limitation in subparagraph (3)(i) of this paragraph, all amounts received which are described in *(a)* or *(b)* of this division are to be excluded from both the numerator and the denominator of the fractions determining compliance with such tests, except as provided in subdivision (ii) of this subparagraph.

(ii) *Organizations dependent primarily on gross receipts from related activities*. — Notwithstanding the provisions of subdivision (i) of this subparagraph, an organization will not be treated as satisfying the $33^1/_3$ percent-of-support test in subparagraph (3)(i) of this paragraph or the 10 percent-of-support limitation in subparagraph (3)(i) of this paragraph if it receives:

(a) Almost all of its support (as defined in section 509(d)) from gross receipts from related activities; and

(b) An insignificant amount of its support from governmental units (without regard to amounts referred to in subdivision (i)(*a*) of this subparagraph) and contributions made directly or indirectly by the general public.

For example, X, an organization described in section 501(c)(3), is controlled by A, its president. X received $500,000 during the four taxable years immediately preceding its current taxable year under a contract with the Department of Transportation, pursuant to which X has engaged in research to improve a particular vehicle used primarily by the Federal Government. During this same period, the only other support received by X consisted of $5,000 in small contributions primarily from X's employees and business associates. The $500,000 amount constitutes support under section 509(d)(2) and 502(d)(2)(*a*) of this subdivision. Under these circumstances, X meets the conditions of *(a)* and *(b)* of this subdivision and will not be treated as meeting the requirements of either subparagraph (2) or subparagraph (3) of this paragraph. As to the rules applicable to organizations which fail to qualify under section 170(b)(1)(A)(vi)

because of the provisions of this subdivison, see section 509(a)(2) and the regulations thereunder. For the distinction between gross receipts (as referred to in section 509(d)(2)) and gross investment income (as referred to in section 509(d)(4)), see §1.509(a)-3(m).

(iii) *Membership fees*. —For purposes of this subparagraph, the term "support" shall include "membership fees" within the meaning of §1.509(a)-3(h) (that is, if the basic purpose for making a payment is to provide support for the organization rather than to purchase admissions, merchandise, services, or the use of facilities).

(8) *Support from a governmental unit*

(i) For purposes of subparagraphs (2) and (3)(i) of this paragraph, the term "support from a governmental unit" includes any amounts received from a governmental unit, including donations or contributions and amounts received in connection with a contract entered into with a Governmental unit for the performance of services or in connection with a government research grant. However, such amounts will not constitute "support from a governmental unit" for such purposes if they constitute amounts received from the exercise or performance of the organization's exempt functions as provided in subparagraph (7)(i)(*a*) of this paragraph.

(ii) For purposes of subdivision (i) of this subparagraph, any amount paid by a governmental unit to an organization is not to be treated as received from the exercise or performance of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a) (within the meaning of subparagraph (7)(i)(*a*) of this paragraph) if the purpose of the payment is primarily to enable the organization to provide a service to, or maintain a facility for, the direct benefit of the public (regardless of whether part of the expense of providing such service or facility is paid for by the public), rather than to serve the direct and immediate needs of the payor. For example:

(a) Amounts paid for the maintenance of library facilities which are open to the public,

(b) Amounts paid under Government programs to nursing homes or homes for the aged in order to provide health care or domiciliary services to residents of such facilities, and

(c) Amounts paid to child placement or child guidance organizations under Government programs for services rendered to children in the community,

are considered payments the purpose of which is primarily to enable the recipient organization to provide a service or maintain a facility for the direct benefit of the public, rather than to serve the direct and immediate needs of the payor. Furthermore, any amount received from a governmental unit under circumstances such that the amount would be treated as a "grant" within the meaning of §1.509(1)-3(g) will generally constitute "support from a governmental unit" described in this subdivision, rather than an amount described in subparagraph (7)(i)(*a*) of this paragraph.

(9) *Examples*. —The application of subparagraphs (1) through (8) of this paragraph may be illustrated by the following examples:

Example (1). (a) M is an organization referred to in section 170(c)(2). For the years 1970 through 1973 (the applicable period with respect to the taxable year 1974 under subparagraph (4) of this paragraph), M received support (as defined in subparagraphs (6) through (8) of this paragraph) of $600,000 from the following sources:

Investment Income	$300,000
City Y (a governmental unit referred to in section 170(c)(1))	$40,000
United Fund (an organization referred to in section 170(b)(1)(A)(vi))	$40,000
Contributions	$220,000
Total Support	$600,000

(*b*) With respect to the taxable year 1974, M "normally" received in excess of $33^1/_3$ percent of its support from a governmental unit referred to in section 170(c)(1) and from direct and indirect contributions from the general public (as defined in subparagraph (6) of this paragraph) computed as follows:

$33^1/_3$ percent of total support	$200,000
Support from a governmental unit referred to in section 170(c)(1)	$40,000
Indirect contributions from the general public (United Fund)	$40,000
Contributions by various donors (no one having made contributions which total in excess of $12,000 --2 percent of total support)	$50,000
Six contributions (each in excess of $12,000 --2 percent total support) 6 ´ $12,000	$72,000
	$202,000

(c) Since the amount of X's support from governmental units referred to in section 170(c)(1) and from direct and indirect contributions from the general public with respect to the taxable year 1974 "normally" exceeds $33^1/_3$ percent of M's total support for the applicable period (1970-1973), X meets the $33^1/_3$ percent-of-support test under subparagraph (2) of this paragraph and is therefore treated as satisfying the requirments for classification as a "publicly supported" organization under subparagraph (2) of this paragraph for the taxable years 1974 and 1975 (there being no substantial and material changes in the organization's character, purposes, methods of operation, or sources of support in these years).

Example (2). N is an organization referred to in section 170(c)(2). It was created to maintain public gardens containing botanical specimens and displaying statuary and other art objects. The facilities, works of art, and a large endowment were all contributed by a single contributor. The members of the governing body of the organization are unrelated to its creator. The gardens are open to the public without charge and attract a substantial number of visitors each year. For the four taxable years immediately preceding the current taxable year, 95 percent of the organization's total support was received from investment income from its original endowment. N also maintains a membership society which is supported by members of the general public who wish to contribute to the upkeep

of the gardens by paying a small annual membership fee. Over the four-year period in question, these fees from the general public constituted the remaining 5 percent of the organization's total support for such period. Under these circumstances, N does not meet the $33^1/_3$ percent-of-support test under subparagraph (2) of this paragraph for its current taxable year. Furthermore, since only 5 percent of its total support is, with respect to the current taxable year, normally received from the general public, N does not satisfy the 10 percent-of-support limitation described in subparagraph (3)(i) of this paragraph and cannot therefore be classified as "publicly supported" under subparagraph (3) of this paragraph. For its current taxable year, N therefore, is not an organization described in section 170(b)(1)(A)(vi). Since N has failed to satisfy the 10 percent-of-support limitation under subparagraph (3)(i) of this paragraph, none of the other requirements or factors set forth in subparagraph (3)(iii) through (vii) of this paragraph can be considered in determining whether N qualifies as a "publicly supported" organization.

Example (3). (a) O, an art museum, is an organization referred to in section 170(c)(2). In 1930, O was founded in Y City by the members of a single family to collect, preserve, interpret, and display to the public important works of art. O is governed by a Board of Trustees which originally consisted almost entirely of members of the founding family. However, since 1945, members of the founding family or persons standing in a relationship to the members of such family described in section 4946(a)(1)(C) through (G) have annually constituted less than one-fifth of the Board of Trustees. The remaining board members are citizens of Y City from a variety of professions and occupations who represent the interests and views of the people of Y City in the activities carried on by the organization rather than the personal or private interests of the founding family. O solicits contributions from the general public and for each of its four most recent taxable years has received total contributions (in small sums of less than $100, none of which exceeds 2 percent of O's total support for such period) in excess of $10,000. These contributions from the general public (as defined in subparagraph (6) of this paragraph) represent 25 percent of the organization's total support for such four-year period. For this same period, investment income from several large endowment funds has constituted 75 percent of its total support. O expends substantially all of its annual income for its exempt purposes and thus depends upon the funds it annually solicits from the public as well as its investment income in order to carry out its activities on a normal and continuing basis and to acquire new works of art. O has, for the entire period of its existence, been open to the public and more than 300,000 people (from Y City and elsewhere) have visited the museum in each of its four most recent taxable years.

(b) Under these circumstances, O does not meet the $33^1/_3$ percent-of-support test under subparagraph (2) of this paragraph for its current year since it has received only 25 percent of its total support for the applicable four-year period from the general public. However, under the facts set forth above, O has met the 10 percent-of-support limitation under subparagraph (3)(i), as well as the requirements of subparagraph (3)(ii), of this paragraph. Under all of the facts set forth in this example, O is considered as meeting the requirements of subparagraph (3) of this paragraph on the basis of satisfying subparagraph (3)(i) and (ii) of this paragraph and the factors set forth in subparagraph (3)(iii), (iv), (v) and (vi) of this paragraph, and is therefore classified as a "publicly supported organization" under subparagraph (1) of this paragraph for its current taxable year and the immediately succeeding taxable year (there being no substantial and material changes in the organization's character, purposes, methods of operation, or sources of support in these years).

Example (4). (a) In 1960, the P Philharmonic Orchestra was organized in Z City through the combined efforts of a local music society and a local women's club to present to the public a wide variety of musical programs intended to foster music appreciation in the community. P is an organization referred to in section 170(c)(2). The orchestra is composed of professional musicians who are paid by the association. Twelve performances open to the public are scheduled each year. A

small admission charge is made for each of these performances. In addition, several performances are staged annually without charge. During its four most recent taxable years, P has received separate contributions of $200,000 each from A and B (not members of a single family) and support of $120,000 from the Z Community Chest, a public federated fund-raising organization operating in Z City. P depends on these funds in order to carry out its activities and will continue to depend on contributions of this type to be made in the future. P has also begun a fund-raising campaign in an attempt to expand its activities for the coming years. P is governed by a Board of Directors comprised of five individuals. A faculty member of a local college, the president of a local music society, the head of a local banking institution, a prominent doctor, and a member of the governing body of the local Chamber of Commerce currently serve on the Board and represent the interests and views of the community in the activities carried on by P.

(b) With respect to P's current taxable year, P's sources of support are computed on the basis of the four immediately preceding years, as follows:

Contributions	$520,000
Receipts from performances	100,000
Total support	$620,000
Less:	
Receipts from performances (excluded under subparagraph (7)(i)(*a*) of this paragraph)	$100,000
Total support for purposes of subparagraphs (2) and (3)(i) of this paragraph	$520,000

(*c*) For purposes of subparagraphs (2) and (3)(i) of this paragraph, P's support is computed as follows:

Z Community Chest (indirect support from the general public)	$120,000
Two contributions (each in excess of $10,400 --2 percent of total support) 2 ´ $10,400	20,800
Total	$140,800

(d) P's support from the general public, directly and indirectly, does not meet the $33^1/_3$ percent-of-support test under subparagraph (2) of this paragraph ($140,800/$520,000 = 27 percent of total support). However, since P receives 27 percent of its total support from the general public, it meets the 10 percent-of-support limitation under subparagraph (3)(i) of this paragraph. P also meets the requirements of subparagraph (3)(ii) of this paragraph. As a result of satisfying these requirements and the factors set forth in subparagraph (3)(iii), (iv), (v) and (vi) of this paragraph, P is considered as meeting the requirements of subparagraph (3) of this paragraph and is therefore considered to be

a “publicly supported” organization under subparagraph (1) of this paragraph.

(e) If, instead of the above facts, P were a newly created organization, P could obtain a ruling pursuant to subparagraph (5) of this paragraph by reason of its purposes, organizational structure and proposed method of operation. Even if P had initially been founded by the contributions of a few individuals, such fact would not, in and of itself, disqualify P from receiving a ruling under subparagraph (5) of this paragraph.

Example (5). (*a*) Q is an organization referred to in section 170(c)(2). It is a philanthropic organization founded in 1965 by A for the purpose of making annual contributions to worthy charities. A created Q as a charitable trust by the transfer of $500,000 worth of appreciated securities to Q.

Pursuant to the trust agreement, A and two other members of his family are the sole trustees and are vested with the right to appoint successor trustees. In each of its four most recent taxable years, Q received $15,000 in investment income from its original endowment. Each year Q makes a solicitation for funds by operating a charity ball at A's residence. Guests are invited and requested to make contributions of $100 per couple. During the four-year period involved, $15,000 was received from the proceeds of these events. A and his family have also made contributions to Q of $25,000 over the course of the organization's four most recent taxable years. Q makes disbursements each year of substantially all of its net income to the public charities chosen by the trustees.

(*b*) With respect to Q's current taxable year, Q's sources of support are computed on the basis of the four immediately preceding years as follows:

Investment income	$60,000
Contributions	$40,000
Total Support	$100,000

(*c*) For purposes of subparagraphs (2) and (3)(i) of this paragraph, Q's support is computed as follows:

Contributions from the general public	$15,000
One contribution (in excess of $2,000 --2 percent of total support) 1 ´ $2,000	$2,000
Total	$17,000

(*d*) Q's support from the general public does not meet the $33^{1}/_{3}$ percent-of-support test under subparagraph (2) of this paragraph ($17,000/$100,000 = 17 percent of total support). Thus, Q's classification as a “publicly supported” organization depends on whether it meets the requirements of subparagraph (3) of this paragraph. Even though it satisfies the 10 percent-of-support limitation under subparagraph (3)(i) of this paragraph, its method of solicitation makes it questionable whether Q satisfies the requirements of subparagraph (3)(ii) of this paragraph. Because of its method of

operating, Q also has a greater burden of establishing its publicly supported nature under subparagraph (3)(iii) of this paragraph. Based upon the foregoing and upon Q's failure to receive favorable consideration under the factors set forth in subparagraph (3)(iv), (v) and (vi) of this paragraph, Q does not satisfy the requirements of subparagraph (3) of this paragraph as a "publicly supported" organization.

(*e*) If, instead of the above facts, Q were a newly created organization, Q would not be able to receive a ruling pursuant to subparagraph (5) of this paragraph. Its purposes, organizational structure, and method of operation would be insufficient to establish that Q could reasonably be expected to meet the requirements of subparagraph (2) or (3) of this paragraph for its first two or its first five taxable years.

(10) *Community trust; introduction*. —Community trusts have often been established to attract large contributions of a capital or endowment nature for the benefit of a particular community or area, and often such contributions have come initially from a small number of donors. While the community trust generally has a governing body comprised of representatives of the particular community or area, its contributions are often received and maintained in the form of separate trusts or funds, which are subject to varying degrees of control by the governing body. To qualify as a "publicly supported" organization, a community trust must meet the $33^1/_3$ percent-of-support test of paragraph (e)(2) of this section, or, if it cannot meet that test, be organized and operated so as to attract new and additional public or governmental support on a continuous basis sufficient to meet the facts and circumstances test of paragraph (e)(3) of this section. Such facts and circumstances test includes a requirement of attraction of public support in paragraph (e)(3)(ii) of this section which, as applied to community trusts, will generally be satisfied if they seek gifts and bequests from a wide range of potential donors in the community or area served, through banks or trust companies, through attorneys or other professional persons, or in other appropriate ways which call attention to the community trust as a potential recipient of gifts and bequests made for the benefit of the community or area served. A community trust is not required to engage in periodic, community-wide, fund-raising campaigns directed toward attracting a large number of small contributions in a manner similar to campaigns conducted by a community chest or united fund. Paragraph (e)(12) and (13) of this section provide[s] a transitional ruling period for certain community trusts in existence before November 11, 1976 that had irregular public support, so that they can meet the requirements of paragraph (e)(2) or (3) of this section based on the 4-year computation period described in paragraph (e)(4) of this section. Paragraph (e)(11) of this section provides rules for determining the extent to which seperate trusts or funds may be treated as component parts of a community trust, fund or foundation (herein collectively referred to as a "community trust", and sometimes referred to as an "organization") for purposes of meeting the requirements of this paragraph for classification as a "publicly supported" organization. Paragraph (e)(14) of this section contains rules for trusts or funds which are prevented from qualifying as component parts of a community trust by paragraph (e)(11) of this section.

(11) *Community trusts; requirements for treatment as a single entity*

(i) *General rule*. —For purposes of sections 170, 501, 507, 508, 509, and chapter 42, any organization that meets the requirements contained in paragraph (e)(11)(iii) through (vi) of this section will be treated as a single entity, rather than as an aggregation of separate funds, and except as otherwise provided, all funds associated with such organization (whether a trust, not-for-profit corporation, unincorporated association, or a combination thereof) which meet the requirements of paragraph (e)(11)(ii) of this section will be treated as component parts of such organization.

(ii) *Component part of a community trust.* —In order to be treated as a component part of a community trust referred to in paragraph (e)(11) of this section (rather than as a seperate trust or not-for-profit corporation or association) a trust or fund:

(A) Must be created by a gift, bequest, legacy, devise, or other transfer to a community trust which is treated as a single entity under paragraph (e)(11) of this section; and

(B) May not be directly subjected by the transferor to any material restriction or condition (within the meaning of §1.507-2(a)(8)) with respect to the transferred assets.

For the purposes of paragraph (e)(11)(ii)(B) of this section, if the transferor is not a private foundation, the provisions of §1.507-2(a)(8) shall be applied to the trust or fund as if the transferor were a private foundation established and funded by the person establishing the trust or fund and such foundation transferred all its assets to the trust or fund. Any transfer made to a fund or trust which is treated as a component part of a community trust under paragraph (e)(11)(ii) of this section will be treated as a transfer made "to" a "publicly supported" community trust for purposes of section 170(b)(1)(A) and 507(b)(1)(A) if such community trust meets the requirements of section 170 (b)(1)(A)(vi) as a "publicly supported" organization at the time of the transfer, except as provided in §1.170A-9(e)(4)(v)(*b*) or §1.508-1(b)(4) and (6) relating, generally, to reliance by grantors and contributors. See, also, paragraph (e)(14)(ii) and (iii) of this section for special provisions relating to split-interest trusts and certain private foundations described in section 170 (b)(1)(E)(iii).

(iii) *Name*. —The organization must be commonly known as a community trust, fund, foundation or other similar name conveying the concept of a capital or endowment fund to support charitable activities (within the meaning of section 170(c)(1) or (2)(B)) in the community or area it serves.

(iv) *Common instrument*. —All funds of the organization must be subject to a common governing instrument or a master trust or agency agreement (herein referred to as the "governing instrument"), which may be embodied in a single document or several documents containing common language. Language in an instrument of transfer to the community trust making a fund subject to the community trust's governing instrument or master trust or agency agreement will satisfy the requirements of paragraph (e)(11)(iv) of this section. In addition, if a community trust adopts a new governing instrument (or creates a corporation) to put into effect new provisions (applying to future transfers to the community trust), the adoption of such new governing instrument (or creation of a corporation with a governing instrument) which contains common language with the existing governing instrument shall not preclude the community trust from meeting the requirements of such paragraph (e)(11)(iv).

(v) *Common governing body*

(A) *In general*. —The organization must have a common governing body or distribution committee (herein referred to as the "governing body") which either directs or, in the case of a fund designated for specified beneficiaries, monitors the distribution of all of the funds exclusively for charitable purposes (within the meaning of section 170(c)(1) or (2)(B)).

For purposes of this (v) a fund is designated for specified beneficiaries only if no person is left with the discretion to direct the distribution of the fund.

(B) *Powers of modification and removal*. —Except as provided in paragraph (e)(11)(v)(C) of this section, the governing body must have the power in the governing instrument, the

instrument of transfer, the resolutions or by-laws of the governing body, a written agreement, or otherwise —

(1) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the governing body (without the necessity of the approval of any participating trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served;

(2) To replace any participating trustee, custodian, or agent for breach of fiduciary duty under State law; and

(3) To replace any participating trustee, custodian, or agent for failure to produce a reasonable (as determined by the governing body) return of net income (within the meaning of paragraph (e)(11)(v)(F) of this section) over a reasonable period of time (as determined by the governing body).

The fact that the exercise of any such power in paragraph (e)(11)(v)(B)(*1*), (*2*) or (*3*) of this section is reviewable by an appropriate State authority will not preclude the community trust from meeting the requirements of paragraph (e)(11)(v)(B) of this section.

(C) *Transitional rule*

(1) Notwithstanding paragraph (e)(11)(v)(B) of this section, if a community trust meets the requirements of paragraph (e)(11)(v)(C)(*2*) of this section, then in the case of any instrument of transfer which is executed before July 19, 1977 and is not revoked or amended thereafter (with respect to any dispositive provision affecting the transfer to the community trust), and in the case of any instrument of transfer which is irrevocable on January 19, 1982, the governing body must have the power to cause proceedings to be instituted (by request to the appropriate State authority) —

(i) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the judgment of the governing body such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served; and

(ii) To remove any participating trustee, custodian, or agent for breach of fiduciary duty under State law.

The necessity of the governing body to obtain the approval of a participating trustee to exercise such a power shall be treated as not preventing the governing body from having such power, unless (and until) such approval has been (or is) requested by the governing body and has been (or is) denied.

(2) Paragraph (e)(11)(v)(C)*(1)* of this section shall not apply unless the community trust meets the requirements of paragraph (e)(11)(v)(B) of this section, with respect to funds other than those under instruments of transfer described in the first sentence of such paragraph (e)(11)(v)(C)*(1)*, by January 19, 1978, or such later date as the Commissioner may provide for such community trust, and unless the community trust does not, once it so complies, thereafter solicit for funds that will not qualify under the requirements of such paragraph (e)(11)(v)(B).

(D) *Inconsistent State law*

(1) For purposes of paragraph (e)(11)(v)(B)(*1*) (*2*), or (*3*) or (C)(*1*)(*i*) or (*ii*) or (E) of this section, if a power described in such a provision is inconsistent with State law even if such power were expressly granted to the governing body by the governing transfer, then the community trust will be treated as meeting the requirements instrument and were accepted without limitation under an instrument of such a provision if it meets such requirements to the fullest extent possible consistent with State law (if such power is or had been so expressly granted).

(2) For example, if, under the conditions of paragraph (e)(11)(v)(D)(*1*) of this section, the power to modify is inconsistent with State law, but the power to institute proceedings to modify, if so expressly granted, would be consistent with State law, the community trust will be treated as meeting such requirements to the fullest extent possible if the governing body has the power (in the governing instrument or otherwise) to institute proceedings to modify a condition or restriction. On the other hand, if in such a case the community trust has only the power to cause proceedings to be instituted to modify a condition or restriction, it will not be treated as meeting such requirements to the fullest extent possible.

(3) In addition, if, for example, under the conditions of paragraph (e)(11)(v)(D)(*1*) of this section, the power to modify and the power to institute proceedings to modify a condition or restriction is inconsistent with State law, but the power to cause such proceedings to be instituted would be consistent with State law, if it were expressly granted in the governing instrument and if the approval of the State Attorney General were obtained, then the community trust will be treated as meeting such requirements to the fullest extent possible if it has the power (in the governing instrument or otherwise) to cause such proceedings to be instituted, even if such proceedings can be instituted only with the approval of the State Attorney General.

(E) *Exercise of powers*. —The governing body shall (by resolution or otherwise) commit itself to exercise the powers described in paragraph (e)(11)(v)(B), (C) and (D) of this section in the best interests of the community trust. The governing body will be considered not to be so committed where it has grounds to exercise such a power and fails to exercise it by taking appropriate action. Such appropriate action may include, for example, consulting with the appropriate State authority prior to taking action to replace a participating trustee.

(F) *Reasonable return*. —In addition to the requirements of paragraph (e)(11)(v)(B), (C), (D) or (E) of this section, the governing body shall (by resolution or otherwise) commit itself to obtain information and take other appropriate steps with the view to seeing that each participating trustee, custodian, or agent, with respect to each restricted (within the meaning of paragraph (e)(13)(x) of this section) trust or fund that is, and with respect to the aggregate of the unrestricted trusts or funds that are, a component part of the community trust, administers such trust or fund in accordance with the terms of its governing instrument and accepted standards of fiduciary conduct to produce a reasonable return of net income (or appreciation where not inconsistent with the community trust's need for current income), with due regard to safety of principal, in furtherance of the exempt purposes of the community trust (except for assets held for the active conduct of the community trust's exempt activities). In the case of a low return of net income (and, where appropriate, appreciation), the Internal Revenue Service will examine carefully whether the governing body has, in fact, committed itself to take the appropriate steps.

(vi) *Common reports*. —The organization must prepare periodic financial reports treating all of the funds which are held by the community trust, either directly or in component parts, as funds of the organization.

(vii) *Transitional rule*. —If the governing instrument of a community trust (or an instrument of transfer) is inconsistent with the requirements of paragraph (e)(11)(iv) or (v) of this section but with respect to gifts or bequests acquired before January 1, 1982, the community trust changes its governing instrument (or instrument of transfer) by the later of November 11, 1977, or one year after the gift or bequest is acquired, in order to conform such instruments to such provisions, then such an instrument shall be treated as consistent with paragraph (e)(11)(iv) or (v) of this section for taxable years beginning after December 31, 1969. In addition, if prior to the later of such dates, the organization has instituted court proceedings in order to conform such an instrument, then it may apply (prior to the later of such dates) for an extension of the period to conform such instrument to such provisions. Such application shall be made to the Commissioner of Internal Revenue, Attention: E:EO, Washington, D.C. 20224. The Commissioner, at the Commissioner's discretion, may grant such an extension, if in the Commissioner's opinion such a change will conform the instrument to such provisions and will be made within a reasonable time.

(12) *Community trusts qualifying for 5-year transitional ruling period*

(i) *In general*. —Paragraph (e)(12) and (13) of this section contain[s] transitional rules for certain community trusts in existence before November 11, 1976 which are unable to meet the requirements of paragraph (e)(2) or (3) of this section based upon a 4-year computation period under paragraph (e)(4) of this section. A community trust that satisfies the requirements of paragraph (e)(12)(ii) of this section will be eligible for a transitional ruling or determination letter that it will be treated as a section 170(b)(1)(A)(vi) organization for a 5-year transitional ruling period (referred to in this section as a “transitional ruling or determination letter”). These transitional rules apply to —

(A) A community trust which has been in existence less than 9 taxable years before November 11, 1976; and

(B) Other community trusts that for each taxable year beginning after December 31, 1969, and before January 1, 1978, qualify as “publicly supported” under paragraph (e)(2) or (3) of this section based upon a computation period of either —

(1) 10 taxable years, or

(2) The number of taxable years (but not more than 20 nor less then 10) preceding such taxable year that the organization was in existence.

For special rules in applying the requirements of paragraph (e)(2) or (3) of this section based upon such computation periods, see paragraph (e)(12)(v) of this section. For purposes of paragraph (e)(12) of this section the initial taxable year of the 5-year transitional ruling period (hereinafter referred to as the “transitional ruling period”) shall be the organization's taxable year beginning in 1977, and (unless terminated earlier) the last year of the transitional ruling period is the organization's taxable year which begins in 1981.

(ii) *Transitional 5-year ruling*

(A) If a community trust meets the requirements of paragraph (e)(11), (12) and (13) of this section and can reasonably be expected to meet the requirements of paragraph (e)(2) or (3) of this section —

(1) For each of its taxable years (if such a year begins after its tenth taxable year) beginning in 1978, 1979, 1980, and 1981 based upon a 10-year computation period, and

(2) For its taxable year beginning in 1982 based upon a 4-year computation period under paragraph (e)(4) of this section,

it may, at the discretion of the Commissioner, receive a transitional ruling or determination letter for a 5-year transitional ruling period.

(B)

(1) However, if for the taxable year beginning in 1977, a community trust can meet the requirements of paragraph (e)(12)(i)(B) of this section only by using the computation period of its existence described in paragraph (e)(12)(i)(B)(*2*) of this section, then the community trust may meet the requirements of paragraph (e)(12)(ii)(A)(*1*) of this section if it is reasonably expected to meet the requirements of paragraph (e)(2) or (3) of this section for each of its taxable years beginning in 1978, 1979, 1980 and 1981 based upon a computation period consisting of the number of taxable years (but not more than 20 nor less than 10) preceding such taxable year that the organization was in existence.

(2) In the case of a community trust that will not have been in existence more than ten taxable years as of its taxable year beginning in 1981, a transitional ruling or determination letter for the transitional ruling period will not be granted unless the community trust can reasonably be expected to meet the requirements of paragraph (e)(2) or (3) of this section for its taxable year beginning in 1982 based upon a 4-year computation period under paragraph (e)(4) of this section and also a computation period consisting of the taxable year the organization has been in existence (other than the organization's taxable year beginning in 1982).

(C) A community trust that is eligible for a transitional ruling or determination letter must apply with the district director for such ruling or determination letter within one year after November 11, 1976. A transitional ruling or determination letter will be granted only if the requesting organization files with its request for such ruling or determination letter a consent letter under section 6501(c)(4) to the effect that the period of limitation upon assessment under section 4940 for all taxable years beginning before January 1, 1982 during the transitional ruling period shall not expire prior to 1 year after the date of the expiration of the time prescribed by law for the assessment of a deficiency for its taxable year beginning in 1981. The provisions of paragraph (e)(5)(iii) of this section (relating to reliance upon ruling) shall apply with respect to a community trust which receives a transitional ruling or determination letter and with respect to its grantors and contributors, except that the transitional ruling period described in paragraph (e)(12)(ii) of this section shall be substituted for the advance ruling period described in paragraph (e)(5)(i) or (iv) of this section.

(D) A community trust does not have to meet the requirements of paragraph (e)(13) of this section for taxable years beginning prior to the date of its application for a transitional ruling or determination letter or for any taxable year beginning after the expiration or termination of its transitional ruling or determination letter. In applying paragraph (e)(13) of this section to

organizations applying for a transitional ruling or determination letter, paragraph (e)(13)(x) and (xii) of this section (relating to unrestricted gifts and excess holdings, respectively) shall be applied without regard to assets acquired prior to November 11, 1976. In addition, if within 1 year from acquiring any asset, the community trust removes any restriction inconsistent with paragraph (e)(13) of this section, such asset shall be treated as if it were not subject to such restriction as of the time it was acquired. Since under paragraph (e)(12)(ii)(D) of this section, a community trust does not have to meet the requirements of paragraph (e)(13) of this section for taxable years beginning prior to the date of its application for the transitional ruling or determination letter, then if the community trust makes such application in its taxable year beginning in 1977 and it terminates such ruling or determination letter in such year as well, such a community trust does not have to meet such requirements for any taxable year.

(E) After the transitional ruling or determination letter of an organization has expired or been terminated under paragraph (e)(12)(iii) of this section, the organization must qualify as a "publicly supported" organization pursuant to the rules set forth in paragraph (e)(1) through (11) of this section. Thus, since the transitional ruling period of a community trust expires with its taxable year beginning in 1981, for its taxable year beginning in 1982 and thereafter, the community trust must meet the requirements of paragraph (e)(2) or (3) of this section based upon the 4-year computation period under paragraph (e)(4) of this section.

(iii) *Termination of transitional ruling*

(A) The transitional ruling or determination letter issued under this paragraph is subject to termination under paragraph (e)(12)(iii)(B) or (D) of this section without a request from the organization. In addition, such a ruling or determination letter is subject to termination under paragraph (e)(12)(iii)(E) of this section at the request of the organization. A transitional ruling or determination letter is subject to termination for any taxable year beginning after December 31, 1976, and before January 1, 1982, under paragraph (e)(12)(iii)(B), (D) or (E) of this section.

(B) The transitional ruling or determination letter issued under this paragraph shall be terminated for any taxable year (if such a year begins after its tenth taxable year) beginning in 1978, 1979, 1980 or 1981 for which the community trust receiving such a ruling or determination letter fails to meet the requirements of paragraph (e)(2) or (3) of this section for a 10-year computation period, except as provided in paragraph (e)(12)(iii)(C) of this section.

(C) In applying paragraph (e)(12)(iii)(B) of this section to a community trust described in paragraph (e)(12)(ii)(B)(*1*) of this section, a computation period consisting of the number of taxable years (but not more than 20 nor less than 10) preceding such taxable year that the organization was in existence shall be substituted for the 10-year computation period until the first taxable year beginning in 1978, 1979, 1980 or 1981 that the community trust can meet the requirements of paragraph (e)(2) or (3) of this section based upon a 10-year computation period.

(D) The Commissioner may, at the discretion of the Commissioner, terminate the transitional ruling or determination letter of any community trust for any taxable year beginning prior to January 1, 1982, for which the organization fails to meet the requirements of paragraph (e)(11), (12) or (13) of this section, as provided in paragraph (e)(12)(ii) of this section.

(E) A community trust may request an immediate termination of the community trust's transitional ruling or determination letter in order that, for the current taxable year, it may be

determined if such community trust meets the requirements of paragraph (e)(2) or (3) of this section based upon a 4-year computation period under paragraph (e)(4) of this section. Such a request shall be granted and the transitional ruling or determination letter terminated only if the community trust meets such requirements, and in the case of an organization that has been in existence less than 11 taxable years at the time of such request, the organization also meets the requirements of paragraph (e)(2) or (3) of this section for the computation period consisting of the taxable years that the organization has been in existence.

(iv) *Initial determination of status*

(A) The initial determination of status of a community trust is the first determination (other than by issuance of an advance ruling or determination letter under paragraph (e)(5) or a transitional ruling or determination letter under paragraph (e)(12)(ii) of this section) that the community trust will be considered as "normally" meeting the requirements of paragraph (e)(2) or (3) of this section for a period beginning with its first taxable year.

(B)

(1) In the case of a community trust described in paragraph (e)(12)(i)(B) of this section, the initial determination of status shall be made for the community trust's taxable year beginning in 1977 if such community trust has met the requirements of paragraph (e)(2) or (3) of this section for its taxable year beginning in 1977, based upon a 10-year computation period.

(2) In the case of any other community trust described in paragraph (e)(12)(i)(B) of this section (but not described in paragraph (e)(12)(v)(B)(*1*) of this section), the initial determination of status shall be made for its first taxable year beginning after December 31, 1976, and before January 1, 1982, for which it meets the requirements of paragraph (e)(2) or (3) of this section based upon a 10-year computation period (if the community trust has received a transitional ruling or determination letter that has not been terminated before such taxable year).

(C) In the case of a community trust described in paragraph (e)(12)(i)(A) of this section (relating to an organization in existence less than 9 taxable years) that reaches its 11th taxable year before its taxable year beginning in 1982, its initial determination of status shall be for its 11th taxable year based upon a 10-year computation period (if it has received a transitional ruling or determination letter that has not been terminated before such taxable year).

(D) If a community trust has not received an initial determination of status prior to the expiration or termination of its transitional ruling period, the initial determination of status shall be made —

(1) In the case of an expiration, for the taxable year beginning in 1982, or

(2) In the case of a termination, for the last taxable year of the terminated transitional period, based upon a 4-year computation period under paragraph (e)(4) of this section. In the case of an organization that has been in existence less than 11 taxable years at such time, the initial determination of status shall also be based upon a computation period consisting of the taxable years it has been in existence.

For example, if the initial determination of status (for an organization that has been in

existence for at least 11 taxable years) is made for its taxable year beginning in 1982, then, except as provided in paragraph (e)(4)(v) of this section (relating to exception for material changes of support), such determination shall be based upon a 4-year computation period ending with the taxable year beginning in 1980 or 1981 (treating the taxable year beginning in 1982, as the subsequent year or current year, respectively).

On the other hand, if, for example, the transitional ruling or determination letter is terminated in the taxable year beginning in 1980, then, except as provided in such paragraph (e)(4)(v), the initial determination of status shall be made for the taxable year beginning in 1980 based upon the 4-year computation period ending with the taxable year beginning in 1978 or 1979.

(v) *Special rules*

(A) *Consequences of organization failing to meet requirements at end of transitional period*. —If upon the expiration (or termination) of the transitional period an organization with a transitional ruling or determination letter fails to meet the requirements of paragraph (e)(2) or (3) of this section based upon the 4-year computation period of paragraph (e)(4) of this section, it shall not be treated as an organization described in section 170(b)(1)(A)(vi) for its taxable year beginning in 1982 (or for the last taxable year of its terminated transitional period, as the case may be). If, by reason of failing to qualify as an organization described in section 170(b)(1)(A)(vi), such organization becomes a private foundation, then the organization will be a private foundation for its taxable year beginning in 1982 (or the last taxable year of its terminated transitional period, as the case may be) and all subsequent taxable years, unless and until it terminates its status under section 507. In addition, such an organization is a private foundation for all taxable years beginning prior to its taxable year beginning in 1982 (or for the last taxable year of the terminated transitional period, as the case may be), except —

(1) That if the organization had received an initial determination of status that it met the requirements of paragraph (e)(2) or (3) of this section, then the organization will be treated as "publicly supported" for the taxable years to which the initial determination of status is effective, as well as for all taxable years beginning after the last of such years and before January 1, 1982, for which the organization consecutively meets the requirements of paragraph (e)(2) or (3) of this section based upon a 10-year computation period,

(2) That in the case of an organization that has reached its tenth taxable year of existence before January 1, 1970, if the organization has not received an initial determination of status prior to its taxable year beginning in 1982, then the organization will be treated as "publicly supported" for each taxable year beginning before January 1, 1977, that the organization, beginning with the taxable year beginning in 1970, consecutively met the requirements of paragraph (e)(2) or (3) of this section based upon a 10-year computation period, or

(3) That in the case of an organization whose 11th taxable year of its existence began after December 31, 1970 and before January 1, 1977, if the organization has not received an initial determination of status prior to its taxable year beginning in 1982, but the organization for its 11th taxable year of existence met the requirements of paragraph (e)(2) or (3) of this section based upon a 10-year computation period, then the organization will be treated as "publicly supported" for the first 12 taxable years of its existence. In addition, such an organization will be so treated for its 13th taxable year and each subsequent taxable year (if such year begins before January 1, 1977) that the organization, beginning with its 12th taxable year, consecutively met the requirements of paragraph (e)(2) or (3) of this section based upon a 10-year computation period.

(4) To the extent provided in paragraph (e)(4)(vii) of this section (relating to special rule for organization with existing rulings), §1.508-1(b) (relating to notice that an organization is not a private foundation) or §1.509(a)-7 (relating to reliance by grantors and contributors to section 509(a)(1), (2), and (3) organizations).

(B) *Computation period*. —In applying the requirements of paragraph (e)(2) or (3) of this section to a 10-year or other computation period under paragraph (e)(12) or (13) of this section, such 10-year or other computation period shall be substituted for the 4-year computation period of paragraph (e)(4) of this section. Thus, for example, an organization will (except as provided in paragraph (e)(4)(v) of this section relating to exemption for material changes in sources of support) meet the "publicly supported" test of this paragraph for the taxable year beginning in 1977 based upon a 10-year computation period, if it met the requirements of paragraph (e)(2) or (3) of this section for a computation period consisting of either the taxable years beginning in the years 1966 through 1975 or the years 1967 through 1976, since under paragraph (e)(4) of this section, meeting the requirements for a computation period is effective for the current taxable year and the immediately succeeding taxable year. However, in substituting a 10-year or other computation period for the 4-year computation period of paragraph (e)(4) of this section, the rules of such paragraph (e)(4) and (6) apply, including the 2-percent limitation under paragraph (e)(6)(i) of this section and the exclusion for unusual grants under paragraph (e)(6)(ii) of this section. In applying such provisions, the fact that the computation period is other than a 4-year computation period shall be taken into account, so that, for example, the 2-percent limitation shall be applied, in the case of a 10-year computation period, with reference to 2 percent of the organization's total support for the 10-year computation period rather than a 4-year computation period.

In addition, in substituting a 10-year or other computation period for purposes of paragraph (e)(3) of this section, all of the facts and circumstances referred to in such paragraph (e)(3) shall be considered with respect to such period, viewing such period as a whole. See, also, paragraph (e)(10) of this section with respect to the organization being organized and operated to attract public support.

(C) *First taxable year of less than 8 months*. —In the case of an organization whose first taxable year consisted of less than 8 months, in order to coordinate the rules of paragraph (e)(12) of this section with the rules paragraph (e)(5) of this section, in applying the rules of paragraph (e)(12) of this section, such an organization shall be treated as organized at the beginning of its succeeding taxable year, so that such succeeding taxable year shall be treated as its first taxable year of existence. However, the support received for the period preceding such succeeding taxable year shall be taken into account with the support received in such succeeding taxable year.

(13) *Community trusts; requirements for 5-year transitional ruling period*

(i) *In general*. —In order for a community trust to be eligible for a transitional ruling or determination letter for the transitional ruling period under paragraph (e)(12) of this section, it must establish that it is organized, and will be operated, in such manner that it can reasonably be expected to meet the requirements of paragraph (e)(13) of this section, and can reasonably be expected to meet the requirements of paragraph (e)(2) or (3) of this section, for each taxable year during and immediately following the transitional ruling period, as provided in paragraph (e)(12)(ii) of this section. In determining whether an organization can reasonably be expected to meet the requirements of paragraph (e)(2) or (3) of this section for each such taxable year, the

basic consideration is whether its organizational structure, proposed programs or activities, and intended method of operation are such as to attract the type of broadly based support from the general public, public charities, and governmental units which is necessary to meet such tests. The information to be considered for this purpose shall consist of all pertinent facts and circumstances relating to the requirements set forth in paragraph (e)(3) of this section. For purposes of meeting the requirements of paragraph (e)(13) of this section, a community trust may, prior to its application for a transitional ruling or determination letter under paragraph (e)(12)(ii)(C) of this section, adopt a resolution stating that, as a matter of policy, it will attempt to meet the conditions set forth in paragraph (e)(13) of this section during the transitional ruling period. A community trust will not be treated as failing to satisfy the requirements of paragraph (e)(13) of this section merely because the governing body, or any of its trustees, agents, or custodians, fails to meet one or more of the requirements contained in paragraph (e)(13)(ii) through (xiii) of this section by reason of isolated and nonrepetitive acts. However, any continuing pattern on the part of the governing body, or its trustees, agents or custodians, indicating a continued and repetitive failure to comply with a policy of meeting such requirements will result in termination of the transitional ruling or determination letter under paragraph (e)(12)(iii)(D) of this section.

(ii) *Area*. —The community trust is organized and operated exclusively to carry out charitable purposes (within the meaning of section 170(c)(1) or (2)(B)) primarily within a broad geographical area which it serves, such as municipality, county, metropolitan area, State or region.

(iii) *General composition of governing body*. —The governing body must represent the broad interests of the public rather than the personal or private interests of a limited number of donors. An organization will be treated as meeting this requirement if it has a governing body comprised of public officials acting in their capacities as such; individuals selected by public officials acting in their capacities as such; persons having special knowledge or expertise in a particular field or discipline in which the community trust operates; community leaders, such as elected or appointed officials, clergymen, educators, civic leaders; or other such persons representing a broad cross-section of the views and interests of the area served.

(iv) *Rules for governing body*. —With respect to terms of office beginning after the date of the application of the community trust for a transitional ruling or determination letter —

(A) Its governing body is comprised of members who may serve a period of not more than ten consecutive years;

(B) Upon completion of a period of service (beginning before or after such date) no person may serve within a period consisting of the lesser of 5 years or the number of consecutive years the member has immediately completed serving;

(C) Persons who would be described in section 4946(a)(1)(A) or (C) through (G) if the community trust were a private foundation do not constitute more than one-third of its governing body; and

(D) Representatives of banks or trust companies which serve as trustees, investment managers, custodians, or agents, plus persons described in paragraph (e)(13)(iv)(C) of this section, do not constitute a majority of the governing body.

No term of office beginning on or before the date of such application may continue for more

than 10 years from such date.

(v) *Fiduciary responsibility*. —Fiduciary responsibility with respect to the funds of the community trust is imposed, either by the master trust or agency agreement or by State law, on either its governing body or its trustee banks or trust companies or both.

(vi) *Ultimate control of assets*. —Neither its governing body, nor any of its trustees, investment managers, custodians or agents may be subjected by any donor to the community trust to any material condition or restriction within the meaning of §1.507(a)(8) which would prevent it from exercising ultimate control over its assets.

(vii) *Administration*. —Administration and investment of all gifts and bequests are accomplished through:

(A) A governing body which directly holds, administers or invests such gifts and bequests exclusively for charitable purposes;

(B) Banks or trust companies (acting or appointed as trustees), investment managers, custodians or agents of the community trust or one or more components thereof; or

(C) A combination of such persons.

(viii) *Annual distributions*. —It makes annual distributions for purposes described in section 170(c)(1) or (2)(B), including administrative expenses and amounts paid to acquire an asset used (or held for use) directly in carrying out one or more of such purposes, in an amount not less than its adjusted net income (as defined in section 4942(f)). For purposes of paragraph (e)(13)(viii) of this section, the term “distributions” shall include amounts set aside for a specific project, but only if prior to making the set-aside the organization has, pursuant to a request for a ruling, established to the satisfaction of the Commissioner that:

(A) The amount will be paid for the specific project within 5 years; and

(B) The project is one which can be better accomplished by such set-aside than by immediate distribution of funds.

All annual distributions required to be made pursuant to paragraph (e)(13)(viii) of this section, except for set-asides, must be made no later than the close of the organization's first taxable year after the taxable year for which the adjusted net income is computed. Thus, in the case of a calendar year community trust which has received a transitional ruling or determination letter upon an application made in 1977, it must make distributions under paragraph (e)(13)(vii) of this section for 1978, 1979, 1980 and 1981 based upon its adjusted net income for 1977, 1978, 1979 and 1980, respectively, unless its transitional ruling or determination letter is terminated. If such a community trust's transitional ruling or determination letter is terminated in 1979, it must make distributions under paragraph (e)(13)(viii) of this section only for 1978 based upon its adjusted net income for 1977.

On the other hand, if such ruling or letter is terminated in 1977 or 1978, no distribution under paragraph (e)(13)(viii) of this section need be made.

(ix) *Net income*. —The community trust's funds must, on an aggregate basis, be invested to produce an annual adjusted net income (as defined in section 4942(f)) of not less than two-thirds

of what would be its minimum investment return (within the meaning of section 4942(e)) if such organization were a private foundation.

(x) *Unrestricted gifts*. —At least one-half of the total income which the community trust derives from the investment of gifts and bequests received must be unrestricted (within the meaning of this (x)) with respect to its availability for distribution by the governing body. For purposes of this (x), any income which has been designated by the donor of the gift or bequest to which such income is attributable as being available only for the use or benefit of a broad charitable purpose, such as the encouragement of higher education or the promotion of better health care in the community, will be treated as unrestricted. However, any income which has been designated for the use or benefit of a named charitable organization or agency or for the use or benefit of a particular class of charitable organizations or agencies, the members of which are readily ascertainable and are less than five in number, will be treated as restricted.

(xi) *Self-dealing*. —The community trust may not engage in any act with any person (other than a foundation manager acting only in such capacity) which would constitute self-dealing within the meaning of section 4941 if such community trust were a private foundation.

(xii) *Excess holdings*. —The community trust must dispose of any holdings which would constitute excess business holdings (within the meaning of section 4943 —applied on a component-by-component basis as if each component were a private foundation, except that components will be combined for purposes of this paragraph if such components would have been described in section 4946(a)(1)(H)(ii)).

(xiii) *Expenditure responsibility*. —The community trust must exercise expenditure responsibility (within the meaning of section 4945(h)) through either its governing body, trustees, investment managers, custodians, or agents with respect to any grant which would otherwise constitute a taxable expenditure under section 4945(d)(4) if the community trust were a private foundation, except that it need not make the reports required of private foundations by section 4945(h)(3).

(14) *Community trusts; treatment of trusts and not-for-profit corporations and associations not included as components*

(i) For purposes of sections 170, 501, 507, 508, 509 and chapter 42, any trust or not-for-profit corporation or association which is alleged to be a component part of a community trust, but which fails to meet the requirements of paragraph (e)(11)(ii) of this section, shall not be treated as a component part of a community trust and, if a trust, shall be treated as a separate trust and be subject to the provisions of section 501 or section 4947(a)(1) or (2), as the case may be. If such organization is a not-for-profit corporation or association, it will be treated as a separate entity, and, if it is described in section 501(c)(3), it will be treated as a private foundation unless it is described in section 509(a)(1), (2), (3), or (4). Any transfer made in connection with the creation of such separate trust or not-for-profit organization, or to such entity, will not be treated as being made “to” the community trust or one of its components for purposes of sections 170(b)(1)(A) and 507(b)(1)(A) even though a deduction with respect to such transfer is allowable under §1.170-1(e), §20.2055-2(b), or §25.2522(a)-2(b), unless such treatment is permitted under §1.170A-9(e)(4)(v)(*b*) or §1.508-1(b)(4). In the case of a fund which is ultimately treated as not being a component part of a community trust pursuant to paragraph (e) (14) of this section, if the Form 990 filed annually by the community trust included financial information with respect to such fund and treated such fund in the same manner as other component parts thereof, such returns filed by the community trust prior to the taxable year in which the Commissioner notifies such fund that it will not be treated as a component part will be treated as its separate return for

purpose of subchapter A of chapter 61 of Subtitle F, and the first such return filed by the community trust will be treated as the notification required of the separate entity for purposes of section 508(a).

(ii) If a transfer is made in trust to a community trust to make income or other payments for a period of a life or lives in being or a term of years to any individual or for any noncharitable purpose, followed by payments to or for the use of the community trust (such as in the case of a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 or a pooled income fund described in section 642(c)(5)), such trust will be treated as a component part of the community trust upon the termination of all intervening noncharitable interests and rights to the actual possession or enjoyment of the property if such trust satisfies the requirements of paragraph (e)(11) of this section at such time. Until such time, the trust will be treated as a separate trust. If a transfer is made in trust to a community trust to make income or other payments to or for the use of the community trust, followed by payments to any individual or for any noncharitable purpose, such trust will be treated as a separate trust rather than as a component part of the community trust. See section 4947(a)(2) and the regulations thereunder for the treatment of such split-interest trusts. The provisions of this (ii) only provide rules for determining when a charitable remainder trust or pooled income fund may be treated as a component part of a community trust and are not intended to preclude a community trust from maintaining a charitable remainder trust or pooled income fund. Thus, for purposes of grantors and contributors, a pooled income fund of a "publicly supported" community trust shall be treated no differently than a pooled income fund of any other "publicly supported" organization.

(iii) An organization described in section 170(b)(1)(E)(iii) will not ordinarily satisfy the requirements of paragraph (e)(11)(ii) of this section because of the unqualified right of the donor to designate the recipients of the income and principal of the trust. Such organization will therefore ordinarily be treated as other than a component part of a community trust under paragraph (e)(14)(i) of this section. However, see section 170(b)(1)(E)(iii) and the regulations thereunder with respect to the treatment of contributions of such organizations.

(f) *Private operating foundation.* —An organization is described in section 170(b)(1)(A)(vii) and (E)(i) if it is a private "operating foundation" as defined in section 4942(j)(3) and the regulations thereunder.

(g) *Private nonoperating foundation distributing amount equal to all contributions received*

(1) *In general*

(i) An organization is described in section 170(b)(1)(A)(vii) and (E)(ii) if it is a private foundation which, not later than the 15th day of the third month after the close of its taxable year in which any contributions are received, distributes an amount equal in value to 100 percent of all contributions received in such year. Such distributions must be qualifying distributions (as defined in section 4942(g) without regard to paragraph (3) thereof) which are treated, after the application of section 4942(g)(3), as distributions out of corpus in accordance with section 4942(h). Qualifying distributions, as defined in section 4942(g) without regard to paragraph (3) thereof, cannot be made to (i) an organization controlled directly or indirectly by the foundation or by one or more disqualified persons (as defined in section 4946) with respect to the foundation or (ii) a private foundation which is not an operating foundation (as defined in section 4942(j)(3)). The phrase "after the application of section 4942(g)(3)" means that every contribution described in section 4942(g)(3) received by a private foundation described in this subparagraph in a particular taxable year must be distributed (within the meaning of section 4942(g)(3)(A)) by such foundation not later than the 15th day of the third month after the close of such taxable year in

order for any other distribution by such foundation to be counted toward the 100-percent requirement described in this subparagraph.

(ii) In order for an organization to meet the distribution requirements of subdivision (i) of this subparagraph, it must, not later than the 15th day of the third month after the close of its taxable year in which any contributions are received, distribute (within the meaning of subdivision (i) of this subparagraph) an amount equal in value to 100 percent of all contributions received in such year and have no remaining undistributed income for such year.

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). X is a private foundation on a calendar year basis. As of January 1, 1971, X had no undistributed income for 1970. X's distributable amount for 1971 was $600,000. In July 1971, A, an individual, contributed $500,000 (fair market value determined at the time of the contribution) of appreciated property to X (which, if sold, would give rise to long-term capital gain). X did not receive any other contribution in either 1970 or 1971. During 1971, X made qualifying distributions of $700,000 which were treated as made out of the undistributed income for 1971 and $100,000 out of corpus. X will meet the requirements of section 170(b)(1)(E)(ii) for 1971 if it makes additional qualifying distributions of $400,000 out of corpus by March 15, 1972.

Example (2). Assume the facts as stated in Example (1), except that as of January 1, 1971, X had $100,000 of undistributed income for 1970. Under these circumstances, the $700,000 distributed by X in 1971 would be treated as made out of the undistributed income for 1970 and 1971. X would therefore have to make additional qualifying distributions of $500,000 out of corpus between January 1, 1972, and March 15, 1972, in order to meet the requirements of section 170(b)(1)(E)(ii) for 1971.

(2) *Special rules.* —In applying subparagraph (1) of this paragraph —

(i) For purposes of section 170(b)(1)(A)(vii), an organization described in section 170(b)(1)(E)(ii) must distribute all contributions received in any year, whether of cash or property. However, solely for purposes of section 170(e)(1)(B)(ii), an organization described in section 170(b)(1)(E)(ii) is required to distribute all contributions of property only received in any year. Contributions for purposes of this paragraph do not include bequests, legacies, devises, or transfers within the meaning of section 2055 or 2106(a)(2) with respect to which a deduction was not allowed under section 170.

(ii) Any distributions made by a private foundation pursuant to subparagraph (1) of this paragraph with respect to a particular taxable year shall be treated as made first out of contributions of property and then out of contributions of cash received by such foundation in such year.

(iii) A private foundation is not required to trace specific contributions of property, or amounts into which such contributions are converted, to specific distributions.

(iv) For purposes of satisfying the requirements of section 170(b)(1)(D)(ii), except as provided to the contrary in this subdivision (iv), the fair market value of contributed property, determined on the date of contribution, is required to be used for purposes of determining whether an amount equal in value to 100 percent of the contributions received has been distributed. However, reasonable selling expenses, if any, incurred by the foundation in the sale of the contributed property may be deducted from the fair market value of the contributed property on the date of contribution, and distribution of the balance of the fair market value will satisfy the 100 percent

distribution requirement. If a private foundation receives a contribution of property and, within 30 days thereafter, either sells the property or makes an in kind distribution of the property to a public charity, then at the choice of the private foundation the gross amount received on the sale (less reasonable selling expenses incurred) or the fair market value of the contributed property at the date of its distribution to the public charity, and not the fair market value of the contributed property on the date of contribution (less reasonable selling expenses, if any), is considered to be the amount of the fair market value of the contributed property for purposes of the requirements of section 170(b)(1)(D)(ii).

(v) A private foundation may satisfy the requirements of subparagraph (1) of this paragraph for a particular taxable year by electing (pursuant to section 4942(h)(2) and the regulations thereunder) to treat a portion or all of one or more distributions, made not later than the 15th day of the third month after the close of such year, as made out of corpus.

(3) *Transitional rules*

(i) *Taxable years beginning before January 1, 1970, and ending after December 31, 1969*. —In order for an organization to meet the distribution requirements of subparagraph (1)(i) of this paragraph for a taxable year which begins before January 1, 1970 and ends after December 31, 1969, it must, not later than the 15th day of the third month after the close of such taxable year, distribute (within the meaning of subparagraph (1)(i) of this paragraph) an amount equal in value to 100 percent of all contributions (other than contributions described in section 4942(g)(3)) which were received between January 1, 1970 and the last day of such taxable year. Because the organization is not subject to the provisions of section 4942 for such year, the organization need not satisfy subparagraph (1)(ii) of this paragraph or the phrase "after the application of section 4942(g)(3)" for such year.

(ii) *Extension of period*. —For purposes of section 170(b)(1)(A)(vii) and (e)(1)(B)(ii), in the case of a taxable year ending in either 1970, 1971 or 1972, the period referred to in section 170(b)(1)(E)(ii) for making distributions shall not expire before April 2, 1973.

(4) *Adequate records required*. —A taxpayer claiming a deduction under section 170 for a charitable contribution to a foundation described in subparagraph (1) of this paragraph must obtain adequate records or other sufficient evidence from such foundation showing that the foundation made the required qualifying distributions within the time prescribed. Such records or other evidence must be attached to the taxpayer's return for the taxable year for which the charitable contribution deduction is claimed. If necessary, an amended income tax return or claim for refund may be filed in accordance with §301.6402-2 and §301.6402-3 of this chapter (Procedure and Administration Regulations).

(h) *Private foundation maintaining a common fund*

(1) *Designation by substantial contributors*. —An organization is described in section 170(b)(1)(A)(vii) and (E)(iii) if it is a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any donor who is a substantial contributor or his spouse to designate annually the recipients, from among private charities, of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to public charities, of the corpus in the common fund attributable to the donor's contribution. For purposes of this paragraph the private foundation is to be treated as meeting the requirements of section 509(a)(3)(A) and (B) even though donors to the foundation, or their spouses, retain the right to, and in fact do, designate public charities to receive income or

corpus from the fund.

(2) *Distribution requirements*. —To qualify under subparagraph (1) of this paragraph, the private foundation described therein must be required by its governing instrument to distribute, and it must in fact distribute (including administrative expenses) —

(i) All of the adjusted net income (as defined in section 4942(f)) of the common fund to one or more public charities not later than the 15th day of the third month after the close of the taxable year in which such income is realized by the fund, and

(ii) All the corpus attributable to any donor's contribution to the fund to one or more public charities not later than one year after the donor's death or after the death of the donor's surviving spouse if such surviving spouse has the right to designate the recipients of such corpus.

(3) *Failure to designate*. —A private foundation will not fail to qualify under this paragraph merely because a substantial contributor or his spouse fails to exercise his right to designate the recipients of income or corpus of the fund, provided that the income and corpus attributable to his contribution are distributed as required by subparagraph (2) of this paragraph.

(4) *Definitions*. —For purposes of this paragraph —

(i) The term “substantial contributor” is as defined in section 507(d)(2) and the regulations thereunder.

(ii) The term “public charity” means an organization described in section 170(b)(1)(A)(i) through (vi). If an organization is described in section 170(b)(1)(A)(i) through (vi), and is also described in section 170(b)(1)(A)(viii), it shall be treated as a public charity for purposes of this paragraph.

(iii) The term “income attributable to” means the income earned by the fund which is properly allocable to the contributed amount by any reasonable and consistently applied method. See, for example, §1.642(c)-5(c).

(iv) The term “corpus attributable to” means the portion of the corpus of the fund attributable to the contributed amount. Such portion may be determined by any reasonable and consistently applied method.

(v) The term “donor” means any individual who makes a contribution (whether of cash or property) to the private foundation, whether or not such individual is a substantial contributor.

(i) *Section 509(a)(2) or (3) organization*. —An organization is described in section 170(b)(1)(A)(viii) if it is described in section 509(a)(2) or (3) and the regulations thereunder. [Reg. §1.170A-9].

§1.170A-10. Charitable contributions carryovers of individuals

(a) *In general*

(1) Section 170(d)(1), relating to carryover of charitable contributions in excess of 50 percent of contribution base, and section 170(b)(1)(D)(ii), relating to carryover of charitable contributions in excess of 30 percent of contribution base, provide for excess charitable contributions carryovers by individuals of charitable contributions to section 170(b)(1)(A) organizations described in §1.170A-9. These carryovers shall be determined as provided in paragraphs (b) and (c) of this section. No

excess charitable contributions carryover shall be allowed with respect to contributions "for the use of", rather than "to", section 170(b)(1)(A) organizations or with respect to contributions "to" or "for the use of" organizations which are not section 170(b)(1)(A) organizations. See §1.170A-8(a)(2) for definitions of "to" or "for the use of" a charitable organization.

(2) The carryover provisions apply with respect to contributions made during a taxable year in excess of the applicable percentage limitation even though the taxpayer elects under section 144 to take the standard deduction in that year instead of itemizing the deduction allowable in computing taxable income for that year.

(3) For provisions requiring a reduction of the excess charitable contribution computed under paragraph (b)(1) or (c)(1) of this section when there is a net operating loss carryover to the taxable year, see paragraph (d)(1) of this section.

(4) The provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section do not apply to contributions by an estate; nor do they apply to a trust unless the trust is a private foundation which, pursuant to §1.642(c)-4, is allowed a deduction under section 170 subject to the provisions applicable to individuals.

(b) *50-percent charitable contributions carryover of individuals*

(1) *Computation of excess of charitable contributions made in a contribution year*. —Under section 170(d)(1), subject to certain conditions and limitations, the excess of —

(i) The amount of the charitable contributions made by an individual in a taxable year (hereinafter in this paragraph referred to as the "contribution year") to section 170(b)(1)(A) organizations described in §1.170A-9, over

(ii) 50 percent of his contribution base, as defined in section 170(b)(1)(F), for such contribution year,

shall be treated as a charitable contribution paid by him to a section 170(b)(1)(A) organization in each of the 5 taxable years immediately succeeding the contribution year in order of time. However, such excess to the extent it consists of contributions of 30-percent capital gain property, as defined in §1.170-A-8(d)(3), shall be subject to the rules of section 170(b)(1)(D)(ii) and paragraph (c) of this section in the years to which it is carried over. A charitable contribution made in a taxable year beginning before January 1, 1970, to a section 170(b)(1)(A) organization and carried over to a taxable year beginning after December 31, 1969, under section 170(b)(5) (before its amendment by the Tax Reform Act of 1969) shall be treated in such taxable year beginning after December 31, 1969, as a charitable contribution of cash subject to the limitations of this paragraph, whether or not such carryover consists of contributions of 30-percent capital gain property or of ordinary income property described in §1.170A-4(b)(1). For purposes of applying this paragraph and paragraph (c) of this section, such a carryover from a taxable year beginning before January 1, 1970, which is so treated as paid to a section 170(b)(1)(A) organization in a taxable year beginning after December 31, 1969, shall be treated as paid to such an organization under section 170(d)(1) of this section. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume that H and W (husband and wife) have a contribution base for 1970 of $50,000 and for 1971 of $40,000 and file a joint return for each year. Assume further that in 1970 they make a charitable contribution in cash of $26,500 to a church and $1,000 to X (not a section 170(b)(1)(A) organization) and in 1971 they make a charitable contribution in cash of $19,000 to a

church and $600 to X. They may claim a charitable contributions deduction of $25,000 in 1970, and the excess of $26,500 (contribution to the church) over $25,000 (50 percent of contribution base), or $1,500, constitutes a charitable contributions carryover which shall be treated as a charitable contribution paid by them to a section 170(b)(1)(A) organization in each of the 5 succeeding taxable years in order of time. No carryover is allowed with respect to the $1,000 contribution made to X in 1970. Since 50 percent of their contribution base for 1971 ($20,000) exceeds the charitable contributions of $19,000 made by them in 1971 to section 170(b)(1)(A) organizations (computed without regard to section 170(b)(1)(D)(ii) and (d)(1) and this section), the portion of the 1970 carryover equal to such excess of $1,000 ($20,000 minus $19,000) is treated, pursuant to the provisions of subparagraph (2) of this paragraph, as paid to a section 170(b)(1)(A) organization in 1971; the remaining $500 constitutes an unused charitable contributions carryover. No deduction for 1971, and no carryover, are allowed with respect to the $600 contribution made to X in 1971.

Example (2). Assume the same facts as in example (1) except that H and W have a contribution base for 1971 of $42,000. Since 50 percent of their contribution base for 1971 ($21,000) exceeds by $2,000 the charitable contribution of $19,000 made by them in 1971 to the section 170(b)(1)(A) organization (computed without regard to section 170(b)(1)(D)(ii) and (d)(1) and this section), the full amount of the 1970 carryover of $1,500 is treated, pursuant to the provisions of subparagraph (2) of this paragraph, as paid to a section 170(b)(1)(A) organization in 1971. They may also claim a charitable contribution of $500 ($21,000 - $20,500 [$19,000 + $1,500]) with respect to the gift to X in 1971. No carryover is allowed with respect to the $100 ($600 - $500) of the contribution to X which is not deductible in 1971.

(2) *Determination of amount treated as paid in taxable years succeeding contribution year*. —In applying the provisions of subparagraph (1) of this paragraph, the amount of the excess computed in accordance with the provisions of such subparagraph and paragraph (d)(1) of this section which is to be treated as paid in any one of the 5 taxable years immediately succeeding the contribution year to a section 170(b)(1)(A) organization shall not exceed the lesser of the amounts computed under subdivision (i) to (iii), inclusive, of this subparagraph:

(i) The amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of —

(a) The charitable contributions actually made (computed without regard to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section) by the taxpayer in such succeeding taxable year to section 170(b)(1)(A) organizations, and

(b) The charitable contributions, other than contributions of 30 percent capital gain property, made to section 170(b)(1)(A) organizations in taxable years preceding the contribution year which, pursuant to the provisions of section 170(d)(1) and this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year.

(ii) In the case of the first taxable year succeeding the contribution year, the amount of the excess charitable contribution in the contribution year, computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section.

(iii) In the case of the second, third, fourth, and fifth taxable years succeeding the contribution year, the portion of the excess charitable contribution in the contribution year, computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section, which has not been treated as paid to a section 170(b)(1)(A) organization in a year intervening between the contribution year and such succeeding taxable year.

For purposes of applying subdivision (i)(*a*) of this subparagraph, the amount of charitable contributions of 30-percent capital gain property actually made in a taxable year succeeding the contribution year shall be determined by first applying the 30-percent limitation of section 170(b)(1)(D)(i) and paragraph (d) of §1.170A-8. If a taxpayer, in any one of the 4 taxable years succeeding a contribution year, elects under section 144 to take the standard deduction instead of itemizing the deductions allowable in computing taxable income, there shall be treated as paid (but not allowable as a deduction) in such standard deduction year the lesser of the amounts determined under subdivisions (i) to (iii), inclusive, of this subparagraph. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume that B has a contribution base for 1970 of $20,000 and for 1971 of $30,000. Assume further than in 1970 B contributed $12,000 in cash to a church and in 1971 he contributed $13,500 in cash to the church. B may claim a charitable contributions deduction of $10,000 in 1970, and the excess of $12,000 (contribution to the church) over $10,000 (50 percent of B's contribution base), or $2,000, constitutes a charitable contributions carryover which shall be treated as a charitable contribution paid by B to a section 170(b)(1)(A) organization in the 5 taxable years succeeding 1970 in order of time. B may claim a charitable contributions deduction of $15,000 in 1971. Such $15,000 consists of the $13,500 contribution to the church in 1971 and $1,500 carried over from 1970 and treated as a charitable contribution paid to a section 170(b)(1)(A) organization in 1971. The $1,500 contribution treated as paid in 1971 is computed as follows:

1970 excess contributions	$2,000
50 percent of B's contribution base for 1971	15,000
Less:	
Contributions actually made in 1971 to section 170(b)(1)(A) organizations	$13,500
Contributions made to section 170(b)(1)(A) organizations in taxable years prior to 1970 treated as having been paid in 1971 0	$13,500
Balance	1,500
Amount of 1970 excess treated as paid in 1971 --the lesser of $2,000 (1970 excess contributions) or $1,500 (excess of 50 percent of contribution base for 1971 ($15,000) over the sum of the section 170(b)(1)(A) contributions actually made in 1971 ($13,500) and the section 170(b)(1)(A) contributions made in years prior to 1970 treated as having been paid in 1971 ($0)) ...	1,500

If the excess contributions made by B in 1971 had been $1,000 instead of $2,000, then, for purposes of

this example, the amount of the 1970 excess treated as paid in 1971 would be $1,000 rather than $1,500.

Example (2). Assume the same facts as in example (1), and, in addition, that B has a contribution base for 1972 of $10,000 and for 1973 of $20,000. Assume further with respect to 1972 that B elects under section 144 to take the standard deduction in computing taxable income and that his actual contributions to section 170(b)(1)(A) organizations in that year are $300 in cash. Assume further that with respect to 1973 that B itemizes his deductions, which include a $5,000 cash contribution to a church. B's deductions for 1972 are not increased by reason of the $500 available as a charitable contributions carryover from 1970 (excess contributions made in 1970 ($2,000) less the amount of such excess treated as paid in 1971 ($1,500)), since B elected to take the standard deduction in 1972. However, for purposes of determining the amount of the excess charitable contributions made in 1970 which is available as a carryover to 1973, B is required to treat such $500 as -a charitable contribution paid in 1972 —the lesser of $500 or $4,700 (50 percent of contribution base ($5,000) over contributions actually made in 1972 to section 170(b)(1)(A) organizations ($300)). Therefore, even though the $5,000 contribution made by B in 1973 to a church does not amount to 50 percent of B's contribution base for 1973 (50 percent of $20,000), B may claim a charitable contributions deduction of only the $5,000 actually paid in 1973 since the entire excess charitable contribution made in 1970 ($2,000) has been treated as paid in 1971 ($1,500) and 1972 ($500).

Example (3). Assume the following factual situation for C who itemizes his deductions in computing taxable income for each of the years set forth in the example:

	1970	*1971*	*1972*	*1973*	*1974*
Contribution base	$10,000	$7,000	$15,000	$10,000	$9,000
Contributions of cash to section 170(b)(1)(A) organizations (no other contributions)	$6,000	$4,400	$8,000	$3,000	$1,500
Allowable charitable contributions deductions computed without regard to carryover of contribution	5,000	3,500	7,500	3,000	1,500
Excess contributions for taxable year to be treated as paid in succeeding taxable years	1,000	900	500	0	0

Since C's contributions in 1973 and 1974 to section 170(b)(1)(A) organizations are less than 50 percent of his contribution base for such years, the excess contributions for 1970, 1971, and 1972 are treated as having been paid to section 170(b)(1)(A) organizations in 1973 and 1974 as follows:

1970	$1,000	0	$1,000
1971	900	0	900
1972	500	0	500
Total			2,400
50 percent of B's contribution base for 1973			5,000
Less: Charitable contributions made in 1973 to section 170(b)(1)(A) organizations			3,000
			2,000
Amount of excess contributions treated as paid in 1973 --lesser of $2,400 (available carryovers to 1973) or $2,000 (excess of 50 percent of contribution base ($5,000) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($3,000))			$2,000

1970	$1,000	$1,000	0
1971	900	900	0
1972	500	100	$400
1973	0	0	0
Total			400
50 percent of B's contribution base for 1974			$4,500
Less: Charitable contributions made in 1974 to section 170(b)(1)(A) organizations			1,500
			3,000
Amount of excess contributions treated as paid in 1974 --the lesser of $400 (available carryovers to 1974) or $3,000 (excess of 50 percent of contribution base ($4,500) over contributions actually made in 1974 to section 170(b)(1)(A) organizations ($1,500))			$400

(c) *30-percent charitable contributions carryover of individuals*

(1) *Computation of excess of charitable contributions made in a contribution year*. —Under section 170(b)(1)(D)(ii), subject to certain conditions and limitations, the excess of —

(i) The amount of the charitable contributions of 30-percent capital gain property, as defined in §1.170A-8(d)(3), made by an individual in a taxable year (hereinafter in this paragraph referred to as the “contribution year”) to section 170(b)(1)(A) organizations described in §1.170A-9, over

(ii) 30 percent of his contribution base for such contribution year, shall, subject to section 170(b)(1)(A) and paragraph (b) of §1.170A-8, be treated as a charitable contribution of 30-percent capital gain property paid by him to a section 170(b)(1)(A) organization in each of the 5 taxable years immediately succeeding the contribution year in order of time. In addition, any charitable contribution of 30-percent capital gain property which is carried over to such years under section 170(d)(1) and paragraph (b) of this section shall also be treated as though it were a carryover of 30-percent capital gain property under section 170(b)(1)(D)(ii) and this paragraph. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume that H and W (husband and wife) have a contribution base for 1970 of $50,000 and for 1971 of $40,000 and file a joint return for each year. Assume further that in 1970 they contribute $20,000 cash and $13,000 of 30-percent capital gain property to a church, and that in 1971 they contribute $5,000 cash and $10,000 of 30-percent capital gain property to a church. They may claim a charitable contributions deduction of $25,000 in 1970 and the excess of $33,000 (contributed to the church) over $25,000 (50 percent of contribution base), or $8,000, constitutes a charitable contributions carryover which shall be treated as a charitable contribution of 30-percent capital gain property paid by them to a section 170(b)(1)(A) organization in each of the 5 succeeding taxable years in order of time. Since 30 percent of their contribution base for 1971 ($12,000) exceeds the charitable contributions of 30-percent capital gain property ($10,000) made by them in 1971 to section 170(b)(1)(A) organizations (computed without regard to section 170(b)(1)(D)(ii) and (d)(1) and this section), the portion of the 1970 carryover equal to such excess of $2,000 ($12,000 - $10,000) is treated, pursuant to the provisions of subparagraph (2) of this paragraph, as paid to a section 170(b)(1)(A) organization in 1971; the remaining $6,000 constitutes an unused charitable contributions carryover in respect of 30-percent capital gain property from 1970.

Example (2). Assume the same facts as in example (1) except the $33,000 of charitable contributions in 1970 are all 30-percent capital gain property. Since their charitable contributions in 1970 exceed 30 percent of their contribution base ($15,000) by $18,000 ($33,000 - $15,000), they may claim a charitable contributions deduction of $15,000 in 1970, and the excess of $33,000 over $15,000, or $18,000, constitutes a charitable contributions carryover which shall be treated as a charitable contribution of 30-percent capital gain property paid by them to a section 170(b)(1)(A) organization in each of the 5 succeeding taxable years in order of time. Since they are allowed to treat only $2,000 of their 1970 contribution as paid in 1971, they have a remaining unused charitable contributions carryover of $16,000 in respect to 30-percent capital gain property from 1970.

(2) *Determination of amount treated as paid in taxable years succeeding contribution year*. —In applying the provisions of subparagraph (1) of this paragraph, the amount of the excess computed in accordance with the provisions of such subparagraph and paragraph (d)(1) of this section which is to be treated as paid in any one of the 5 taxable years immediately succeeding the contribution year to a section 170(b)(1)(A) organization shall not exceed the least of the amounts computed under subdivisions (i) to (iv), inclusive, of this subparagraph:

(i) The amount by which 30 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of —

(a) The charitable contributions of 30-percent capital gain property actually made (computed without regard to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section) by the taxpayer in such succeeding taxable year to section 170(b)(1)(A) organizations, and

(b) The charitable contributions of 30-percent capital gain property made to section 170(b)(1)(A) organizations in taxable years preceding the contribution year, which, pursuant to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year.

(ii) The amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of —

(a) The charitable contributions actually made (computed without regard to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section) by the taxpayer in such succeeding taxable year to section 170(b)(1)(A) organizations,

(b) The charitable contributions of 30-percent capital gain property made to section 170(b)(1)(A) organizations in taxable years preceding the contribution year which, pursuant to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year, and

(c) The charitable contributions, other than contributions of 30-percent capital gain property, made to section 170(b)(1)(A) organizations which, pursuant to the provisions of section 170(d)(1) and paragraph (b) of this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year.

(iii) In the case of the first taxable year succeeding the contribution year, the amount of the excess charitable contribution of 30-percent capital gain property in the contribution year, computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section.

(iv) In the case of the second, third, fourth, and fifth succeeding taxable years succeeding the contribution year, the portion of the excess charitable contribution of 30-percent capital gain property in the contribution year (computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section) which has not been treated as paid to a section 170(b)(1)(A) organization in a year intervening between the contribution year and such succeeding taxable year.

For purposes of applying subdivisions (i) and (ii) of this subparagraph, the amount of charitable contributions of 30-percent capital gain property actually made in a taxable year succeeding the contribution year shall be determined by first applying the 30-percent limitation of section 170(b)(1)(D)(i) and paragraph (d) of §1.170A-8. If a taxpayer, in any one of the four taxable years succeeding a contribution year, elects under section 144 to take the standard deduction instead of itemizing the deductions allowable in computing taxable income, there shall be treated as paid (but not allowable as a deduction) in the standard deduction year the least of the amounts determined under subdivisions (1) to (iv), inclusive, of this subparagraph. The provisions of this subparagraph may be illustrated by the following example:

Example. Assume the following factual situation for C who itemizes his deductions in computing taxable income for each of the years set forth in the example:

	1970	*1971*	*1972*	*1973*	*1974*
Contribution base	$10,000	$15,000	$20,000	$15,000	$33,000

Contributions of cash to section 170(b)(1)(A) organizations	2,000	8,500	0	14,000	700
Contributions of 30-percent capital gain property to section 170(b)(1)(A) organizations	5,000	0	7,800	0	6,400
Allowable charitable contributions (computed without regard to carryover of contributions) subject to limitations of:					
50 percent	2,000	7,500	0	7,500	700
30 percent	3,000	0	6,000	0	6,400
Total	5,000	7,500	6,000	7,500	7,100
Excess contributions for taxable year to be treated as paid in 5 succeeding taxable years:					
Carryover of contributions of property other than 30-percent capital gain property	0	$1,000	0	$6,500	0
Carryover of 30-percent capital gain property	$2,000	0	$1,800	0	0

C's excess contributions for 1970, 1971, 1972, and 1973 which are treated as having been paid to section 170(b)(1)(A) organizations in 1972, 1973 and 1974 are indicated below. The portion of the excess charitable contribution for 1972 of 30-percent capital gain property which is not treated as paid in 1974 ($1,800-$900) is available as a carryover to 1975.

1971			
Contribution	*Total excess*	*Less: Amount treated as paid in years*	*Available charitable contributions carryovers*

Contribution year	*Amount treated as paid in prior years*	*Total excess*		*Less: 1971*	*Available charitable contributions carryovers to*	
		50%	*30%*		*50%*	*30%*
1970	0	$2,000	0		0	$2,000
		==========				==========
50 percent of C's contribution base for 1971						$7,500
30 percent of C's contribution base for 1971						4,500
Less: Charitable contributions actually made in 1971 to section 170(b)(1)(A) organizations ($8,500, but not to exceed 50% of contribution base)				7,500		0
Excess				0		4,500
		==========				==========

The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1971 is the least of --

(i) Available carryover from 1970 to 1971 of contributions of 30-percent capital gain property 2,000

(ii)Excess of 50 percent of contribution base for 1971 ($7,500) over sum of contributions actually made in 1971 to section 170(b)(1)(A) organizations ($7,500) 0

(iii)Excess of 30 percent of contribution base for 1971 ($4,500) over contributions of 30-percent capital gain property actually made in 1971 to section 170(b)(1)(A) organizations ($0) $4,500

Amount treated as paid 0

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1972

Contribution year	*Amount treated as paid in prior years*	*Total excess*		*Less: 1972*	*Available charitable contributions carryovers to*	
		50%	*30%*		*50%*	*30%*
1970	0	$2,000	0		0	$2,000
1971	$1,000	0	0	$1,000		0
		1,000				2,000
50 percent of C's contribution base for 1972						10,000
30 percent of C's contribution base for 1972						6,000
Less: Charitable contributions actually made in 1972 to section 170(b)(1)(A) organizations ($7,800, but not to exceed 30% of contribution base)				0		6,000
Excess				10,000		0
		==========				==========

(1) The amount of excess contributions for 1971 of property other than 30-percent capital gain property which is treated as paid in 1972 is the lesser of --

(i) Available carryover from 1971 to 1972 of contributions of property other than 30-percent capital gain property $1,000

(ii) Excess of 50 percent of contribution base for 1972 ($10,000) over contributions actually made in 1972 to section 170(b)(1)(A) organizations ($6,000) 4,000

Amount treated as paid $1,000

(2) The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1972 is the least of --

(i) Available carryover from 1970 to 1972 of contributions of 30-percent capital gain property $2,000

(ii) Excess of 50 percent of contribution base for 1972 ($10,000) over sum of contributions actually made in 1972 to section 170(b)(1)(A) organizations ($6,000) and excess contributions for 1971 treated under item (1) above as paid in 1972 ($1,000) 3,000

(iii) Excess of 30 percent of contribution base for 1972 ($6,000) over contributions of 30-percent capital gain property actually made in 1972 to section 170(b)(1)(A) organizations ($6,000) 0

Amount treated as paid 0

1973

Contribution year	*Less: Amount treated as paid in prior years*		*Total excess*		*Available charitable contributions carryovers to 1973*	
	50%	*30%*		*50%*	*30%*
1970	0	$2,000	0	0	$2,000
1971	$1,000	0	$1,000	0	0
1972	0	1,800	0	0	1,800
	0				3,800

50 percent of C's contribution base for 1973 ..... $7,500

30 percent of C's contribution base for 1973 4,500

Less: Charitable contributions actually made in 1973 to section 170(b)(1)(A) organizations ($14,000, but not to exceed 50% of contribution base) 7,500 0

Excess	0	4,500

(1) The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1973 is the least of

(i) Available carryover from 1970 to 1973 of contributions of 30-percent capital gain property	$2,000
(ii)Excess of 50 percent of contribution base for 1973 ($7,500) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($7,500)	0
(iii)Excess of 30 percent of contribution base for 1973 ($4,500) over contributions of 30-percent capital gain property actually made in 1973 to section 170(b)(1)(A) organizations ($0)	4,500
Amount treated as paid	0

(2) The amount of excess contributions for 1972 of 30-percent capital gain property which is treated as paid in 1973 is the least of --

(i) Available carryover from 1972 to 1973 of contributions of 30-percent capital gain property	$1,800
(ii)Excess of 50 percent of contribution base for 1973 ($7,500) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($7,500)	0
(iii)Excess of 30 percent of contribution base for 1973 ($4,500) over sum of contributions of 30-percent capital gain property actually made in 1973 to section 170(b)(1)(A) organizations ($0) and excess contributions for 1970 treated under item (1) above as paid in 1973 ($0)	$4,500
Amount treated as paid	0

	1974				
	Less: Amount treated as paid in				*Available charitable contributions*
Contribution year	*Total prior*	*excess 50%*	*30%*	*years 1974*	*carryovers to 50%*	*30%*

1970	0	$2,000		0	$2,000
1971	$1,000	0	$1,000	0	0
1972	0	1,800	0	0	1,800
1973	6,500	0	0	$6,500	0
	$6,500				$3,800

50 percent of C's contribution base of 1974 ..... $16,500
30 percent of C's contribution base for 1974 ..... $9,900

Less: Charitable contributions actually made in 1974 to section 170(b)(1)(A) organizations	700	6,400
Excess	15,800	3,500

(1) The amount of excess contributions for 1973 of property other than 30-percent capital gain property which is treated as paid in 1974 is the lesser of
(i) Available carryover from 1973 to 1974 of contributions of property other than 30-percent capital gain property 6,500
(ii)Excess of 50 percent of contribution base for 1974 ($16,500) over contributions actually made in 1974 to section 170(b)(1)(A) organizations ($7,100) 9,400

Amount treated as paid 6,500

(2) The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1974 is the least of --
(i) Available carryover from 1970 to 1974 of contributions of 30-percent capital gain property $2,000
(ii)Excess of 50 percent of contribution base for 1974 ($16,500) over sum of contributions actually made in 1974 to section 170(b)(1)(A) organizations ($7,100) and excess contributions for 1973 of property other than 30-percent capital gain property treated under item (1) above as paid in 1974 ($6,500) 2,900
(iii)Excess of 30 percent of contribution base for 1974 ($9,900) over contributions of 30-percent capital gain property actually made in 1974 to section 170(b)(1)(A) organizations ($6,400) ... 3,500

Amount treated as paid 2,000

(3) The amount of excess contributions for 1972 of 30-percent capital gain property which is treated as paid in 1974 is the least of --
(i) Available carryover from 1972 to 1974 of

contributions of 30-percent capital gain property 1,800
(ii)Excess of 50 percent of contribution base for 1974 ($16,500) over sum of contributions actually made in 1974 to section 170(b)(1)(A) organizations ($7,100) and excess contributions for 1973 and 1970 treated under items (1) and (2) above as paid in 1974 ($8,500) $900
(iii)Excess of 30 percent of contribution base for 1974 ($9,900) over sum of contributions of 30-percent capital gain property actually made in 1974 to section 170(b)(1)(A) organizations ($6,400) and excess contributions for 1970 of 30-percent capital gain property treated under item (2) above as paid in 1974 ($2,000) 1,500
Amount treated as paid $900
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(d) *Adjustments*

(1) *Effect of net operating loss carryovers on carryover of excess contributions*. —An individual having a net operating loss carryover from a prior taxable year which is available as a deduction in a contribution year must apply the special rule of section 170(d)(1)(B) and this subparagraph in computing the excess described in paragraph (b)(1) or (c)(1) of this section for such contribution year. In determining the amount of excess charitable contributions that shall be treated as paid in each of the 5 taxable years succeeding the contribution year, the excess charitable contributions described in paragraph (b)(1) or (c)(1) of this section must be reduced by the amount by which such excess reduces taxable income (for purposes of determining the portion of a net operating loss which shall be carried to taxable years succeeding the contribution year under the second sentence of section 172(b)(2)) and increases the net operating loss which is carried to a succeeding taxable year. In reducing taxable income under the second sentence of section 172(b)(2), an individual who has made charitable contributions in the contribution year to both section 170(b)(1)(A) organizations, as defined in §1.170A-9, and to organizations which are not section 170(b)(1)(A) organizations must first deduct contributions made to the section 170(b)(1)(A) organizations from his adjusted gross income computed without regard to his net operating loss deduction before any of the contributions made to organizations which are not section 170(b)(1)(A) organizations may be deducted from such adjusted gross income. Thus, if the excess of the contributions made in the contribution year to section 170(b)(1)(A) organizations over the amount deductible in such contribution 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 part of the excess charitable contributions made in such contribution year shall be treated as paid in any of the 5 immediately succeeding taxable years. If only a portion of the excess charitable contributions is so used, the excess charitable contributions shall be reduced only to that extent. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). B, an individual, reports his income on the calendar year basis and for the year 1970 has adjusted gross income (computed without regard to any net operating loss deduction) of $50,000. During 1970 he made charitable contributions of cash in the amount of $30,000 all of which were to section 170(b)(1)(A) organizations. B has a net operating loss carryover from 1969 of

$50,000. In the absence of the net operating loss deduction B would have been allowed a deduction for charitable contributions of $25,000. After the application of the net operating loss deduction, B is allowed no deduction for charitable contributions, and there is (before applying the special rule of section 170(d)(1)(B) and this subparagraph) a tentative excess charitable contribution of $30,000. For purposes of determining the net operating loss which remains to be carried over to 1971, B computes his taxable income for 1970 under section 172(b)(2) by deducting the $25,000 charitable contribution. After the $50,000 net operating loss carryover is applied against the $25,000 of taxable income for 1970 (computed in accordance with section 172(b)(2), assuming no deductions other than the charitable contributions deduction are applicable in making such computation) there remains a $25,000 net operating loss carryover to 1971. Since the application of the net operating loss carryover of $50,000 from 1969 reduces the 1970 adjusted gross income (for purposes of determining 1970 tax liability) to zero, no part of the $25,000 of charitable contributions in that year is deductible under section 170(b)(1). However, in determining the amount of the excess charitable contributions which shall be treated as paid in taxable years 1971, 1972, 1973, 1974, and 1975, the $30,000 must be reduced to $5,000 by the portion of the excess charitable contributions ($25,000) which was used to reduce taxable income for 1970 (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 1971 from zero to $25,000.

Example (2). Assume the same facts as in example (1), except that B's total charitable contributions of $30,000 in cash made during 1970 consisted of $25,000 to section 170(b)(1)(A) organizations and $5,000 to organizations other than section 170(b)(1)(A) organizations. Under these facts there is a tentative excess charitable contribution of $25,000, rather than $30,000 as in example (1). For purposes of determining the net operating loss which remains to be carried over to 1971, B computes his taxable income for 1970 under section 172(b)(2) by deducting the $25,000 of charitable contributions made to section 170(b)(1)(A) organizations. Since the excess charitable contribution of $25,000 determined in accordance with paragraph (b)(1) of this section was used to reduce taxable income for 1970 (as computed for purposes of the second sentence of section 172(b)(2)) and thereby served to increase the net operating loss carryover to 1971 from zero to $25,000, no part of such excess charitable contributions made in the contribution year shall be treated as paid in any of the five immediately succeeding taxable years. No carryover is allowed with respect to the $5,000 of charitable contributions made in 1970 to organizations other than section 170(b)(1)(A) organizations.

Example (3). Assume the same facts as in example (1), except that B's total contributions of $30,000 made during 1970 were of 30-percent capital gain property. Under these facts there is a tentative excess charitable contribution of $30,000. For purposes of determining the net operating loss which remains to be carried over to 1971, B computes his taxable income for 1970 under section 172(b)(2)(B) by deducting the $15,000 (30 percent of $50,000) contribution of 30-percent capital gain property which would have been deductible in 1970 absent the net operating loss deduction. Since $15,000 of the excess charitable contribution of $30,000 determined in accordance with paragraph (c)(1) of this section was used to reduce taxable income for 1970 (as computed for purposes of the second sentence of section 172(b)(2)) and thereby served to increase the net operating loss carryover to 1971 from zero to $15,000, only $15,000 ($30,000 - $15,000) of such excess shall be treated as paid in taxable years 1971, 1972, 1973, 1974, and 1975.

(2) *Effect of net operating loss carryback to contribution year.* —The amount of the excess contribution for a contribution year computed as provided in paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph shall not be increased because a net operating loss carryback is available as a deduction in the contribution year. Thus, for example, assuming that in 1970 there is an excess contribution of $50,000 (determined as provided in paragraph (b)(1) of this

section) which is to be carried to the 5 succeeding taxable years and that in 1973 the taxpayer has a net operating loss which may be carried back to 1970, the excess contribution of $50,000 for 1970 is not increased by reason of the fact that the adjusted gross income for 1970 (on which such excess contribution was based) is subsequently decreased by the carryback of the net operating loss from 1973. 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 made to section 170(b)(1)(A) organizations shall be limited to the amount of such contributions which did not exceed 50 percent or, in the case of 30-percent capital gain property, 30 percent of the donor's contribution base, computed without regard to any of the modifications referred to in section 172(d), for the contribution year. Thus, for example, assume that the taxpayer has a net operating loss in 1973 which is carried back to 1970 and in turn to 1971 and that he has made charitable contributions in 1970 to section 170(b)(1)(A) organizations. In determining the maximum amount of such charitable contributions which may be deducted in 1970 for purposes of determining the taxable income for 1970 which is deducted under section 172(b)(2) from the 1973 loss in order to ascertain the amount of such loss which is carried back to 1971, the 50-percent limitation of section 170(b)(1)(A) is based upon the adjusted gross income for 1970 computed without taking into account the net operating loss carryback from 1973 and without making any of the modifications specified in section 172(d).

(3) *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 treated as paid, as provided in paragraph (b)(2) or (c)(2) of this section, 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 taxable year subsequent to the deduction year which is a carryback or carryover to taxable years succeeding the deduction year, the amount of contributions made to section 170(b)(1)(A) organizations in the deduction year shall be limited to the amount of such contributions, which were actually made in such year and those which were treated as paid in such year, which did not exceed 50 percent or, in the case of 30-percent capital gain property, 30 percent of the donor's contribution based, computed without regard to any of the modifications referred to in section 172(d), for the deduction year.

(4) *Husband and wife filing joint returns*

(i) *Change from joint return to separate returns*. —If a husband and wife —

(a) Make a joint return for a contribution year and compute an excess charitable contribution for such year in accordance with the provisions of paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph, and

(b) Make separate returns for one or more of the 5 taxable years immediately succeeding such contribution year,

any excess charitable contribution for the contribution year which is unused at the beginning of the first such taxable year for which separate returns are filed shall be allocated between the husband and wife. For purposes of the allocation, a computation shall be made of the amount of any excess charitable contribution which each spouse would have computed in accordance with paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph if separate returns (rather than a joint return) had been filed for the contribution year. The portion of the total unused excess charitable contribution for the contribution year allocated to each spouse shall be an

amount which bears the same ratio to such unused excess charitable contribution as such spouse's excess contribution, based on the separate return computation, bears to the total excess contributions of both spouses, based on the separate return computation. To the extent that a portion of the amount allocated to either spouse in accordance with the foregoing provisions of this subdivision is not treated in accordance with the provisions of paragraph (b)(2) or (c)(2) of this section as a charitable contribution paid to a section 170(b)(1)(A) organization in the taxable year in which a separate return or separate returns are filed, each spouse shall for purposes of paragraph (b)(2) or (c)(2) of this section treat his respective unused portion as the available charitable contributions carryover to the next succeeding taxable year in which the joint excess charitable contribution may be treated as paid in accordance with paragraph (b)(1) or (c)(1) of this section. If such husband and wife make a joint return in one of the five taxable years immediately succeeding the contribution year with respect to which a joint excess charitable contribution is computed and following such first taxable year for which such husband and wife filed a separate return, the amounts allocated to each spouse in accordance with this subdivision for such first year reduced by the portion of such amounts treated as paid to a section 170(b)(1)(A) organization in such first year and in any taxable year intervening between such first year and the succeeding taxable year in which the joint return is filed shall be aggregated for purposes of determining the amount of the available charitable contributions carryover to such succeeding taxable year. The provisions of this subdivision may be illustrated by the following example:

Example. (a) H and W file joint returns for 1970, 1971, and 1972, and in 1973 they file separate returns. In each such year H and W itemize their deductions in computing taxable income. Assume the following factual situation with respect to H and W for 1970:

1970			
	H	*W*	*Joint return*
Contribution base	$50,000	$40,000	$90,000
Contributions of cash to section 170(b)(1)(A) organizations (no other contributions)	37,000	28,000	65,000
Allowable charitable contributions deductions	$25,000	$20,000	$45,000
Excess contributions for taxable year to be treated as paid in 5 succeeding taxable years	$12,000	$8,000	$20,000

(b) The joint excess charitable contribution of $20,000 is to be treated as having been paid to a section 170(b)(1)(A) organization in the five succeeding taxable years. Assume that in 1971 the portion of such excess treated as paid by H and W is $3,000, and that in 1972 the portion of such excess treated as paid is $7,000. Thus, the unused portion of the excess charitable contribution made in the contribution year is $10,000 ($20,000 less $3,000 [amount treated as paid in 1971] and $7,000 [amount treated as paid in 1972]). Since H and W file separate returns in 1973, $6,000 of such $10,000 is allocable to H, and $4,000 is allocable to W. Such allocation is computed as follows:

$12,000 (excess charitable contributions made by H (based on separate return computation) in 1970) ÷ $10,000 = $6,000
$20,000 (total excess charitable contributions made by H and W (based on separate return computation) in 1970)

$8,000 (excess charitable contributions made by W (based on separate return computation) in 1970) ÷ $10,000 = $4,000
$20,000 (Total excess charitable contributions made by H and W (based on separate return computation) in 1970)

(c) In 1973 H has a contribution base of $70,000, and he contributes $14,000 in cash to a section 170(b)(1)(A) organization. In 1973 W has a contribution base of $50,000, and she contributes $10,000 in cash to a section 170(b)(1)(A) organization. Accordingly, H may claim a charitable contributions deduction of $20,000 in 1973, and W may claim a charitable contributions deduction of $14,000 in 1973. H's $20,000 deduction consists of the $14,000 contribution made to the section 170(b)(1)(A) organization in 1973 and the $6,000 carried over from 1970 and treated as a charitable contribution paid by him to a section 170(b)(1)(A) organization in 1973. W's $14,000 deduction consists of the $10,000 contribution made to a section 170(b)(1)(A) organization in 1973 and the $4,000 carried over from 1970 and treated as a charitable contribution paid by her to a section 170(b)(1)(A) organization in 1973.

(d) The $6,000 contribution treated as paid in 1973 by H, and the $4,000 contribution treated as paid in 1973, by W, are computed as follows:

	H	*W*
Available charitable contribution carryover (see computations in (b))	$6,000	$4,000
50-percent of contribution base	35,000	25,000
Contributions of cash made in 1973 to section 170(b)(1)(A) organizations (no other contributions)	14,000	10,000
	21,000	15,000

Amount of excess contributions treated as paid in 1973:	
The lesser of $6,000 (available carryover of H to 1973) or $21,000 (excess of 50 percent of contribution base ($35,000) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($14,000))	$6,000
The lesser of $4,000 (available carryover of W to 1973) or $15,000 (excess of 50 percent of contribution base ($25,000) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($10,000))	$4,000

(e) It is assumed that H and W made no contributions of 30-percent capital gain property during these years. If they had made such contributions, there would have been similar adjustments based on 30 percent of the contribution base.

(ii) Change from separate returns to joint return. —If in the case of a husband and wife —

(a) Either or both of the spouses make a separate return for a contribution year and compute an excess charitable contribution for such year in accordance with the provisions of paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph, and

(b) Such husband and wife make a joint return for one or more of the taxable years succeeding such contribution year,

the excess charitable contribution of the husband and wife for the contribution year which is unused at the beginning of the first taxable year for which a joint return is filed shall be aggregated for purposes of determining the portion of such unused charitable contribution which shall be treated in accordance with paragraph (b)(2) or (c)(2) of this section as a charitable contribution paid to a section 170(b)(1)(A) organization. The provisions of this subdivision also apply in the case of two single individuals who are subsequently married and file a joint return. A remarried taxpayer who filed a joint return with a former spouse in a contribution year with respect to which an excess charitable contribution was computed and who in any one of the five taxable years succeeding such contribution year files a joint return with his or her present spouse shall treat the unused portion of such excess charitable contribution allocated to him or her in accordance with subdivision (i) of this subparagraph in the same manner as the unused portion of an excess charitable contribution computed in a contribution year in which he filed a separate return, for purposes of determining the amount which in accordance with paragraph (b)(2) or (c)(2) of this section shall be treated as paid to an organization specified in section 170(b)(1)(A) in such succeeding year.

(iii) *Unused excess charitable contribution of deceased spouse*. —In case of the death of one spouse, any unused portion of an excess charitable contribution which is allocable in accordance with subdivision (i) of this subparagraph to such spouse shall not be treated as paid in the taxable year in which such death occurs or in any subsequent taxable year except on a separate return made for the deceased spouse by a fiduciary for the taxable year which ends with the date of death or on a joint return for the taxable year in which such death occurs. The 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 1972 and W files a separate return for 1973. W made a joint return for herself and H for 1972. In that example, the unused excess charitable contribution as of January 1, 1973, 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 1973 or any subsequent year.

(e) *Information required in support of a deduction of an amount carried over and 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 paragraph (b)(2) or (c)(2) of this section, is treated (in whole or in part) as paid in such taxable year, the taxpayer shall attach to his return a statement showing:

(1) The contribution year (or years) in which the excess charitable contributions were made,

(2) The excess charitable contributions made in each contribution year, and the amount of such excess charitable contributions consisting of 30-percent capital gain property,

(3) The portion of such excess, or of each such excess, treated as paid in accordance with paragraph (b)(2) or (c)(2) of this section in any taxable year intervening between the contribution year and the taxable year for which the return is made, and the portion of such excess which consists of 30-percent capital gain property.

(4) Whether or not an election under section 170(b)(1)(D)(iii) has been made which affects any of such excess contributions of 30-percent capital gain property, and

(5) Such other information as the return or the instructions relating thereto may require.

(f) *Effective date*. —This section applies only to contributions paid in taxable years beginning after December 31, 1969. For purposes of applying section 170(d)(1) with respect to contributions paid in a taxable year beginning before January 1, 1970, subsection (b)(1)(D), subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 shall not apply. See section 201(g)(1)(D) of the Tax Reform Act of 1969 (83 Stat. 564). [Reg. §1.170A-10.]

§1.170A-11. Limitation on, and carryover of, contributions by corporations

(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 under section 170 for charitable contributions,

(2) The special deductions for corporations allowed under part VIII (except section 248), subchapter B, chapter 1 of the Code,

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

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

A charitable contribution by a corporation to a trust, chest, fund, or foundation described in section 170(c)(2) is deductible under section 170 only if the contribution is to be used in the United States or its possessions exclusively for religious, charitable, scientific, literary, or educational purposes or

for the prevention of cruelty to children or animals. 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.

(b) *Election by corporations on an accrual method*

(1) A corporation reporting its taxable income on an accrual method may elect to have a charitable contribution treated as paid during the taxable year, if payment is actually made on or before the 15th day of the third month following the close of such year and if, during such year, its board of directors authorizes the charitable contribution. If by reason of such an election a charitable contribution (other than a contribution of a letter, memorandum, or property similar to a letter or memorandum) paid in a taxable year beginning after December 31, 1969, is treated as paid during a taxable year beginning before January 1, 1970, the provisions of §1.170A-4 shall not be applied to reduce the amount of such contribution. However, see section 170(e) before its amendment by the Tax Reform Act of 1969.

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

(c) *Charitable contributions carryover of corporations*

(1) *In general*. —Subject to the reduction provided in subparagraph (2) of this paragraph, any charitable contributions made by a corporation in a taxable year (hereinafter in this paragraph referred to as the "contribution year") 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 charitable 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 charitable contributions, and in the case of the second, third, fourth, and fifth taxable years succeeding the contribution year, the portion of the excess charitable contributions not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

This paragraph applies to excess charitable contributions by a corporation, whether or not such contributions are made to, or for the use of, the donee organization and whether or not such organization is a section 170(b)(1)(A) organization, as defined in §1.170A-9. For purposes of

applying this paragraph, a charitable contribution made in a taxable year beginning before January 1, 1970, which is carried over to a taxable year beginning after December 31, 1969, under section 170(b)(2) (before its amendment by the Tax Reform Act of 1969) and is deductible in such taxable year beginning after December 31, 1969, shall be treated as deductible under section 170(d)(1) and this paragraph. The application 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 1970. Its taxable income (determined without regard to any deduction for charitable contributions) for 1970 is $100,000. Accordingly, the charitable contributions deduction for that year is limited to $5,000 (5 percent of $100,000). The excess charitable contribution not deductible in 1970 ($15,000) is a carryover to 1971. The corporation has taxable income (determined without regard to any deduction for charitable contributions) of $150,000 in 1971 and makes a charitable contribution of $5,000 in that year. For 1971 the corporation may deduct as a charitable contribution the amount of $7,500 (5 percent of $150,000). This amount consists of the $5,000 contribution made in 1971 and of the $2,500 carried over from 1970. The remaining $12,500 carried over from 1970 and not allowable as a deduction for 1971 because of the 5-percent limitation may be carried over to 1972. The corporation has taxable income (determined without regard to any deduction for charitable contributions) of $200,000 in 1972 and makes a charitable contribution of $5,000 in that year. For 1972 the corporation may deduct the amount of $10,000 (5 percent of $200,000). This amount consists of the $5,000 contributed in 1972, and $5,000 of the $12,500 carried over from 1970 to 1972. The remaining $7,500 of the carryover from 1970 is available for purposes of computing the charitable contributions carryover from 1970 to 1973, 1974, and 1975.

(2) *Effect of net operating loss carryovers on carryover of excess contributions.* —A corporation having a net operating loss carryover from any taxable year must apply the special rule of section 170(d)(2)(B) and this subparagraph before computing under subparagraph (1) of this paragraph the excess charitable contributions carryover from any taxable year. In determining the amount of excess charitable contributions that may be deducted in accordance with subparagraph (1) of this paragraph in taxable years succeeding the contribution year, the excess of the charitable contributions made by a corporation in the contributions 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 taxable 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 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 1971. Its taxable income for 1971 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 1970 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 from 1971 of $10,000. For purposes of determining the net operating loss carryover to 1972 the

corporation computes its taxable income for 1971 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 1971 (computed in accordance with section 172(b)(2)), there remains a $4,000 net operating loss carryover to 1972. Since the application of the net operating loss carryover of $80,000 from 1970 reduces the taxable income for 1971 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 from 1971 to 1972, 1973, 1974, 1975, and 1976, the $10,000 must be reduced by the portion thereof ($4,000) which was used to reduce taxable income for 1971 (as computed for purposes of the second sentence of section 172(b)(2)) and which thereby served to increase the net operating loss carryover from 1970 to 1972 from zero to $4,000.

(3) *Effect of net operating loss carryback to contribution year*. —The amount of the excess contribution for a contribution year computed as provided in subparagraph (1) of 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 any charitable contributions shall be limited to the amount of such contributions which did not exceed 5 percent of the donor's taxable income, computed as provided in paragraph (a) of this section and without regard to any of the modifications referred to in section 172(d), for the contribution year. For illustrations see paragraph (d)(2) of §1.170A-10.

(4) *Effect of net operating loss carryback to taxable year 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 taxable year subsequent to the deduction year which is a carryback or a carryover to taxable years succeeding the deduction year, the amount of contributions made in the deduction year shall be limited to the amount of such contributions, which were actually made in such year and those which were deductible in such year under section 170(d)(2), which did not exceed 5 percent of the donor's taxable income, computed as provided in paragraph (a) of this section and without regard to any of the modifications referred to in section 172(d), for the deduction year.

(5) *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.

(d) *Effective date*. —This section applies only to contributions paid in taxable years beginning after December 31, 1969. For purposes of applying section 170(d)(2) with respect to contributions paid, or treated under section 170(a)(2) as paid, in a taxable year beginning before January 1, 1970, subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 shall not apply. See section 201(g)(1)(D) of the Tax Reform Act of 1969 (83 Stat. 564). [Reg. §1.170A-11.]

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

(a) *In general*

(1) Section 170(f)(4) provides that, in determining the value of a remainder interest in real property for purposes of section 170, depreciation and depletion of such property shall be taken into account. Depreciation shall be computed by the straight line method and depletion shall be computed by the cost depletion method. Section 170(f)(4) and this section apply only in the case of a contribution, not made in trust, of a remainder interest in real property made after July 31, 1969, for which a deduction is otherwise allowable under section 170.

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

(3) If the remainder interest that has been contributed follows only one life, the value of the remainder interest shall be computed under the rules contained in paragraph (b) of this section. If the remainder interest that has been contributed follows a term for years, the value of the remainder interest shall be computed under the rules contained in paragraph (c) of this section. If the remainder interest that has been contributed is dependent upon the continuation or the termination of more than one life or upon a term certain concurrent with one or more lives, the provisions of paragraph (e) of this section shall apply. In every case where it is provided in this section that the rules contained in §25.2512-5 (or, for certain prior periods, §25.2512-5A) of this chapter (Gift Tax Regulations) apply, such rules shall apply notwithstanding the general effective date for such rules contained in paragraph (a) of such sections. Except as provided in §1.7520-3(b) of this chapter, for transfers of remainder interests after April 30, 1989, the present value of the remainder interest is determined under §25.2512-5 of this chapter by use of the interest rate component on the date the interest is transferred unless an election is made under section 7520 and §1.7520-2 of this chapter to compute the present value of the interest transferred by use of the interest rate component for either of the 2 months preceding the month in which the interest is transferred. In some cases, a reduction in the amount of a charitable contribution of a remainder interest, after the computation of its value under section 170(f)(4) and this section, may be required. See section 170(e) and §1.170A-4.

(b) *Valuation of a remainder interest following only one life*

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

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

[GRAPHIC]

[GRAPHIC]

Val. of remainder int. following one life

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

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

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

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

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

(d) *Definition of estimated useful life*. —For the purposes of this section, the determination of the estimated useful life of depreciable property shall take account of the expected use of such property during the period of the life estate or term for years. The term “estimated useful life” means the estimated period (beginning with the date of the contribution) over which such property may reasonably be expected to be useful for such expected use. This period shall be determined by reference to the experience based on any prior use of the property for such purposes if such prior experience is adequate. If such prior experience is inadequate or if the property has not been previously used for such purposes, the estimated useful life shall be determined by reference to the general experience of persons normally holding similar property for such expected use, taking into account present conditions and probable future developments. The estimated useful life of such depreciable property is not limited to the period of the life estate or term for years preceding the remainder interest. In determining the expected use and the estimated useful life of the property, consideration is to be given to the provisions of the governing instrument creating the life estate or term for years or applicable local law, if any, relating to use, preservation, and maintenance of the property during the life estate or term for years. In arriving at the estimated useful life of the property, estimates, if available, of engineers or other persons skilled in estimating the useful life of similar property may be taken into account. At the option of the taxpayer, the estimated useful life of property contributed after December 31, 1970, for purposes of this section, shall be an asset depreciation period selected by the taxpayer that is within the permissible asset depreciation range for the relevant asset guideline class established pursuant to §1.167(a)-11(b)(4)(ii). For purposes of the preceding sentence, such period, range, and class shall be those which are in effect at the time that the contribution of the remainder interest was made. At the option of the taxpayer, in the case of property contributed before January 1, 1971, the estimated useful life, for purposes of this section, shall be the guideline life provided in Revenue Procedure 62-21 for the relevant asset guideline class.

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

(1)

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

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

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

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

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

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

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

[GRAPHIC]

[GRAPHIC]

Val. of a remainder int. following two lives

(3) Notwithstanding that the taxpayer may be able to compute the special factor in certain cases under paragraph (2), if a special factor is required in the case of an actual contribution, the Commissioner will furnish the factor to the donor upon request. The request must be accompanied by a statement of the sex and date of birth of each person the duration of whose life may affect the value of the remainder interest, copies of the relevant instruments, and, if depreciation is involved, a statement of the estimated useful life of the depreciable property. However, since remainder interests in that part of any property which is depletable cannot be valued on a purely actuarial basis, special factors will not be furnished with respect to such part. Requests should be forwarded to the Commissioner of Internal Revenue, Attention: OP:E:EP:A:1, Washington, D.C. 20224. [Reg. §1.170A-12.]

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

(a) *Charitable contributions of money made in taxable years beginning after December 31, 1982*

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

(i) A cancelled check.

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

(iii) In the absence of a canceled check or receipt from the donee charitable organization, other

reliable written records showing the name of the donee, the date of the contribution, and the amount of the contribution.

(2) *Special rules*

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

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

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

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

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

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

(b) *Charitable contributions of property other than money made in taxable years beginning after December 31, 1982*

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

(i) The name of the donee.

(ii) The date and location of the contribution.

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

A letter or other written communication from the donee acknowledging receipt of the contribution, showing the date of the contribution, and containing the required description of the property contributed constitutes a receipt for purposes of this paragraph. A receipt is not required if the

contribution is made in circumstances where it is impractical to obtain a receipt (*e.g.*, by depositing property at a charity's unattended drop site). In such cases, however, the taxpayer shall maintain reliable written records with respect to each item of donated property that include the information required by paragraph (b)(2)(ii) of this section.

(2) *Special rules*

(i) *Reliability of records*. —The rules described in paragraph (a)(2)(i) of this section also apply to this paragraph (b) for determining the reliability of the written records described in paragraph (b)(1) of this section.

(ii) *Content of records*. —The written records described in paragraph (b)(1) of this section shall include the following information and such information shall be stated in the taxpayer's income tax return if required by the return form or its instructions:

(A) The name and address of the donee organization to which the contribution was made.

(B) The date and location of the contribution.

(C) A description of the property in detail reasonable under the circumstances (including the value of the property), and, in the case of securities, the name of the issuer, the type of security, and whether or not such security is regularly traded on a stock exchange or in an over-the-counter market.

(D) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

(E) In the case of property to which section 170(e) applies, the cost or other basis, adjusted as provided by section 1016, the reduction by reason of section 170(e)(1) in the amount of the charitable contribution otherwise taken into account, and the manner in which such reduction was determined. A taxpayer who elects under paragraph (d)(2) of §1.170A-8 to apply section 170(e)(1) to contributions and carryovers of 30 percent capital gain property shall maintain a written record indicating the years for which the election was made and showing the contributions in the current year and carryovers from preceding years to which it applies. For the definition of the term “30-percent capital gain property,” see paragraph (d)(3) of §1.170A-8.

(F) If less than the entire interest in the property is contributed during the taxable year, the total amount claimed as a deduction for the taxable year due to the contribution of the property, and the amount claimed as a deduction in any prior year or years for contributions of other interests in such property, the name and address of each organization to which any such contribution was made, the place where any such property which is tangible property is located or kept, and the name of any person, other than the organization to which the property giving rise to the deduction was contributed, having actual possession of the property.

(G) The terms of any agreement or understanding entered into by or on behalf of the taxpayer which relates to the use, sale, or other disposition of the property contributed, including for example, the terms of any agreement or understanding which —

(1) Restricts temporarily or permanently the donee's right to use or dispose of the donated

property,

(2) Reserves to, or confers upon, anyone (other than the donee organization or an organization participating with the donee organization in cooperative fund-raising) any right to the income from donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or

(3) Earmarks donated property for a particular use.

(3) *Deductions in excess of $500 claimed for a charitable contribution of property other than money*

(i) *In general*. —In addition to the information required under paragraph (b)(2)(ii) of this section, if a taxpayer makes a charitable contribution of property other than money in a taxable year beginning after December 31, 1982, and claims a deduction in excess of $500 in respect of the contribution of such item, the taxpayer shall maintain written records that include the following information with respect to such item of donated property, and shall state such information in his or her income tax return if required by the return form or its instructions:

(A) The manner of acquisition, as, for example by purchase, gift, bequest, inheritance, or exchange, and the approximate date of acquisition of the property by the taxpayer or, if the property was created, produced, or manufactured by or for the taxpayer, the approximate date the property was substantially completed.

(B) The cost or other basis, adjusted as provided by section 1016, of property, other than publicly traded securities, held by the taxpayer for a period of less than 12 months (6 months for property contributed in taxable years beginning after December 31, 1982, and on or before June 6, 1988) immediately preceding the date on which the contribution was made and, when the information is available, of property, other than publicly traded securities, held for a period of 12 months or more (6 months or more for property contributed in taxable years beginning after December 31, 1982, and on or before June 6, 1988) preceding the date on which the contribution was made.

(ii) *Information on acquisition date or cost basis not available*. —If the return form or its instructions require the taxpayer to provide information on either the acquisition date of the property or the cost basis as described in paragraph (b)(3)(i)(A) and (B), respectively, of this section, and the taxpayer has reasonable cause for not being able to provide such information, the taxpayer shall attach an explanatory statement to the return. If a taxpayer has reasonable cause for not being able to provide such information, the taxpayer shall not be disallowed a charitable contribution deduction under section 170 for failure to comply with paragraph (b)(3)(i)(A) and (B) of the section.

(4) *Taxpayer option to apply paragraph (d)(1) and (2) to pre-1985 contributions*. —See paragraph (d)(1) and (2) of this section with regard to contributions of property made on or before December 31, 1984.

(c) *Deductions in excess of $5,000 for certain charitable contributions of property made after December 31, 1984*

(1) *General Rule*

(i) *In general*. —This paragraph applies to any charitable contribution made after December 31, 1984, by an individual, closely held corporation, personal service corporation, partnership, or S corporation of an item of property (other than money and publicly traded securities to which §1.170A-13(c)(7)(xi)(B) does not apply) if the amount claimed or reported as a deduction under section 170 with respect to such item exceeds $5,000. This paragraph also applies to charitable contributions by C corporations (as defined in section 1361(a)(2) of the Code) to the extent described in paragraph (c)(2)(ii) of this section. No deduction under section 170 shall be allowed with respect to a charitable contribution to which this paragraph applies unless the substantiation requirements described in paragraph (c)(2) of this section are met. For purposes of this paragraph (c), the amount claimed or reported as a deduction for an item of property is the aggregate amount claimed or reported as a deduction for a charitable contribution under section 170 for such items of property and all similar items of property (as defined in paragraph (c)(7)(iii) of this section) by the same donor for the same taxable year (whether or not donated to the same donee).

(ii) *Special rule for property to which section 170(e)(3) or (4) applies*. —For purposes of this paragraph (c), in computing the amount claimed or reported as a deduction for donated property to which section 170(e)(3) or (4) applies (pertaining to certain contributions of inventory and scientific equipment) there shall be taken into account only the amount claimed or reported as a deduction in excess of the amount which would have been taken into account for tax purposes by the donor as costs of goods sold if the donor had sold the contributed property to the donee. For example, assume that a donor makes a contribution from inventory of clothing for the care of the needy to which section 170(e)(3) applies. The cost of the property to the donor was $5,000, and, pursuant to section 170(e)(3)(B), the donor claims a charitable contribution deduction of $8,000 with respect to the property. Therefore, $3,000 ($8,000 - $5,000) is the amount taken into account for purposes of determining whether the $5,000 threshold of this paragraph (c)(1) is met.

(2) *Substantiation requirements*

(i) *In general*. —Except as provided in paragraph (c)(2)(ii) of this section, a donor who claims or reports a deduction with respect to a charitable contribution to which this paragraph (c) applies must comply with the following three requirements:

(A) Obtain a qualified appraisal (as defined in paragraph (c)(3) of this section) for such property contributed. If the contributed property is a partial interest, the appraisal shall be of the partial interest.

(B) Attach a fully completed appraisal summary (as defined in paragraph (c)(4) of this section) to the tax return (or, in the case of a donor that is a partnership or S corporation, the information return) on which the deduction for the contribution is first claimed (or reported) by the donor.

(C) Maintain records containing the information required by paragraph (b)(2)(ii) of this section.

(ii) *Special rules for certain nonpublicly traded stock, certain publicly traded securities, and contributions by certain C corporations*

(A) In cases described in paragraph (c)(2)(ii)(B) of this section, a qualified appraisal is not required, and only a partially completed appraisal summary form (as described in paragraph (c)(4)(iv)(A) of this section) is required to be attached to the tax or information return specified in paragraph (c)(2)(i)(B) of this section. However, in all cases donors must maintain records

containing the information required by paragraph (b)(2)(ii) of this section.

(B) This paragraph (c)(2)(ii) applies in each of the following cases:

(1) The contribution of nonpublicly traded stock, if the amount claimed or reported as a deduction for the charitable contribution of such stock is greater than $5,000 but does not exceed $10,000;

(2) The contribution of a security to which paragraph (c)(7)(xi)(B) of this section applies; and

(3) The contribution of an item of property or of similar items of property described in paragraph (c)(1) of this section made after June 6, 1988, by a C corporation (as defined in section 1361(a)(2) of the Code), other than a closely held corporation or a personal service corporation.

(3) *Qualified appraisal*

(i) *In general*. —For purposes of this paragraph (c), the term "qualified appraisal" means an appraisal document that —

(A) Relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property nor later than the date specified in paragraph (c)(3)(iv)(B) of this section;

(B) Is prepared, signed, and dated by a qualified appraiser (within the meaning of paragraph (c)(5) of this section);

(C) Includes the information required by paragraph (c)(3)(ii) of this section; and

(D) Does not involve an appraisal fee prohibited by paragraph (c)(6) of this section.

(ii) *Information included in qualified appraisal*. —A qualified appraisal shall include the following information:

(A) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;

(B) In the case of tangible property, the physical condition of the property;

(C) The date (or expected date) of contribution to the donee;

(D) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement or understanding that —

(1) Restricts temporarily or permanently a donee's right to use or dispose of the donated property,

(2) Reserves to, or confers upon, anyone (other than a donee organization or an organization participating with a donee organization in cooperative fund-raising) any right to the income from the contributed property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or

(3) Earmarks donated property for a particular use;

(E) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser; and, if the qualified appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person (whether an individual, corporation, or partnerships), or an independent contractor engaged by a person other than the donor, the name, address, and taxpayer identification number (if a number is otherwise required by section 6109 and the regulations thereunder) of the partnership or the person who employs or engages the qualified appraiser;

(F) The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations:

(G) A statement that the appraisal was prepared for income tax purposes;

(H) The date (or dates) on which the property was appraised;

(I) The appraised fair market value (within the meaning of §1.170A-1(c)(2)) of the property on the date (or expected date) of contribution;

(J) The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and

(K) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

(iii) *Effect of signature of the qualified appraiser*. —Any appraiser who falsely or fraudulently overstates the value of the contributed property referred to in a qualified appraisal or appraisal summary (as defined in paragraph (c)(3) and (4), respectively, of this section) that the appraiser has signed may be subject to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability and, moreover, may have appraisals disregarded pursuant to 31 U.S.C. §330(c).

(iv) *Special rules*

(A) *Number of qualified appraisals*. —For purposes of paragraph (c)(2)(i)(A) of this section, a separate qualified appraisal is required for each item of property that is not included in a group of similar items of property. See paragraph (c)(7)(iii) of this section for the definition of similar items of property. Only one qualified appraisal is required for a group of similar items of property contributed in the same taxable year of the donor, although a donor may obtain separate qualified appraisals for each item of property. A qualified appraisal prepared with respect to a group of similar items of property shall provide all the information required by

paragraph (c)(3)(ii) of this section for each item of similar property, except that the appraiser may select any items whose aggregate value is appraised at $100 or less and provide a group description of such items.

(B) *Time of receipt of qualified appraisal*. —The qualified appraisal must be received by the donor before the due date (including extensions) of the return on which a deduction is first claimed (or reported in the case of a donor that is a partnership or S corporation) under section 170 with respect to the donated property, or, in the case of a deduction first claimed (or reported) on an amended return, the date on which the return is filed.

(C) *Retention of qualified appraisal*. —The donor must retain the qualified appraisal in the donor's records for so long as it may be relevant in the administration of any internal revenue law.

(D) *Appraisal disregarded pursuant to 31 U.S.C. §330(c)*. —If an appraisal is disregarded pursuant to 31 U.S.C. §330(c) it shall have no probative effect as to the value of the appraised property. Such appraisal will, however, otherwise constitute a "qualified appraisal" for purposes of this paragraph (c) if the appraisal summary includes the declaration described in paragraph (c)(4)(ii)(L)(*2*) and the taxpayer had no knowledge that such declaration was false as of the time described in paragraph (c)(4)(i)(B) of this section.

(4) *Appraisal summary*

(i) *In general*. —For purposes of this paragraph (c), except as provided in paragraph (c)(4)(iv)(A) of this section, the term "appraisal summary" means a summary of a qualified appraisal that —

(A) Is made on the form prescribed by the Internal Revenue Service;

(B) Is signed and dated (as described in paragraph (c)(4)(iii) of this section) by the donee (or presented to the donee for signature in cases described in paragraph (c)(4)(iv)(C)(*2*) of this section);

(C) Is signed and dated by the qualified appraiser (within the meaning of paragraph (c)(5) of this section) who prepared the qualified appraisal (within the meaning of paragraph (c)(3) of this section); and

(D) Includes the information required by paragraph (c)(4)(ii) of this section.

(ii) *Information included in an appraisal summary*. —An appraisal summary shall include the following information:

(A) The name and taxpayer identification number of the donor (social security number if the donor is an individual or employer identification number if the donor is a partnership or corporation);

(B) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was contributed;

(C) In the case of tangible property, a brief summary of the overall physical condition of the property at the time of the contribution;

(D) The manner of acquisition (*e.g.*, purchase, exchange, gift, or bequest) and the date of acquisition of the property by the donor, or, if the property was created, produced, or manufactured by or for the donor, a statement to that effect and the approximate date the property was substantially completed;

(E) The cost or other basis of the property adjusted as provided by section 1016;

(F) The name, address, and taxpayer identification number of the donee;

(G) The date the donee received the property;

(H) For charitable contributions made after June 6, 1988, a statement explaining whether or not the charitable contribution was made by means of a bargain sale and the amount of any consideration received from the donee for the contribution;

(I) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser who signs the appraisal summary and of other persons as required by paragraph (c)(3)(ii)(E) of this section;

(J) The appraised fair market value of the property on the date of contribution;

(K) The declaration by the appraiser described in paragraph (c)(5)(i) of this section;

(L) A declaration by the appraiser stating that —

(1) The fee charged for the appraisal is not of a type prohibited by paragraph (c)(6) of this section; and

(2) Appraisals prepared by the appraiser are not being disregarded pursuant to 31 U.S.C. §330(c) on the date the appraisal summary is signed by the appraiser; and

(M) Such other information as may be specified by the form.

(iii) *Signature of the original donee*. —The person who signs the appraisal summary for the donee shall be an official authorized to sign the tax or information returns of the donee, or a person specifically authorized to sign appraisal summaries by an official authorized to sign the tax or information returns of such donee. In the case of a donee that is a governmental unit, the person who signs the appraisal summary for such donee shall be the official authorized by such donee to sign appraisal summaries. The signature of the donee on the appraisal summary does not represent concurrence in the appraised value of the contributed property. Rather, it represents acknowledgment of receipt of the property described in the appraisal summary on the date specified in the appraisal summary and that the donee understands the information reporting requirements imposed by section 6050L and §1.6050L-1. In general, §1.6050L-1 requires the donee to file an information return with the Internal Revenue Service in the event the donee sells, exchanges, consumes, or otherwise disposes of the property (or any portion thereof) described in the appraisal summary within 2 years after the date of the donor's contribution of such property.

(iv) *Special rules*

(A) *Content of appraisal summary required in certain cases*. —With respect to contributions of nonpublicly traded stock described in paragraph (c)(2)(ii)(B)(*1*) of this section, contributions of securities described in paragraph (c)(7)(xi)(B) of this section, and contributions by C corporations described in paragraph (c)(2)(ii)(B)(*3*) of this section, the term "appraisal summary" means a document that —

(1) Complies with the requirements of paragraph (c)(4)(i)(A) and (B) of this section,

(2) Includes the information required by paragraph (c)(4)(ii)(A) through (H) of this section,

(3) Includes the amount claimed or reported as a charitable contribution deduction, and

(4) In the case of securities described in paragraph (c)(7)(xi)(B) of this section, also includes the pertinent average trading price (as described in paragraph (c)(7)(xi)(B)(*2*)(*iii*) of this section).

(B) *Number of appraisal summaries*. —A separate appraisal summary for each item of property described in paragraph (c)(1) of this section must be attached to the donor's return. If, during the donor's taxable year, the donor contributes similar items of property described in paragraph (c)(1) of this section to more than one donee, the donor shall attach to the donor's return a separate appraisal summary for each donee. See paragraph (c)(7)(iii) of this section for the definition of similar items of property. If, however, during the donor's taxable year, a donor contributes similar items of property described in paragraph (c)(1) of this section to the same donee, the donor may attach to the donor's return a single appraisal summary with respect to all similar items of property contributed to the same donee. Such an appraisal summary shall provide all the information required by paragraph (c)(4)(ii) of this section for each item of property, except that the appraiser may select any items whose aggregate value is appraised at $100 or less and provide a group description for such items.

(C) *Manner of acquisition, cost basis and donee's signature*

(1) If a taxpayer has reasonable cause for being unable to provide the information required by paragraph (c)(4)(ii)(D) and (E) of this section (relating to the manner of acquisition and basis of the contributed property), an appropriate explanation should be attached to the appraisal summary. The taxpayer's deduction will not be disallowed simply because of the inability (for reasonable cause) to provide these items of information.

(2) In rare and unusual circumstances in which it is impossible for the taxpayer to obtain the signature of the donee on the appraisal summary as required by paragraph (c)(4)(i)(B) of this section, the taxpayer's deduction will not be disallowed for that reason provided that the taxpayer attaches a statement to the appraisal summary explaining, in detail, why it was not possible to obtain the donee's signature. For example, if the donee ceases to exist as an entity subsequent to the date of the contribution and prior to the date when the appraisal summary must be signed, and the donor acted reasonably in not obtaining the donee's signature at the time of the contribution, relief under this paragraph (c)(4)(iv)(C)(*2*) would generally be appropriate.

(D) *Information excluded from certain appraisal summaries.* —The information required by paragraph (c)(4)(i)(C), paragraph (c)(4)(ii)(D), (E), (H) through (M), and paragraph (c)(4)(iv)(A)(*3*), and the average trading price referred to in paragraph (c)(4)(iv)(A)(*4*) of this section do not have to be included on the appraisal summary at the time it is signed by the

donee or a copy is provided to the donee pursuant to paragraph (c)(4)(iv)(E) of this section.

(E) *Statement to be furnished by donors to donees*. —Every donor who presents an appraisal summary to a donee for signature after June 6, 1988, in order to comply with paragraph (c)(4)(i)(B) of this section shall furnish a copy of the appraisal summary to such donee.

(F) *Appraisal summary required to be provided to partners and S corporation shareholders.* —If the donor is a partnership or S corporation, the donor shall provide a copy of the appraisal summary to every partner or shareholder, respectively, who receives an allocation of a charitable contribution deduction under section 170 with respect to the property described in the appraisal summary.

(G) *Partners and S corporation shareholders*. —A partner of a partnership or shareholder of an S corporation who receives an allocation of a deduction under section 170 for a charitable contribution of property to which this paragraph (c) applies must attach a copy of the partnership's or S corporation's appraisal summary to the tax return on which the deduction for the contribution is first claimed. If such appraisal summary is not attached, the partner's or shareholder's deduction shall not be allowed except as provided for in paragraph (c)(4)(iv)(H) of this section.

(H) *Failure to attach appraisal summary*. —In the event that a donor fails to attach to the donor's return an appraisal summary as required by paragraph (c)(2)(i)(B) of this section, the Internal Revenue Service may request that the donor submit the appraisal summary within 90 days of the request. If such a request is made and the donor complies with the request within the 90-day period, the deduction under section 170 shall not be disallowed for failure to attach the appraisal summary, provided that the donor's failure to attach the appraisal summary was a good faith omission and the requirements of paragraph (c)(3) and (4) of this section are met (including the completion of the qualified appraisal prior to the date specified in paragraph (c)(3)(iv)(B) of this section).

(5) *Qualified appraiser*

(i) *In general*. —The term “qualified appraiser” means an individual (other than a person described in paragraph (c)(5)(iv) of this section) who includes on the appraisal summary (described in paragraph (c)(4) of this section), a declaration that —

(A) The individual either holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis;

(B) Because of the appraiser's qualifications as described in the appraisal (pursuant to paragraph (c)(3)(ii)(F) of this section), the appraiser is qualified to make appraisals of the type of property being valued;

(C) The appraiser is not one of the persons described in paragraph (c)(5)(iv) of this section; and

(D) The appraiser understands that an intentionally false or fraudulent overstatement of the value of the property described in the qualified appraisal or appraisal summary may subject the appraiser to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability, and, moreover, the appraiser may have appraisals disregarded pursuant to 31 U.S.C. §330(c) (see paragraph (c)(3)(iii) of this section).

(ii) *Exception*. —An individual is not a qualified appraiser with respect to a particular donation, even if the declaration specified in paragraph (c)(5)(i) of this section is provided in the appraisal summary, if the donor had knowledge of facts that would cause a reasonable person to expect the appraiser falsely to overstate the value of the donated property (*e.g.,* the donor and the appraiser make an agreement concerning the amount at which the property will be valued and the donor knows that such amount exceeds the fair market value of the property).

(iii) *Numbers of appraisers*. —More than one appraiser may appraise the donated property. If more than one appraiser appraises the property, the donor does not have to use each appraiser's appraisal for purposes of substantiating the charitable contribution deduction pursuant to this paragraph (c). If the donor uses the appraisal of more than one appraiser, or if two or more appraisers contribute to a single appraisal, each appraiser shall comply with the requirements of this paragraph (c), including signing the qualified appraisal and appraisal summary as required by paragraphs (c)(3)(i)(B) and (c)(4)(i)(C) of this section, respectively.

(iv) *Qualified appraiser exclusions*. —The following persons cannot be qualified appraisers with respect to particular property:

(A) The donor or the taxpayer who claims or reports a deduction under section 170 for the contribution of the property that is being appraised.

(B) A party to the transaction in which the donor acquired the property being appraised (*i.e.*, the person who sold, exchanged, or gave the property to the donor, or any person who acted as an agent for the transferor or for the donor with respect to such sale, exchange, or gift), unless the property is donated within 2 months of the date of acquisition and its appraised value does not exceed its acquisition price.

(C) The donee of the property.

(D) Any person employed by any of the foregoing persons (*e.g.,* if the donor acquired a painting from an art dealer, neither the art dealer nor persons employed by the dealer can be qualified appraisers with respect to that painting).

(E) Any person related to any of the foregoing persons under section 267(b), or with respect to appraisals made after June 6, 1988, married to a person who is in a relationship described in section 267(b) with any of the foregoing persons.

(F) An appraiser who is regularly used by any person described in paragraph (c)(5)(iv)(A), (B), or (C) of this section and who does not perform a majority of his or her appraisals made during his or her taxable year for other persons.

(6) *Appraisal fees*

(i) *In general*. —Except as otherwise provided in paragraph (c)(6)(ii) of this section, no part of the fee arrangement for a qualified appraisal can be based, in effect, on a percentage (or set of percentages) of the appraised value of the property. If a fee arrangement for an appraisal is based in whole or in part on the amount of the appraised value of the property, if any, that is allowed as a deduction under section 170, after Internal Revenue Service examination or otherwise, it shall be treated as a fee based on a percentage of the appraised value of the property. For example, an appraiser's fee that is subject to reduction by the same percentage as the appraised value may be

reduced by the Internal Revenue Service would be treated as a fee that violates this paragraph (c)(6).

(ii) *Exception*. —Paragraph (c)(6)(i) of this section does not apply to a fee paid to a generally recognized association that regulates appraisers provided all of the following requirements are met:

(A) The association is not organized for profit and no part of the net earnings of the association inures to the benefit of any private shareholder or individual (these terms have the same meaning as in section 501(c)),

(B) The appraiser does not receive any compensation from the association or any other persons for making the appraisal, and

(C) The fee arrangement is not based in whole or in part on the amount of the appraised value of the donated property, if any, that is allowed as a deduction under section 170 after Internal Revenue Service examination or otherwise.

(7) *Meaning of terms*. —For purposes of this paragraph (c) —

(i) *Closely held corporation*. —The term "closely held corporation" means any corporation (other than an S corporation) with respect to which the stock ownership requirement of paragraph (2) of section 542(a) of the Code is met.

(ii) *Personal service corporation*. —The term "personal service corporation" means any corporation (other than an S corporation) which is a service organization (within the meaning of section 414(m)(3) of the Code).

(iii) *Similar items of property*. —The phrase "similar items of property" means property of the same generic category or type, such as stamp collections (including philatelic supplies and books on stamp collecting), coin collections (including numismatic supplies and books on coin collecting), lithographs, paintings, photographs, books, nonpublicly traded stock, nonpublicly traded securities other than nonpublicly traded stock, land, buildings, clothing, jewelry, furniture, electronic equipment, household appliances, toys, everyday kitchenware, china, crystal, or silver. For example, if a donor claims on her return for the year deductions of $2,000 for books given by her to College A, $2,500 for books given by her to College B, and $900 for books given by her to College C, the $5,000 threshold of paragraph (c)(1) of this section is exceeded. Therefore, the donor must obtain a qualified appraisal for the books and attach to her return three appraisal summaries for the books donated to A, B, and C. For rules regarding the number of qualified appraisals and appraisal summaries required when similar items of property are contributed, see paragraphs (c)(3)(iv)(A) and (c)(4)(iv)(B), respectively, of this section.

(iv) *Donor*. —The term "donor" means a person or entity (other than an organization described in section 170(c) to which the donated property was previously contributed) that makes a charitable contribution of property.

(v) *Donee*. —The term "donee" means —

(A) Except as provided in paragraph (c)(7)(v)(B) and (C) of this section, an organization described in section 170(c) to which property is contributed,

(B) Except as provided in paragraph (c)(7)(v)(C) of this section, in the case of a charitable contribution of property placed in trust for the benefit of an organization described in section 170(c), the trust, or

(C) In the case of a charitable contribution of property placed in trust for the benefit of an organization described in section 170(c) made on or before June 6, 1988, the beneficiary that is an organization described in section 170(c), or if the trust has assumed the duties of a donee by signing the appraisal summary pursuant to paragraph (c)(4)(i)(B) of this section, the trust.

In general, the term refers only to the original donee. However, with respect to paragraph (c)(3)(ii)(D), the last sentence of paragraph (c)(4)(iii), and paragraph (c)(5)(iv)(C) of this section, the term "donee" means the original donee and all successor donees in cases where the original donee transfers the contributed property to a successor donee after June 6, 1988.

(vi) *Original donee*. —The term "original donee" means the donee to or for which property is initially donated by a donor.

(vii) *Successor donee*. —The term "successor donee" means any donee of property other than its original donee (*i.e.,* a transferee of property for less than fair market value from an original donee or another successor donee).

(viii) *Fair market value*. —For the meaning of the term "fair market value," see section 1.170A-1(c)(2).

(ix) *Nonpublicly traded securities*. —The term "nonpublicly traded securities" means securities (within the meaning of section 165(g)(2) of the Code) which are not publicly traded securities as defined in paragraph (c)(7)(xi) of this section.

(x) *Nonpublicly traded stock.* —The term "nonpublicly traded stock" means any stock of a corporation (evidence by a stock certificate) which is not a publicly traded security. The term stock does not include a debenture or any other evidence of indebtedness.

(xi) *Publicly traded securities*

(A) *In general*. —Except as provided in paragraph (c)(7)(xi)(C) of this section, the term "publicly traded securities" means securities (within the meaning of section 165(g)(2) of the Code) for which (as of the date of the contribution) market quotations are readily available on an established securities market. For purposes of this section, market quotations are readily available on an established securities market with respect to a security if:

(1) The security is listed on the New York Stock Exchange, the American Stock Exchange, or any copy or regional exchange in which quotations are published on a daily basis, including foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published daily basis;

(2) The security is regularly traded in the national or regional over-the-counter market, for which published quotations are available; or

(3) The security is a share of an open-end investment company (commonly known as a mutual fund) registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2), for which quotations are published on a daily basis in a newspaper of

general circulation throughout the United States.

(If the market value of an issue of a security is reflected only on an interdealer quotation system, the issue shall not be considered to be publicly traded unless the special rule described in paragraph (c)(7)(xi)(B) of this section is satisfied.)

(B) *Special rule*

(1) In General. —An issue of a security that does not satisfy the requirements of paragraph (c)(7)(xi)(A)(*1*), (*2*), or (*3*) of this section shall nonetheless be considered to have market quotations readily available on an established securities market for purposes of paragraph (c)(7)(xi)(A) of this section if all of the following five requirements are met:

(i) The issue is regularly traded during the computational period (as defined in paragraph (c)(7)(xi)(B)(*2*)(*iv*) of this section) in a market that is reflected by the existence of an interdealer quotation system for the issue,

(ii) The issuer or an agent of the issuer computes the average trading price (as defined in paragraph (c)(7)(xi)(B)(*2*)(*iii*) of this section) for the issue for the computational period,

(iii) The average trading price and total volume of the issue during the computational period are published in a newspaper of general circulation throughout the United States not later than the last day of the month following the end of the calendar quarter in which the computational period ends,

(iv) The issuer or its agent keeps books and records that list for each transaction during the computational period involving each issue covered by this procedure the date of the settlement of the transaction, the name and address of the broker or dealer making the market in which the transaction occurred, and the trading price and volume, and

(v) The issuer or its agent permits the Internal Revenue Service to review the books and records described in paragraph (c)(7)(xi)(B)(*1*)(*iv*) of this section with respect to transactions during the computational period upon giving reasonable notice to the issuer or agent.

(2) Definitions. —For purposes of this paragraph (c)(7)(xi)(B) —

(i) Issue of a security. —The term “issue of a security” means a class of debt securities with the same obligor and identical terms except as to their relative denominations (amounts) or a class of stock having identical rights.

(ii) Interdealer quotation system. —The term “interdealer quotation system” means any system of general circulation to brokers and dealers that regularly disseminates quotations of obligations by two or more identified brokers or dealers, who are not related to either the issuer of the security or to the issuer's agent, who compute the average trading price of the security. A quotation sheet prepared and distributed by a broker or dealer in the regular course of its business and containing only quotations of such broker or dealer is not an interdealer quotation system.

(iii) Average trading price. —The term “average trading price” means the mean price of all transactions (weighted by volume), other than original issue or redemption

transactions, conducted through a United States office of a broker or dealer who maintains a market in the issue of the security during the computational period. For this purpose, bid and asked quotations are not taken into account.

(iv) Computational period. —For calendar quarters beginning on or after June 6, 1988, the term "computational period" means weekly during October through December (beginning with the first Monday in October and ending with the first Sunday following the last Monday in December) and monthly during January through September (beginning January 1). For calendar quarters beginning before June 6, 1988, the term "computational period" means weekly during October through December and monthly during January through September.

(C) *Exception*. —Securities described in paragraph (c)(7)(xi)(A) or (B) of this section shall not be considered publicly traded securities if —

(1) The securities are subject to any restrictions that materially affect the value of the securities to the donor or prevent the securities from being freely traded, or

(2) If the amount claimed or reported as a deduction with respect to the contribution of the securities is different than the amount listed in the market quotations that are readily available on an established securities market pursuant to paragraph (c)(7)(xi)(A) or (B) of this section.

(D) *Market quotations and fair market value*. —The fair market value of a publicly traded security, as defined in this paragraph (c)(7)(xi), is not necessarily equal to its market quotation, its average trading price (as defined in paragraph (c)(7)(xi)(B)(*2*)(*iii*) of this section), or its face value, if any. See section 1.170A-1(c)(2) for the definition of "fair market value."

(d) *Charitable contributions; information required in support of deductions for taxable years beginning before January 1, 1983*

(1) *In general*. —This paragraph (d)(1) shall apply to deductions for charitable contributions made in taxable years beginning before January 1, 1983. At the option of the taxpayer the requirements of this paragraph (d)(1) shall also apply to all charitable contributions made on or before December 31, 1984 (in lieu of the requirements of paragraphs (a) and (b) of this section). In connection with claims for deductions for charitable contributions, taxpayers shall state in their income tax returns the name of each organization to which a contribution was made and the amount and date of the actual payment of each contribution. If a contribution is made in property other than money, the taxpayer shall state the kind of property contributed, for example, used clothing, paintings, or securities, the method utilized in determining the fair market value of the property at the time the contribution was made, and whether or not the amount of the contribution was reduced under section 170(e). If a taxpayer makes more than one cash contribution to an organization during the taxable year, then in lieu of listing each cash contribution and the date of payment the taxpayer may state the total cash payments made to such organization during the taxable year. A taxpayer who elects under paragraph (d)(2) of §1.170A-8 to apply section 170(e)(1) to his contributions and carryovers of 30-percent capital gain property must file a statement with his return indicating that he has made the election and showing the contributions in the current year and carryovers from preceding years to which it applies. For the definition of the term "30-percent capital gain property", see paragraph (d)(3) of §1.170A-8.

(2) *Contribution by individual of property other than money*. —This paragraph (d)(2) shall apply to

deductions for charitable contributions made in taxable years beginning before January 1, 1983. At the option of the taxpayer, the requirements of this paragraph (d)(2) shall also apply to contributions of property made on or before December 31, 1984 (in lieu of the requirements of paragraph (b) of this section).

(i) The name and address of the organization to which the contribution was made.

(ii) The date of the actual contribution.

(iii) A description of the property in sufficient detail to identify the particular property contributed, including in the case of tangible property the physical condition of the property at the time of contribution, and, in the case of securities, the name of the issuer, the type of security, and whether or not such security is regularly traded on a stock exchange or in an over-the-counter market.

(iv) The manner of acquisition, as, for example, by purchase, gift, bequest, inheritance, or exchange, and the approximate date of acquisition of the property by the taxpayer or, if the property was created, produced, or manufactured by or for the taxpayer, the approximate date the property was substantially completed.

(v) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

(vi) The cost or other basis, adjusted as provided by section 1016, of property, other than securities, held by the taxpayer for a period of less than five years immediately preceding the date on which the contribution was made and, when the information is available, of property, other than securities, held for a period of five years or more preceding the date on which the contribution was made.

(vii) In the case of property to which section 170(e) applies, the cost or other basis, adjusted as provided by section 1016, the reduction by reason of section 170(e)(1) in the amount of the charitable contribution otherwise taken into account, and the manner in which such reduction was determined.

(viii) The terms of any agreement or understanding entered into by or on behalf of the taxpayer which relates to the use, sale, or disposition of the property contributed, as, for example, the terms of any agreement or understanding which —

(A) Restricts temporarily or permanently the donee's right to dispose of the donated property.

(B) Reserves to, or confers upon, anyone other than the donee organization or other than an organization participating with such organization in cooperative fund raising, any right to the income from such property, to the possession of the property, including the right to vote securities, to acquire such property by purchase or otherwise, or to designate the person to have such income, possession, or right to acquire, or

(C) Earmarks contributed property for a particular charitable use, such as the use of donated furniture in the reading room of the donee organization's library.

(ix) The total amount claimed as a deduction for the taxable year due to the contribution of the

property and, if less than the entire interest in the property is contributed during the taxable year, the amount claimed as a deduction in any prior year or years for contributions of other interests in such property, the name and address of each organization to which any such contribution was made, the place where any such property which is tangible property is located or kept, and the name of any person, other than the organization to which the property giving rise to the deduction was contributed, having actual possession of the property.

(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 the donee organization. A taxpayer who makes more than one contribution of $250 or more to a donee organization in a taxable year may substantiate the contributions with one or more contemporaneous written acknowledgments. 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. Separate contributions of less than $250 are not subject to the requirements of section 170(f)(8), regardless of whether the sum of the contributions made by a taxpayer to a donee organization during a taxable year equals $250 or more.

(2) *Written acknowledgment*. —Except as otherwise provided in paragraphs (f)(8) through (f)(11) and (f)(13) 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 the 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 a 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 in exchange 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 may 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 a donee organization and for which the donee organization reasonably projects that the cost per person (excluding any allocable overhead) attending 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 of any items or services that 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. *Contemporaneous written acknowledgment need not mention rights or privileges that can be disregarded.* The facts are the same as in Example 1, except that *F* made a payment of $300 and received only a basic membership. *F* can satisfy the section 170(f)(8) substantiation requirement with a contemporaneous written acknowledgment stating that no goods or services were provided.

Example 3. *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.

Example 4. *Multiple memberships*. In December of each year, *K*, an individual, gives each of her six grandchildren a junior membership in Dinosaur Museum, an organization described in section 170(c). Each junior membership costs $50, and *K* makes a single payment of $300 for all six memberships. A junior member is entitled to free admission to the museum and to weekly films, slide shows, and lectures about dinosaurs. In addition, each junior member receives a bi-monthly, non-commercial quality newsletter with information about dinosaurs and upcoming events. *K*'s contemporaneous written acknowledgment from Dinosaur Museum may state that no goods or services were provided in exchange for *K*'s payment.

(9) *Goods or services provided to employees or partners of donors*

(i) *Certain goods or services disregarded*. —For purposes of section 170(f)(8), goods or services provided by a donee organization to employees of a donor, or to partners of a partnership that is a donor, in return for a payment to the organization may be disregarded to the extent that the goods or services provided to each employee or partner 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 or partners 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 for one year, a tee-shirt with *J*'s logo that costs *J* $4.50, and a gift shop discount of 25% for one year. 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, the 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 who 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) 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

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

(11) *Contributions made by payroll deduction*

(i) *Form of substantiation*. —A contribution made by means of withholding from a taxpayer's wages and payment by the taxpayer's employer to a donee organization may be substantiated, for purposes of section 170(f)(8), by both —

(A) A pay stub, Form W-2, or other document furnished by the employer that sets forth the amount withheld by the employer for the purpose of payment to a donee organization; and

(B) A pledge card or other document prepared by or at the direction of the donee organization that includes a statement to the effect that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction.

(ii) *Application of $250 threshold*. —For the purpose of applying the $250 threshold provided in section 170(f)(8)(A) to contributions made by the means described in paragraph (f)(11)(i) of this section, the amount withheld from each payment of wages to a taxpayer is treated as a separate contribution.

(12) *Distributing organizations as donees*. —An organization described in section 170(c), or an organization described in 5 CFR 950.105 (a Principal Combined Fund Organization for purposes of the Combined Federal Campaign) and acting in that capacity, that receives a payment made as a contribution is treated as a donee organization solely for purposes of section 170(f)(8), even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in section 170(c). This paragraph (f)(12) does not apply, however, to a case in which the distributee organization provides goods or services as part of a transaction structured with a view to avoid taking the goods or services into account in determining the amount of the deduction to which the donor is entitled under section 170.

(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) or (d)(3) or §1.664-(3)(a)(1)(i)(*b*)). Section 170(f)(8) does apply, however, to a transfer to a pooled income fund (as defined in section 642(c)(5)); for such a transfer, the contemporaneous written acknowledgment must state that the contribution was transferred to the donee organization's pooled income fund and indicate whether any goods or services (in addition to an income interest in the fund) were provided in exchange for the transfer. The contemporaneous written acknowledgment is not required to include a good faith estimate of the income interest.

(14) *Substantiation of payments to a college or university for the right to purchase tickets to athletic events*. —For purposes of paragraph (f)(2)(iii) of this section, the right to purchase tickets for seating at an athletic event in exchange for a payment described in section 170(l) is treated as having a value equal to twenty percent of such payment. For example, when a taxpayer makes a payment of $312.50 for the right to purchase tickets for seating at an athletic event, the right to purchase tickets is treated as having a value of $62.50. The remaining $250 is treated as a charitable contribution, which the taxpayer must substantiate in accordance with the requirements of this section.

(15) *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.

(16) *Purchase of an annuity*. —If a taxpayer purchases an annuity from a charitable organization and claims a charitable contribution deduction of $250 or more for the excess of the amount paid over the value of the annuity, the contemporaneous written acknowledgment must state whether any goods or services in addition to the annuity were provided to the taxpayer. The contemporaneous written acknowledgment is not required to include a good faith estimate of the value of the annuity. See §1.170A-1(d)(2) for guidance in determining the value of the annuity.

(17) *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)(17).

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 a statement of 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.

(18) *Effective date*. —This paragraph (f) applies to contributions made on or after December 16, 1996. However, taxpayers may rely on the rules of this paragraph (f) for contributions made on or after January 1, 1994. [Reg. §1.170A-13.]

§1.170A-14. Qualified conservation contributions

(a) *Qualified conservation contributions*. —A deduction under section 170 is generally not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust (see §1.170A-6 relating to charitable contributions in trust and §1.170A-7 relating to contributions not in trust of partial interests in property). However, a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of this section are met. A qualified conservation contribution is the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. To be eligible for a deduction under this section, the conservation purpose must be protected in perpetuity.

(b) *Qualified real property interest*

(1) *Entire interest of donor other than qualified mineral interest*

(i) The entire interest of the donor other than a qualified mineral interest is a qualified real property interest. A qualified mineral interest is the donor's interest in subsurface oil, gas, or other minerals and the right of access to such minerals.

(ii) A real property interest shall not be treated as an entire interest other than a qualified mineral interest by reason of section 170(h)(2)(A) and this paragraph (b)(1) if the property in which the donor's interest exists was divided prior to the contribution in order to enable the donor to retain control of more than a qualified mineral interest or to reduce the real property interest donated. See Treasury regulations §1.170A-7(a)(2)(i). An entire interest in real property may consist of an undivided interest in the property. But see section 170(h)(5)(A) and the regulations thereunder (relating to the requirement that the conservation purpose which is the subject of the donation must be protected in perpetuity).

Minor interests, such as rights-of-way, that will not interfere with the conservation purposes of the donation, may be transferred prior to the conservation contribution without affecting the treatment

of a property interest as a qualified real property interest under this paragraph (b)(1).

(2) *Perpetual conservation restriction*. —A perpetual conservation restriction is a qualified real property interest. A "perpetual conservation restriction" is a restriction granted in perpetuity on the use which may be made of real property —including, an easement or other interest in real property that under state law has attributes similar to an easement (e.g., a restrictive covenant or equitable servitude). For purposes of this section, the terms "easement", "conservation restriction", and "perpetual conservation restriction" have the same meaning. The definition of "perpetual conservation restriction" under this paragraph (b)(3) is not intended to preclude the deductibility of a donation of affirmative rights to use a land or water area under §1.170A-13(d)(2). Any rights reserved by the donor in the donation of a perpetual conservation restriction must conform to the requirements of this section. See *e.g.*, paragraphs (d)(4)(ii), (d)(5)(i), (e)(3), and (g)(4) of this section.

(c) *Qualified organization*

(1) *Eligible donee*. —To be considered an eligible donee under this section, an organization must be a qualified organization, have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions. A conservation group organized or operated primarily or substantially for one of the conservation purposes specified in section 170(b)(4)(A) will be considered to have the commitment required by the preceding sentence. A qualified organization need not set aside funds to enforce the restrictions that are the subject of the contribution. For purposes of this section, the term "qualified organization" means:

(i) A governmental unit described in section 170(b)(1)(A)(v);

(ii) An organization described in section 170(b)(1)(A)(vi);

(iii) A charitable organization described in section 501(c)(3) that meets the public support test of section 509(a)(2);

(iv) A charitable organization described in section 501(c)(3) that meets the requirements of section 509(a)(3) and is controlled by an organization described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2) *Transfers by donee*. —A deduction shall be allowed for a contribution under this section only if in the instrument of conveyance the donor prohibits the donee from subsequently transferring the easement (or, in the case of a remainder interest or the reservation of a qualified mineral interest, the property), whether or not for consideration, unless the donee organization, as a condition of the subsequent transfer, requires that the conservation purposes which the contribution was originally intended to advance continue to be carried out. Moreover, subsequent transfers must be restricted to organizations qualifying, at the time of the subsequent transfer, as an eligible donee under paragraph (c)(1) of this section. When a later unexpected change in the conditions surrounding the property that is the subject of a donation under paragraphs (b)(1), (2), or (3) of this section makes impossible or impractical the continued use of the property for conservation purposes, the requirements of this paragraph will be met if the property is sold or exchanged and any proceeds are used by the donee organization in a manner consistent with the conservation purposes of the original contribution. In the case of a donation under paragraph (b)(3) of this section to which the preceding sentence applies, see also paragraph (g)(5)(ii) of this section.

(d) *Conservation purposes*

(1) *In general*. —For purposes of section 170(h) and this section, the term "conservation purposes" means —

(i) The preservation of land areas for outdoor recreation by, or the education of, the general public, within the meaning of paragraph (d)(2) of this section,

(ii) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, within the meaning of paragraph (d)(3) of this section,

(iii) The preservation of certain open space (including farmland and forest land) within the meaning of paragraph (d)(4) of this section, or

(iv) The preservation of an historically important land area or a certified historic structure, within the meaning of paragraph (d)(5) of this section.

(2) *Recreation or education*

(i) *In general*. —The donation of a qualified real property interest to preserve land areas for the outdoor recreation of the general public or for the education of the general public will meet the conservation purposes test of this section. Thus, conservation purposes would include, for example, the preservation of a water area for the use of the public for boating or fishing, or a nature or hiking trail for the use of the public.

(ii) *Access*. —The preservation of land areas for recreation or education will not meet the test of this section unless the recreation or education is for the substantial and regular use of the general public.

(3) *Protection of environmental system*

(i) *In general*. —The donation of a qualified real property interest to protect a significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem, normally lives will meet the conservation purposes test of this section. The fact that the habitat or environment has been altered to some extent by human activity will not result in a deduction being denied under this section if the fish, wildlife, or plants continue to exist there in a relatively natural state. For example, the preservation of a lake formed by a man-made dam or a salt pond formed by a man-made dike would meet the conservation purposes test if the lake or pond were a natural feeding area for a wildlife community that included rare, endangered, or threatened native species.

(ii) *Significant habitat or ecosystem*. —Significant habitats and ecosystems include, but are not limited to, habitats for rare, endangered, or threatened species of animals, fish, or plants; natural areas that represent high quality examples of a terrestrial community or aquatic community, such as islands that are undeveloped or not intensely developed where the coastal ecosystem is relatively intact; and natural areas which are included in, or which contribute to, the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or other similar conservation area.

(iii) Limitations on public access to property that is the subject of a donation under this paragraph (d)(3) shall not render the donation nondeductible. For example, a restriction on all public access to the habitat of a threatened native animal species protected by a donation under this paragraph

(d)(3) would not cause the donation to be nondeductible.

(4) *Preservation of open space*

(i) *In general*. —The donation of a qualified real property interest to preserve open space (including farmland and forest land) will meet the conservation purposes test of this section if such a preservation is —

(A) Pursuant to a clearly delineated federal, state, or local governmental conservation policy and will yield a significant public benefit, or

(B) For the scenic enjoyment of the general public and will yield a significant public benefit.

An open space easement donated on or after December 18, 1980, must meet the requirements of section 170(h) in order to be deductible.

(ii) *Scenic enjoyment*

(A) *Factors*. —A contribution made for the preservation of open space may be for the scenic enjoyment of the general public. Preservation of land may be for the scenic enjoyment of the general public if development of the property would impair the scenic character of the local rural or urban landscape or would interfere with a scenic panorama that can be enjoyed from a park, nature preserve, road, waterbody, trail, or historic structure or land area, and such area or transportation way is open to, or utilized by, the public. “Scenic enjoyment” will be evaluated by considering all pertinent facts and circumstances germane to the contribution. Regional variations in topography, geology, biology, and cultural and economic conditions require flexibility in the application of this test, but do not lessen the burden on the taxpayer to demonstrate the scenic characteristics of a donation under this paragraph. The application of a particular objective factor to help define a view as “scenic” in one setting may in fact be entirely inappropriate in another setting. Among the factors to be considered are:

(1) The compatibility of the land use with other land in the vicinity;

(2) The degree of contrast and variety provided by the visual scene;

(3) The openness of the land (which would be a more significant factor in an urban or densely populated setting or in a heavily wooded area);

(4) Relief from urban closeness;

(5) The harmonious variety of shapes and textures;

(6) The degree to which the land use maintains the scale and character of the urban landscape to preserve open space, visual enjoyment, and sunlight for the surrounding area;

(7) The consistency of the proposed scenic view with a methodical state scenic identification program, such as a state landscape inventory; and

(8) The consistency of the proposed scenic view with a regional or local landscape inventory made pursuant to a sufficiently rigorous review process, especially if the donation is endorsed by an appropriate state or local governmental agency.

(B) *Access*. —To satisfy the requirement of scenic enjoyment by the general public, visual (rather than physical) access to or across the property by the general public is sufficient. Under the terms of an open space easement on scenic property, the entire property need not be visible to the public for a donation to qualify under this section, although the public benefit from the donation may be insufficient to qualify for a deduction if only a small portion of the property is visible to the public.

(iii) *Governmental conservation policy*

(A) *In general*. —The requirement that the preservation of open space be pursuant to a clearly delineated Federal, state, or local governmental policy is intended to protect the types of property identified by representatives of the general public as worthy of preservation or conservation. A general declaration of conservation goals by a single official or legislative body is not sufficient. However, a governmental conservation policy need not be a certification program that identifies particular lots or small parcels of individually owned property. This requirement will be met by donations that further a specific, identified conservation project, such as the preservation of land within a state or local landmark district that is locally recognized as being significant to that district; the preservation of a wild or scenic river; the preservation of farmland pursuant to a state program for flood prevention and control; or the protection of the scenic, ecological, or historic character of land that is contiguous to, or an integral part of, the surroundings of existing recreation or conservation sites. For example, the donation of a perpetual conservation restriction to a qualified organization pursuant to a formal resolution or certification by a local governmental agency established under state law specifically identifying the subject property as worthy of protection for conservation purposes will meet the requirement of this paragraph. A program need not be funded to satisfy this requirement, but the program must involve a significant commitment by the government with respect to the conservation project. For example, a governmental program according preferential tax assessment or preferential zoning for certain property deemed worthy of protection for conservation purposes would constitute a significant commitment by the government.

(B) *Effect of acceptance by governmental agency*. —Acceptance of an easement by an agency of the Federal Government or by an agency of a state or local government (or by a commission, authority, or similar body duly constituted by the state or local government and acting on behalf of the state or local government) tends to establish the requisite clearly delineated governmental policy, although such acceptance, without more, is not sufficient. The more rigorous the review process by the governmental agency, the more the acceptance of the easement tends to establish the requisite clearly delineated governmental policy. For example, in a state where the legislature has established an Environmental Trust to accept gifts to the state which meet certain conservation purposes and to submit the gifts to a review that requires the approval of the state's highest officials, acceptance of a gift by the Trust tends to establish the requisite clearly delineated governmental policy. However, if the Trust merely accepts such gifts without a review process, the requisite clearly delineated governmental policy is not established.

(C) *Access*. —A limitation on public access to property subject to a donation under this paragraph (d)(4)(iii) shall not render the deduction nondeductible unless the conservation purpose of the donation would be undermined or frustrated without public access. For example, a donation pursuant to a governmental policy to protect the scenic character of land near a river requires visual access to the same extent as would a donation under paragraph

(d)(4)(ii) of this section.

(iv) *Significant public benefit*

(A) *Factors*. —All contributions made for the preservation of open space must yield a significant public benefit. Public benefit will be evaluated by considering all pertinent facts and circumstances germane to the contribution. Factors germane to the evaluation of public benefit from one contribution may be irrelevant in determining public benefit from another contribution. No single factor will necessarily be determinative. Among the factors to be considered are:

(1) The uniqueness of the property to the area;

(2) The intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);

(3) The consistency of the proposed open space use with public programs (whether Federal, state or local) for conservation in the region, including programs for outdoor recreation, irrigation or water supply protection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in, or related to, a government approved master plan or land management area;

(4) The consistency of the proposed open space use with existing private conservation programs in the area, as evidenced by other land, protected by easement or fee ownership by organizations referred to in §1.170A-14(c)(1), in close proximity to the property;

(5) The likelihood that development of the property would lead to or contribute to degradation of the scenic, natural, or historic character of the area;

(6) The opportunity for the general public to use the property or to appreciate its scenic values;

(7) The importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;

(8) The likelihood that the donee will acquire equally desirable and valuable substitute property or property rights;

(9) The cost to the donee of enforcing the terms of the conservation restriction;

(10) The population density in the area of the property; and

(11) The consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection.

(B) *Illustrations*. —The preservation of an ordinary tract of land would not in and of itself yield a significant public benefit, but the preservation of ordinary land areas in conjunction with other factors that demonstrate significant public benefit or the preservation of a unique land area for public enjoyment would yield a significant public benefit. For example, the preservation of a vacant downtown lot would not by itself yield a significant public benefit, but the preservation of the downtown lot as a public garden would, absent countervailing factors,

yield a significant public benefit. The following are other examples of contributions which would, absent countervailing factors, yield a significant public benefit: the preservation of farmland pursuant to a state program for flood prevention and control; the preservation of a unique natural land formation for the enjoyment of the general public; the preservation of woodland along a public highway pursuant to a government program to preserve the appearance of the area so as to maintain the scenic view from the highway; and the preservation of a stretch of undeveloped property located between a public highway and the ocean in order to maintain the scenic ocean view from the highway.

(v) *Limitation*. —A deduction will not be allowed for the preservation of open space under section 170(h)(4)(A)(iii), if the terms of the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land or with the governmental conservation policy that is being furthered by the donation. See §1.170A-14(e)(2) for rules relating to inconsistent use.

(vi) *Relationship of requirements*

(A) *Clearly delineated governmental policy and significant public benefit*. —Although the requirements of "clearly delineated governmental policy" and "significant public benefit" must be met independently, for purposes of this section the two requirements may also be related. The more specific the governmental policy with respect to the particular site to be protected, the more likely the governmental decision, by itself, will tend to establish the significant public benefit associated with the donation. For example, while a statute in State X permitting preferential assessment for farmland is, by definition, governmental policy, it is distinguishable from a state statute, accompanied by appropriations, naming the X River as a valuable resource and articulating the legislative policy that the X River and the relatively natural quality of its surroundings be protected. On these facts, an open space easement on farmland in State X would have to demonstrate additional factors to establish "significant public benefit." The specificity of the legislative mandate to protect the X River, however, would by itself tend to establish the significant public benefit associated with an open space easement on land fronting the X River.

(B) *Scenic enjoyment and significant public benefit.* —With respect to the relationship between the requirements of "scenic enjoyment" and "significant public benefit," since the degrees of scenic enjoyment offered by a variety of open space easements are subjective and not as easily delineated as are increasingly specific levels of governmental policy, the significant public benefit of preserving a scenic view must be independently established in all cases.

(C) *Donations may satisfy more than one test*. —In some cases, open space easements may be both for scenic enjoyment and pursuant to a clearly delineated governmental policy. For example, the preservation of a particular scenic view identified as part of a scenic landscape inventory by a rigorous governmental review process will meet the tests of both paragraphs (d)(4)(i)(A) and (d)(4)(i)(B) of this section.

(5) *Historic preservation*

(i) *In general*. —The donation of a qualified real property interest to preserve an historically important land area or a certified historic structure will meet the conservation purposes test of this section. When restrictions to preserve a building or land area within a registered historic district permit future development on the site, a deduction will be allowed under this section only if the terms of the restrictions require that such development conform with appropriate local, state, or

Federal standards for construction or rehabilitation within the district. See also, §1.170A-14(h)(3)(ii).

(ii) *Historically important land area*. —The term "historically important land area" includes:

(A) An independently significant land area including any related historic resources (for example, an archaeological site or a Civil War battlefield with related monuments, bridges, cannons, or houses) that meets the National Register Criteria for Evaluation in 36 CFR 60.4 (Pub. L. 89-665, 80 Stat. 915);

(B) Any land area within a registered historic district including any buildings on the land area that can reasonably be considered as contributing to the significance of the district; and

(C) Any land area (including related historic resources) adjacent to a property listed individually in the National Register of Historic Places (but not within a registered historic district) in a case where the physical or environmental features of the land area contribute to the historic or cultural integrity of the property.

(iii) *Certified historic structure*

(A) *Definition*. —The term "certified historic structure," for purposes of this section, means any building, structure or land area which is —

(A) Listed in the National Register, or

(B) Located in a registered historic district (as defined in section 48(g)(3)(B)) and is certified by the Secretary of the Interior (pursuant to 36 CFR 67.4) to the Secretary of the Treasury as being of historic significance to the district.

A "structure" for purposes of this section means any structure, whether or not it is depreciable. Accordingly, easements on private residences may qualify under this section. In addition, a structure would be considered to be a certified historic structure if it were certified either at the time the transfer was made or at the due date (including extensions) for filing the donor's return for the taxable year in which the contribution was made.

(iv) *Access*

(A) In order for a conservation contribution described in section 170(h)(4)(A)(iv) and this paragraph (d)(5) to be deductible, some visual public access to the donated property is required. In the case of an historically important land area, the entire property need not be visible to the public for a donation to qualify under this section. However, the public benefit from the donation may be insufficient to qualify for a deduction if only a small portion of the property is so visible. Where the historic land area or certified historic structure which is the subject of the donation is not visible from a public way (*e.g.*, the structure is hidden from view by a wall or shrubbery, the structure is too far from the public way, or interior characteristics and features of the structure are the subject of the easement), the terms of the easement must be such that the general public is given the opportunity on a regular basis to view the characteristics and features of the property which are preserved by the easement to the extent consistent with the nature and condition of the property.

(B) Factors to be considered in determining the type and amount of public access required

under paragraph (d)(5)(iv)(A) of this section include the historical significance of the donated property, the nature of the features that are the subject of the easement, the remoteness or accessibility of the site of the donated property, the possibility of physical hazards to the public visiting the property (for example, an unoccupied structure in a dilapidated condition), the extent to which public access would be an unreasonable intrusion on any privacy interests of individuals living on the property, the degree to which public access would impair the preservation interests which are the subject of the donation, and the availability of opportunities for the public to view the property by means other than visits to the site.

(C) The amount of access afforded the public by the donation of an easement shall be determined with reference to the amount of access permitted by the terms of the easement which are established by the donor, rather than the amount of access actually provided by the donee organization. However, if the donor is aware of any facts indicating that the amount of access that the donee organization will provide is significantly less than the amount of access permitted under the terms of the easement, then the amount of access afforded the public shall be determined with reference to this lesser amount.

(v) *Examples*. —The provisions of paragraph (d)(5)(iv) of this section may be illustrated by the following examples:

Example (1). A and his family live in a house in a certified historic district in the State of X. The entire house, including its interior, has architectural features representing classic Victorian period architecture. A donates an exterior and interior easement on the property to a qualified organization but continues to live in the house with his family. A's house is surrounded by a high stone wall which obscures the public's view of it from the street. Pursuant to the terms of the easement, the house may be opened to the public from 10:00 a.m. to 4:00 p.m. on one Sunday in May and one Sunday in November each year for house and garden tours. These tours are to be under the supervision of the donee and open to members of the general public upon payment of a small fee. In addition, under the terms of the easement, the donee organization is given the right to photograph the interior and exterior of the house and distribute such photographs to magazines, newsletters, or other publicly available publications. The terms of the easement also permit persons affiliated with educational organizations, professional architectural associations, and historical societies to make an appointment through the donee organization to study the property. The donor is not aware of any facts indicating that the public access to be provided by the donee organization will be significantly less than that permitted by the terms of the easement. The 2 opportunities for public visits per year, when combined with the ability of the general public to view the architectural characteristics and features that are the subject of the easement through photographs, the opportunity for scholarly study of the property, and the fact that the house is used as an occupied residence, will enable the donation to satisfy the requirement of public access.

Example (2). B owns an unoccupied farmhouse built in the 1840's and located on a property that is adjacent to a Civil War battlefield. During the Civil War the farmhouse was used as quarters for Union troops. The battlefield is visited year round by the general public. The condition of the farmhouse is such that the safety of visitors will not be jeopardized and opening it to the public will not result in significant deterioration. The farmhouse is not visible from the battlefield or any public way. It is accessible only by way of a private road owned by B. B donates a conservation easement on the farmhouse to a qualified organization. The terms of the easement provide that the donee organization may open the property (via B's road) to the general public on four weekends each year from 8:30 a.m. to 4:00 p.m. The donation does not meet the public access requirement because the farmhouse is safe, unoccupied, and easily accessible to the general public who have

come to the site to visit Civil War historic land areas (and related resources), but will only be open to the public on four weekends each year. However, the donation would meet the public access requirement if the terms of the easement permitted the donee organization to open the property to the public every other weekend during the year and the donor is not aware of any facts indicating that the donee organization will provide significantly less access than that permitted.

(e) *Exclusively for conservation purposes*

(1) *In general*. —To meet the requirements of this section, a donation must be exclusively for conservation purposes. See paragraphs (c)(1) and (g)(1) through (g)(6)(ii) of this section. A deduction will not be denied under this section when incidental benefit inures to the donor merely as a result of conservation restrictions limiting the uses to which the donor's property may be put.

(2) *Inconsistent use*. —Except as provided in paragraph (e)(4) of this section, a deduction will not be allowed if the contribution would accomplish one of the enumerated conservation purposes but would permit destruction of other significant conservation interests. For example, the preservation of farmland pursuant to a state program for flood prevention and control would not qualify under paragraph (d)(4) of this section if under the terms of the contribution a significant naturally occurring ecosystem could be injured or destroyed by the use of pesticides in the operation of the farm. However, this requirement is not intended to prohibit uses of the property, such as selective timber harvesting or selective farming if, under the circumstances, those uses do not impair significant conservation interests.

(3) *Inconsistent use permitted*. —A use that is destructive of conservation interests will be permitted only if such use is necessary for the protection of the conservation interests that are the subject of the contribution. For example, a deduction for the donation of an easement to preserve an archaeological site that is listed on the National Register of Historic Places will not be disallowed if site excavation consistent with sound archaeological practices may impair a scenic view of which the land is a part. A donor may continue a pre-existing use of the property that does not conflict with the conservation purposes of the gift.

(f) *Examples*. —The provisions of this section relating to conservation purposes may be illustrated by the following examples.

Example (1). State S contains many large tract forests that are desirable recreation and scenic areas for the general public. The forests' scenic values attract millions of people to the State. However, due to the increasing intensity of land development in State S, the continued existence of forestland parcels greater than 45 acres is threatened. J grants a perpetual easement on a 100-acre parcel of forestland that is part of one of the State's scenic areas to a qualifying organization. The easement imposes restrictions on the use of the parcel for the purpose of maintaining its scenic values. The restrictions include a requirement that the parcel be maintained forever as open space devoted exclusively to conservation purposes and wildlife protection, and that there be no commercial, industrial, residential, or other development use of such parcel. The law of State S recognizes a limited public right to enter private land, particularly for recreational pursuits, unless such land is posted or the landowner objects. The easement specifically restricts the landowner from posting the parcel, or from objecting, thereby maintaining public access to the parcel according to the custom of the State. J's parcel provides the opportunity for the public to enjoy the use of the property and appreciate its scenic values. Accordingly, J's donation qualifies for a deduction under this section.

Example (2). A qualified conservation organization owns Greenacre in fee as a nature preserve. Greenacre contains a high quality example of a tall grass prairie ecosystem. Farmacre, an operating

farm, adjoins Greenacre and is a compatible buffer to the nature preserve. Conversion of Farmacre to a more intense use, such as a housing development, would adversely affect the continued use of Greenacre as a nature preserve because of human traffic generated by the development. The owner of Farmacre donates an easement preventing any future development on Farmacre to the qualified conservation organization for conservation purposes. Normal agricultural uses will be allowed on Farmacre. Accordingly, the donation qualifies for a deduction under this section.

Example (3). H owns Greenacre, a 900-acre parcel of woodland, rolling pasture, and orchards on the crest of a mountain. All of Greenacre is clearly visible from a nearby national park. Because of the strict enforcement of an applicable zoning plan, the highest and best use of Greenacre is as a subdivision of 40-acre tracts. H wishes to donate a scenic easement on Greenacre to a qualifying conservation organization, but H would like to reserve the right to subdivide Greenacre into 90-acre parcels with no more than one single-family home allowable on each parcel. Random building on the property, even as little as one home for each 90 acres, would destroy the scenic character of the view. Accordingly, no deduction would be allowable under this section.

Example (4). Assume the same facts as in *example (3),* except that not all of Greenacre is visible from the park and the deed of easement allows for limited cluster development of no more than five nine-acre clusters (with four houses on each cluster) located in areas generally not visible from the national park and subject to site and building plan approval by the donee organization in order to preserve the scenic view from the park. The donor and the donee have already identified sites where limited cluster development would not be visible from the park or would not impair the view. Owners of homes in the clusters will not have any rights with respect to the surrounding Greenacre property that are not also available to the general public. Accordingly, the donation qualifies for a deduction under this section.

Example (5). In order to protect State S's declining open space that is suited for agricultural use from increasing development pressure that has led to a marked decline in such open space, the Legislature of State S passed a statute authorizing the purchase of “agricultural land development rights” on open acreage. Agricultural land development rights allow the State to place agricultural preservation restrictions on land designated as worthy of protection in order to preserve open space and farm resources. Agricultural preservation restrictions prohibit or limit construction or placement of buildings except those used for agricultural purposes or dwellings used for family living by the farmer and his family and employees; removal of mineral substances in any manner that adversely affects the land's agricultural potential; or other uses detrimental to retention of the land for agricultural use. Money has been appropriated for this program and some landowners have in fact sold their “agricultural land development rights” to State S. K owns and operates a small dairy farm in State S located in an area designated by the Legislature as worthy of protection. K desires to preserve his farm for agricultural purposes in perpetuity. Rather than selling the development rights to State S, K grants to a qualified organization an agricultural preservation restriction on his property in the form of a conservation easement. K reserves to himself, his heirs and assigns the right to manage the farm consistent with sound agricultural and management practices. The preservation of K's land is pursuant to a clearly delineated governmental policy of preserving open space available for agricultural use, and will yield a significant public benefit by preserving open space against increasing development pressures. Accordingly, a deduction is allowed under this section.

(g) *Enforceable in perpetuity*

(1) *In general*. —In the case of any donation under this section, any interest in the property retained by the donor (and the donor's successors in interest) must be subject to legally enforceable restrictions (for example, by recordation in the land records of the jurisdiction in which the property is located) that will prevent uses of the retained interest inconsistent with the conservation purposes

of the donation. In the case of a contribution of a remainder interest, the contribution will not qualify if the tenants, whether they are tenants for life or a term of years, can use the property in a manner that diminishes the conservation values which are intended to be protected by the contributions.

(2) *Protection of a conservation purpose in case of donation of property subject to a mortgage*. —In the case of conservation contributions made after February 13, 1986, no deduction will be permitted under this section for an interest in property which is subject to a mortgage unless the mortgagee subordinates its rights in the property to the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity. For conservation contributions made prior to February 14, 1986, the requirement of section 170(h)(5)(A) is satisfied in the case of mortgaged property (with respect to which the mortgagee has not subordinated its rights) only if the donor can demonstrate that the conservation purpose is protected in perpetuity without subordination of the mortgagee's rights.

(3) *Remote future event*. —A deduction shall not be disallowed under section 170(f)(3)(B)(iii) and this section merely because the interest which passes to, or is vested in, the donee organization may be defeated by the performance of some act or the happening of some event, if on the date of the gift it appears that the possibility that such act or event will occur is so remote as to be negligible. See paragraph (e) of §1.170A-1. For example, a state's statutory requirement that use restrictions must be rerecorded every 30 years to remain enforceable shall not, by itself, render an easement nonperpetual.

(4) *Retention of qualified mineral interest*

(i) *In general*. —Except as otherwise provided in paragraph (g)(4)(ii) of this section, the requirements of this section are not met and no deduction shall be allowed in the case of a contribution of any interest when there is a retention by any person of a qualified mineral interest (as defined in paragraph (b)(1)(i) of this section) if at any time there may be extractions or removal of minerals by any surface mining method. Moreover, in the case of a qualified mineral interest gift, the requirement that the conservation purposes be protected in perpetuity is not satisfied if any method of mining that is inconsistent with the particular conservation purposes of a contribution is permitted at any time. See also §1.170A-14(e)(2). However, a deduction under this section will not be denied in the case of certain methods of mining that may have limited, localized impact on the real property but that are not irremediably destructive of significant conservation interests. For example, a deduction will not be denied in a case where production facilities are concealed or compatible with existing topography and landscape and when surface alteration is to be restored to its original state.

(ii) *Exception for qualified conservation contributions after July 1984*

(A) A contribution made after July 18, 1984, of a qualified real property interest described in section 170(h)(2)(A) shall not be disqualified under the first sentence of paragraph (g)(4)(i) of this section if the following requirements are satisfied.

(1) The ownership of the surface estate and mineral interest were separated before June 13, 1976, and remain so separated up to and including the time of the contribution.

(2) The present owner of the mineral interest is not a person whose relationship to the owner of the surface estate is described at the time of the contribution in section 267(b) or section 707(b), and

(3) The probability of extraction or removal of minerals by any surface mining method is so remote as to be negligible.

Whether the probability of extraction or removal of minerals by surface mining is so remote as to be negligible is a question of fact and is to be made on a case by case basis. Relevant factors to be considered in determining if the probability of extraction or removal of minerals by surface mining is so remote as to be negligible include: geological, geophysical or economic data showing the absence of mineral reserves on the property, or the lack of commercial feasibility at the time of the contribution of surface mining the mineral interest.

(B) If the ownership of the surface estate and mineral interest first became separated after June 12, 1976, no deduction is permitted for a contribution under this section unless surface mining on the property is completely prohibited.

(iii) *Examples*. —The provisions of paragraph (g)(4)(i) and (ii) of this section may be illustrated by the following examples.

Example (1). K owns 5,000 acres of bottomland hardwood property along a major watershed system in the southern part of the United States. Agencies within the Department of the Interior have determined that southern bottomland hardwoods are a rapidly diminishing resource and a critical ecosystem in the south because of the intense pressure to cut the trees and convert the land to agricultural use. These agencies have further determined (and have indicated in correspondence with K) that bottomland hardwoods provide a superb habitat for numerous species and play an important role in controlling floods and in purifying rivers. K donates to a qualified organization his entire interest in this property other than his interest in the gas and oil deposits that have been identified under K's property. K covenants and can ensure that, although drilling for gas and oil on the property may have some temporary localized impact on the real property, the drilling will not interfere with the overall conservation purpose of the gift, which is to protect the unique bottomland hardwood ecosystem. Accordingly, the donation qualifies for a deduction under this section.

Example (2). Assume the same facts as in example (1), except that in 1979, K sells the mineral interest to A, an unrelated person, in an arm's-length transaction, subject to a recorded prohibition on the removal of any minerals by any surface mining method and a recorded prohibition against any mining technique that will harm the bottomland hardwood ecosystem. After the sale to A, K donates a qualified real property interest to a qualified organization to protect the bottomland hardwood ecosystem. Since at the time of the transfer, surface mining and any mining technique that will harm the bottomland hardwood ecosystem are completely prohibited, the donation qualifies for a deduction under this section.

(5) *Protection of conservation purpose where taxpayer reserves certain rights*

(i) *Documentation*. —In the case of a donation made after February 13, 1986, of any qualified real property interest when the donor reserves rights the exercise of which may impair the conservation interests associated with the property, for a deduction to be allowable under this section the donor must make available to the donee, prior to the time the donation is made, documentation sufficient to establish the condition of the property at the time of the gift. Such documentation is designed to protect the conservation interests associated with the property, which although protected in perpetuity by the easement, could be adversely affected by the exercise of the reserved rights. Such documentation may include:

(A) The appropriate survey maps from the United States Geological Survey, showing the property line and other contiguous or nearby protected areas;

(B) A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences, or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);

(C) An aerial photograph of the property at an appropriate scale taken as close as possible to the date the donation is made; and

(D) On-site photographs taken at appropriate locations on the property.

If the terms of the donation contain restrictions with regard to a particular natural resource to be protected, such as water quality or air quality, the condition of the resource at or near the time of the gift must be established. The documentation, including the maps and photographs, must be accompanied by a statement signed by the donor and a representative of the donee clearly referencing the documentation and in substance saying "This natural resources inventory is an accurate representation of [the protected property] at the time of the transfer."

(ii) *Donee's right to inspection and legal remedies*. —In the case of any donation referred to in paragraph (g)(5)(i) of this section, the donor must agree to notify the donee, in writing, before exercising any reserved right, *e.g.*, the right to extract certain minerals which may have an adverse impact on the conservation interests associated with the qualified real property interest. The terms of the donation must provide a right of the donee to enter the property at reasonable times for the purpose of inspecting the property to determine if there is compliance with the terms of the donation. Additionally, the terms of the donation must provide a right of the donee to enforce the conservation restrictions by appropriate legal proceedings including, but not limited to, the right to require the restoration of the property to its condition at the time of the donation.

(6) *Extinguishment*

(i) *In general*. —If a subsequent unexpected change in the conditions surrounding the property that is the subject of a donation under this paragraph can make impossible or impractical the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if the restrictions are extinguished by judicial proceeding and all of the donee's proceeds (determined under paragraph (g)(6)(ii) of this section) from a subsequent sale or exchange of the property are used by the donee organization in a manner consistent with the conservation purposes of the original contribution.

(ii) *Proceeds*. —In the case of a donation made after February 13, 1986, for a deduction to be allowed under this section, at the time of the gift the donor must agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in the donee organization, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the property as a whole at that time. See §1.170A-14(h)(3)(iii) relating to the allocation of basis. For purposes of this paragraph (g)(6)(ii), that proportionate value of the donee's property rights shall remain constant. Accordingly, when a change in conditions gives rise to the extinguishment of a perpetual conservation restriction under paragraph (g)(6)(i) of this section, the donee organization, on a subsequent sale, exchange,or involuntary conversion of the subject property,

must be entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that the donor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.

(h) *Valuation*

(1) *Entire interest of donor other than qualified mineral interest.* —The value of the contribution under section 170 in the case of a contribution of a taxpayer's entire interest in property other than a qualified mineral interest is the fair market value of the surface rights in the property contributed. The value of the contribution shall be computed without regard to the mineral rights. See paragraph (h)(4), *example (1),* of this section.

(2) *Remainder interest in real property*. —In the case of a contribution of any remainder interest in real property, section 170(f)(4) provides that in determining the value of such interest for purposes of section 170, depreciation and depletion of such property shall be taken into account. See §170A-12. In the case of the contribution of a remainder interest for conservation purposes, the current fair market value of the property (against which the limitations of §1.170A-12 are applied) must take into account any pre-existing or contemporaneously recorded rights limiting, for conservation purposes, the uses to which the subject property may be put.

(3) *Perpetual conservation restriction*

(i) *In general*. —The value of the contribution under section 170 in the case of a charitable contribution of a perpetual conservation restriction is the fair market value of the perpetual conservation restriction at the time of the contribution. See §1.170A-7(c). If there is a substantial record of sales of easements comparable to the donated easement (such as purchases pursuant to a governmental program), the fair market value of the donated easement is based on the sales prices of such comparable easements. If no substantial record of market-place sales is available to use as a meaningful or valid comparison, as a general rule (but not necessarily in all cases) the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property it encumbers before the granting of the restriction and the fair market value of the encumbered property after the granting of the restriction. The amount of the deduction in the case of a charitable contribution of a perpetual conservation restriction covering a portion of the contiguous property owned by a donor and the donor's family as defined in section 267(c)(4) is the difference between the fair market value of the entire contiguous parcel of property before and after the granting of the restriction. If the granting of a perpetual conservation restriction after January 14, 1986, has the effect of increasing the value of any other property owned by the donor or a related person, the amount of the deduction for the conservation contribution shall be reduced by the amount of the increase in the value of the other property, whether or not such property is contiguous. If, as a result of the donation of a perpetual conservation restriction, the donor or a related person receives, or can reasonably expect to receive, financial or economic benefits that are greater than those that will inure to the general public from the transfer, no deduction is allowable under this section. However, if the donor or a related person receives, or can reasonably expect to receive, a financial or economic benefit that is substantial, but it is clearly shown that the benefit is less than the amount of the transfer, then a deduction under this section is allowable for the excess of the amount transferred over the amount of the financial or economic benefit received or reasonably expected to be received by the donor or the related person. For purposes of this paragraph (h)(3)(i), related person shall have the same meaning as in either section 267(b) or section 707(b). (See *example (10)* of paragraph (h)(4) of this section.)

(ii) *Fair market value of property before and after restriction*. —If before and after valuation is used, the fair market value of the property before contribution of the conservation restriction must take into account not only the current use of the property but also an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would in fact be developed, as well as any effect from zoning, conservation, or historic preservation laws that already restrict the property's potential highest and best use. Further, there may be instances where the grant of a conservation restriction may have no material effect on the value of the property or may in fact serve to enhance, rather than reduce, the value of property. In such instances, no deduction would be allowable. In the case of a conservation restriction that allows for any development, however limited, on the property to be protected, the fair market value of the property after contribution of the restriction must take into account the effect of the development. In the case of a conservation easement such as an easement on a certified historic structure, the fair market value of the property after contribution of the restriction must take into account the amount of access permitted by the terms of the easement. Additionally, if before and after valuation is used, an appraisal of the property after contribution of the restriction must take into account the effect of restrictions that will result in a reduction of the potential fair market value represented by highest and best use but will, nevertheless, permit uses of the property that will increase its fair market value above that represented by the property's current use. The value of a perpetual conservation restriction shall not be reduced by reason of the existence of restrictions on transfer designed solely to ensure that the conservation restriction will be dedicated to conservation purposes. See §1.170A-14(c)(3).

(iii) *Allocation of basis*. —In the case of the donation of a qualified real property interest for conservation purposes, the basis of the property retained by the donor must be adjusted by the elimination of that part of the total basis of the property that is properly allocable to the qualified real property interest granted. The amount of the basis that is allocable to the qualified real property interest shall bear the same ratio to the total basis of the property as the fair market value of the qualified real property interest bears to the fair market value of the property before the granting of the qualified real property interest. When a taxpayer donates to a qualifying conservation organization an easement on a structure with respect to which deductions are taken for depreciation, the reduction required by this paragraph (h)(3)(ii) in the basis of the property retained by the taxpayer must be allocated between the structure and the underlying land.

(4) *Examples*. —The provisions of this section may be illustrated by the following examples. In examples illustrating the value or deductibility of donations, the applicable restrictions and limitations of §1.170A-4, with respect to reduction in amount of charitable contributions of certain appreciated property, and §1.170A-8, with respect to limitations on charitable deductions by individuals, must also be taken into account.

Example (1). A owns Goldacre, a property adjacent to a state park. A wants to donate Goldacre to the state to be used as part of the park, but A wants to reserve a qualified mineral interest in the property, to exploit currently and to devise at death. The fair market value of the surface rights in Goldacre is $200,000 and the fair market value of the mineral rights is $100,000. In order to ensure that the quality of the park will not be degraded, restrictions must be imposed on the right to extract the minerals that reduce the fair market value of the mineral rights to $80,000. Under this section, the value of the contribution is $200,000 (the value of the surface rights).

Example (2). In 1984, B, who is 62, donates a remainder interest in Greenacre to a qualifying organization for conservation purposes. Greenacre is a tract of 200 acres of undeveloped woodland that is valued at $200,000 at its highest and best use. Under §1.170A-12(b), the value of a remainder

interest in real property following one life is determined under §25.2512-5 of this chapter (Gift Tax Regulations). (See §25.2512-5A of this chapter with respect to the valuation of annuities, interests for life or term of years, and remainder or reversionary interests transferred before May 1, 1999). Accordingly, the value of the remainder interest, and thus the amount eligible for an income tax deduction under section 170(f), is $55,996 ($200,000 ´ .27998).

Example (3). Assume the same facts as in *example (2),* except that Greenacre is B's 200-acre estate with a home built during the colonial period. Some of the acreage around the home is cleared; the balance of Greenacre, except for access roads, is wooded and undeveloped. See section 170(f)(3)(B)(i). However, B would like Greenacre to be maintained in its current state after his death, so he donates a remainder interest in Greenacre to a qualifying organization for conservation purposes pursuant to sections 170(f)(3)(B)(iii) and (h)(2)(B). At the time of the gift the land has a value of $200,000 and the house has a value of $100,000. The value of the remainder interest, and thus the amount eligible for an income tax deduction under section 170(f), is computed pursuant to §1.170A-12. See §1.170A-12(b)(3).

Example (4). Assume the same facts as in *example (2),* except that at age 62 instead of donating a remainder interest B donates an easement in Greenacre to a qualifying organization for conservation purposes. The fair market value of Greenacre after the donation is reduced to $110,000. Accordingly, the value of the easement, and thus the amount eligible for a deduction under section 170(f), is $90,000 ($200,000 less $110,000).

Example (5). Assume the same facts as in *example (4),* and assume that three years later, at age 65, B decides to donate a remainder interest in Greenacre to a qualifying organization for conservation purposes. Increasing real estate values in the area have raised the fair market value of Greenacre (subject to the easement) to $130,000. Accordingly, the value of the remainder interest, and thus the amount eligible for a deduction under section 170(f), is $41,639 ($130,000 ´ .32030).

Example (6). Assume the same facts as in *example (2),* except that at the time of the donation of a remainder interest in Greenacre, B also donates an easement to a different qualifying organization for conservation purposes. Based on all the facts and circumstances, the value of the easement is determined to be $100,000. Therefore, the value of the property after the easement is $100,000 and the value of the remainder interest, and thus the amount eligible for deduction under section 170(f), is $27,998 ($100,000 ´ .27998).

Example (7). C owns Greenacre, a 200-acre estate containing a house built during the colonial period. At its highest and best use, for home development, the fair market value of Greenacre is $300,000. C donates an easement (to maintain the house and Greenacre in their current state) to a qualifying organization for conservation purposes. The fair market value of Greenacre after the donation is reduced to $125,000. Accordingly, the value of the easement and the amount eligible for a deduction under section 170(f) is $175,000 ($300,000 less $125,000).

Example (8). Assume the same facts as in *example (7),* and assume that three years later, C decides to donate a remainder interest in Greenacre to a qualifying organization for conservation purposes. Increasing real estate values in the area have raised the fair market value of Greenacre to $180,000. Assume that because of the perpetual easement prohibiting any development of the land, the value of the house is $120,000 and the value of the land is $60,000. The value of the remainder interest, and thus the amount eligible for an income tax deduction under section 170(f), is computed pursuant to §1.170A-12. See §1.170A-12(b)(3).

Example (9). D owns property with a basis of $20,000 and a fair market value of $80,000. D donates

to a qualifying organization an easement for conservation purposes that is determined under this section to have a fair market value of $60,000. The amount of basis allocable to the easement is $15,000 ($60,000/$80,000 = $15,000/$20,000). Accordingly, the basis of the property is reduced to $5,000 ($20,000 minus $15,000).

Example (10). E owns 10 one-acre lots that are currently woods and parkland. The fair market value of each of E's lots is $15,000 and the basis of each lot is $3,000. E grants to the county a perpetual easement for conservation purposes to use and maintain eight of the acres as a public park and to restrict any future development on those eight acres. As a result of the restrictions, the value of the eight acres is reduced to $1,000 an acre. However, by perpetually restricting development on this portion of the land, E has ensured that the two remaining acres will always be bordered by parkland, thus increasing their fair market value to $22,500 each. If the eight acres represented all of E's land, the fair market value of the easement would be $112,000, an amount equal to the fair market value of the land before the granting of the easement (8 ´ $15,000 = $120,000) minus the fair market value of the encumbered land after the granting of the easement (8 ´ $1,000 = $8,000). However, because the easement only covered a portion of the taxpayer's contiguous land, the amount of the deduction under section 170 is reduced to $97,000 ($150,000 - $53,000), that is, the difference between the fair market value of the entire tract of land before ($150,000) and after ((8 ´ $1,000) + (2 ´ $22,500)) the granting of the easement.

Example (11). Assume the same facts as in *example (10).* Since the easement covers a portion of E's land, only the basis of that portion is adjusted. Therefore, the amount of basis allocable to the easement is $22,400 ((8 ´ $3,000) ´ ($112,000/$120,000)). Accordingly, the basis of the eight acres encumbered by the easement is reduced to $1,600 ($24,000 - $22,400), or $200 for each acre. The basis of the two remaining acres is not affected by the donation.

Example (12). F owns and uses as professional offices a two-story building that lies within a registered historic district. F's building is an outstanding example of period architecture with a fair market value of $125,000. Restricted to its current use, which is the highest and best use of the property without making changes to the facade, the building and lot would have a fair market value of $100,000, of which $80,000 would be allocable to the building and $20,000 would be allocable to the lot. F's basis in the property is $50,000, of which $40,000 is allocable to the building and $10,000 is allocable to the lot. F's neighborhood is a mix of residential and commercial uses, and it is possible that F (or another owner) could enlarge the building for more extensive commercial use, which is its highest and best use. However, this would require changes to the facade. F would like to donate to a qualifying preservation organization an easement restricting any changes to the facade and promising to maintain the facade in perpetuity. The donation would qualify for a deduction under this section. The fair market value of the easement is $25,000 (the fair market value of the property before the easement, $125,000, minus the fair market value of the property after the easement, $100,000). Pursuant to §1.170A-14(h)(3)(iii), the basis allocable to the easement is $10,000 and the basis of the underlying property (building and lot) is reduced to $40,000.

(i) *Substantiation requirement*. —If a taxpayer makes a qualified conservation contribution and claims a deduction, the taxpayer must maintain written records of the fair market value of the underlying property before and after the donation and the conservation purpose furthered by the donation and such information shall be stated in the taxpayer's income tax return if required by the return or its instructions. See also §1.170A-13(c) (relating to substantiation requirements for deductions in excess of $5,000 for charitable contributions made after 1984), and section 6659 (relating to additions to tax in the case of valuation overstatements).

(i)[j] *Effective date*. —Except as otherwise provided in §1.170A-14(g)(4)(ii), this section applies only

to contributions made on or after December 18, 1980. [Reg. §1.170A-14.]

[*T.D.* 8069, 1-13-86. *Amended by T.D.* 8199, 5-4-88; *T.D.* 8540, 6-9-94 *and T.D.* 8819, 4-29-99.]