



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 request for information dated June 25, 2005. You asked several questions regarding capital assets and the formation of charitable entities. This letter is not a ruling on any of these issues, but I hope the following general information is helpful.

You stated that the taxpayer found a document behind an old picture she purchased, and that document appears to be an original copy of a State constitution. The taxpayer wishes to set up a charity to help abused women and single mothers, and she would like to transfer an ownership interest in the document to the charity. You have asked whether these transactions are possible and whether the document qualifies as a capital asset.

Section 501(a) of the Internal Revenue Code provides an exemption from federal income taxes for charitable organizations. Charitable organizations are defined, in part, as "[c]orporations, and any community chest, fund, or foundation" organized and operated exclusively for charitable purposes. § 501(c)(3). The Income Tax Regulations provide that a charitable organization must also file an application with the Internal Revenue Service, requesting that tax-exempt status be granted to it. §§ 1.501(a)-1(2) and (3). For your convenience, a copy of the application, Form 1023, *Application for Recognition of Exemption and Instructions* is enclosed. Also enclosed are two publications which might be helpful to you: Publication 557, *Tax-Exempt Status for your Organization*; and Publication 4220, *Applying for § 501(c)(3) Tax-Exempt Status*.

The actual formation of a corporation, community chest, fund, or foundation, and the transfer of an ownership interest in the document to this entity are matters governed by state law. So long as the entity is properly formed under state law, then the taxpayer may apply for federal tax-exempt status of the charitable organization as described above.

Regarding the federal income tax consequences of a transfer of a partial interest in the document to the charity, § 170(f)(3) disallows a charitable contribution deduction for a

gift of a partial interest in property not in trust, unless the gift meets one of the outlined exceptions. One of these exceptions is for the gift of an undivided portion of the donor's entire interest. See § 170(f)(3)(B)(ii); § 1.170A-7(b)(1). The portion of the interest transferred to the charity must consist of a fraction or percentage of 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. § 1.170A-7(b)(1). For example, the transferee charity must have the right to possession of the property in proportion to its ownership interest.

Your final question concerns whether the document is a capital asset. Section 1221(a) defines a capital asset as property held by a taxpayer, with certain exceptions. In relevant part, a copyright; literary, musical, or artistic composition; letter or memorandum, or similar property constitutes a capital asset unless it is held by the taxpayer whose personal efforts created such property, or in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced. § 1221(a)(3). If the document meets this definition, and does not fall within one of the two exceptions, it is a capital asset, and its sale or exchange is subject to taxation at capital gains rates under § 1(h).

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. 2004-1, §2.04, 2004-1 IRB 7. If you have any additional questions, please contact
of our office at .

Sincerely,

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