



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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Dear :

This letter responds to your inquiry dated March 11, 2005, in which you ask about the tax treatment of a charitable contribution of property, and about the policy aspects of the deduction allowed to C corporations (as opposed to S corporations) for certain charitable contributions of property to be used solely for the care of the ill, the needy, or infants. This letter provides general information regarding charitable contributions of property, and is not a ruling.. If you would like a private letter ruling, you will need to submit an application and user fee in accordance with Rev. Proc. 2005-1, 2005-1 I.R.B. 1 (copy enclosed).

You relate the facts as follows: The taxpayer, an S corporation and partner in an operating partnership, will purchase certain inventory from the partnership. The taxpayer plans to hold the inventory and eventually transfer it to a public charity.

You ask if the taxpayer may claim as a charitable contribution deduction the fair market value of the inventory at the time of the transfer to charity.

Contributions of ordinary income and capital gain property

Section 170(a) of the Internal Revenue Code allows as a deduction, subject to certain limitations, any charitable contribution of property, payment of which is made within the taxable year. Section 170(e)(1)(A) reduces the amount of a charitable contribution deduction by the amount of gain that would not be long-term capital gain if the property were sold on the date of the contribution. In other words, the deduction under § 170 is limited to the taxpayer's basis in property if the property upon a sale would have generated ordinary income or short-term capital gain.

Section 1.170A-4(b)(1) of the Income Tax Regulations defines "ordinary income property" and provides several examples. Ultimately, whether property will be treated as ordinary income property for purposes of § 170(e)(1)(A) and § 1.170A-4(b)(1) depends on the facts and circumstances in an individual case.

Deduction under § 170(e)(3) for certain contributions of inventory

In your letter, you ask whether the Internal Revenue Service, as directed by Congress, intended that C and S corporations receive different treatment under § 170(e)(3). You also ask if the law under § 170(e)(3) will be changed so that all corporations are subject to the same rules.

Section 170(e)(3), which Congress added to the Code as part of the Tax Reform Act of 1976, provides a special rule allowing an increased deduction in the case of a qualified contribution of inventory. The increased deduction is available only to C corporations, and is not available to other entities or to individuals. Furthermore, a “qualified contribution of inventory” must meet several requirements, including that it must be a gift of property that will be used by a qualified charity to care for the ill, the needy, or infants.

The Internal Revenue Service’s role is to correctly administer the tax law, which is written by Congress. Only Congress has the authority to change § 170(e)(3).

I hope this information is helpful. For your convenience, I have also enclosed a copy of Publication 526, “Charitable Contributions.” If you have any additional questions, please contact \_\_\_\_\_, at \_\_\_\_\_.

Sincerely,

Thomas A. Luxner  
Chief, Branch 1  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosures:

Rev. Proc. 2005-1  
Publication 526