



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

OFFICE OF
CHIEF COUNSEL

July 13, 2005

Number: **INFO 2005-0141**
Release Date: 9/30/05
UIL: 170.00-00

CC:ITA:B03
GENIN-115779-05

Dear _____ :

This letter responds to your request for information dated March 07, 2005. This letter provides general information about charitable contributions and in particular, the requirements needed to complete a charitable contribution.

In general, section 170 of the Internal Revenue Code allows as a deduction a charitable contribution made within the taxable year. A charitable contribution is a contribution or gift to or for the use of an organization described in section 170(c) of the Code. Where property other than money is donated, the amount of the contribution generally is the fair market value of the property at the time the contribution is made. See § 1.170A-1(c) of the Income Tax Regulations. *But see* § 170(e), § 1.170A-4 and 1.170A-4A indicating that for certain property the amount of the contribution will be a lesser amount.

Section 170(a)(3) of the Code provides that a charitable contribution is made when all intervening interests in, and rights to actual possession or enjoyment of, the property have expired, or are held by persons other than the taxpayer, or those standing in a relationship to the taxpayer as described in § 267(b) or § 707(b) of the Code.

Courts have held that charitable contributions are synonymous with gifts. See *Seed v. Commissioner*, 57 T.C. 265, 275 (1971); *DeJong v. Commissioner*, 36 T.C. 896, 899 (1961), *aff'd* 309 F. 2d 373 (9th Cir. 1962). The essential elements of a gift are (1) a donor competent to make the gift; (2) a donee capable of taking the gift; (3) a clear and unmistakable intention on the part of the donor to absolutely and irrevocably divest himself of the title, dominion and control of the subject matter of the gift, *in praesenti*; (4) the irrevocable transfer of the present legal title and of the dominion and control of the entire gift to the donee so that the donor can exercise no further act of dominion or control over it; (5) a delivery by the donor to the donee of the subject matter of the gift or of the most effectual means of commanding the dominion of it; and (6) acceptance of the gift by the donee. See *Weil v. Commissioner*, 31 B.T.A. 899, 906 (1934).

Whether the fifth element of the gift- the delivery requirement- has been met depends upon state law, which generally focuses upon whether actual dominion and control has passed from the donor to the donee. See *Greer v. Commissioner*, 70 T.C. 294 (1978), *acq.* 1979-2 C.B. 2 (1979), *aff'd* 632 F.2d 1044 (6th Cir. 1980).

Generally, actual delivery is necessary for the consummation of a gift when the subject of the gift is capable of manual delivery. If the gift is not capable of manual delivery, the charitable contribution must be delivered as completely as possible and must clearly manifest the donor's intention to divest himself or herself of title and possession. Delivery of a deed to the donee may substitute for delivery of the gift where actual delivery is inconvenient or impracticable. See *Bennett v. Commissioner*, T.C. Memo 1991-604.

In certain instances, a duly executed deed of gift can satisfy the delivery requirement, with physical possession of the property to be transferred subsequently. See *Winokur v. Commissioner*, 90 T.C. 733 (1988), *acq.* 1989-1 C.B. 1. The duly executed deed must clearly and unmistakably demonstrate a present transfer of the gift and place the charitable contribution beyond the power of the donor so as to completely divorce the donor from dominion and control over the property. Whether the deed of gift effectuates this transfer of dominion and control and thus completes the gift is determined by reference to applicable state law. See *Bennett*, T.C. Memo 1991-604.

Therefore, in instances where a deed of gift satisfies the delivery requirements, the gift is made as of the date of delivery of the executed deed of gift. The donee of such a gift, in completing Form 8283, should acknowledge the gift as being made as of that date.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2005-1, §2.04, 2005-1 IRB 7. If you have any additional questions, please contact of our office at .

Sincerely,

Christopher F. Kane
Chief, Branch 3
Associate Chief Counsel
(Income Tax & Accounting)