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Revenue Rulings

Rev. Rul. 81-282, 1981-2 CB 78, IRC Sec(s). 170

Headnote:

Rev. Rul. 81 -282 , 1981-2 CB 78 -- IRC Sec. 170

Reference(s): Code Sec. 170; Reg § 1.170a-7

Charitable contribution; voting stock.

A contribution of voting stock to a charitable organization with the donor retaining the right to vote that stock constitutes a contribution of a partial interest under  section 170(f)(3) of the Code for which a charitable contribution deduction is not allowable.

Full Text:

ISSUE

Are contributions of stock deductible under  section 170 of the Internal Revenue Code in the situation described below?

FACTS

A, an individual, is a shareholder of X corporation. A contributes 100x shares of A's voting stock in X to Y, an organization described in  section 170(c) of the Code. A retains the right to vote the contributed stock.

LAW AND ANALYSIS

 Section 170(a)(1) of the Code allows a deduction, subject to certain limitations, **<Page 79>** for any charitable contribution (as defined in  section 170(c) paid during the tax year.

Section 170(f)(3) of the Code denies a charitable contribution deduction for certain contributions of partial interests in property. Section 170(f)(3)(A) provides that no charitable deduction is allowed for a contribution of less than the taxpayer's entire interest in property unless the contribution would have been allowed had it been transferred in trust. A contribution by a taxpayer of the right to use property is treated as a contribution of less than the taxpayer's entire interest in property.

Section 170(f)(3)(B)(ii) of the Code and section 1.170A-7(b) of the Income Tax Regulations provide that a deduction is allowed under section 170 of the Code for a contribution not in trust of a partial interest that is less than the donor's entire interest in property if the partial interest is an undivided portion of the donor's entire interest. An undivided portion of a donor's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the donor in such property. A charitable contribution in perpetuity of an interest in property not in trust if 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) of the Code 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 if the donor retains the exclusive right to make reproductions of such films and to exploit such reproductions commercially. Section 1.170A-7(B)(1).

Rev. Rul. 76-143, 1976-1 C.B. 63, considered two situations involving an irrevocable assignment to a college of the cash surrender value of a life insurance policy. In Situation 1 the college was given possession of a paid-up policy, but the taxpayer retained the right to name or change the beneficiary and to assign the policy subject to the college's right to the cash surrender value. Even though the donor could not defeat the charity's interest in the life insurance policy, the revenue ruling stated that the rights retained by the donor were substantial rights and held that, in this situation, the taxpayer's gift was a gift of a partial interest in property that was not deductible under section 170 of the Code. See also Rev. Rul. 76-331, 1976-2 C.B. 52.

The right to vote stock is inherent in the ownership of common stock and, as such, is a property right. This right gives the holder a voice in the management of the corporation and is crucial in protecting the stockholder's financial interest. Therefore, the right to vote the stock of X is a substantial right in that stock. See *Brown v. McLanahan*, 148 F.2d 703 (4th Cir. 1945); and *DuVall v. Moore*, 276 F. Supp. 674 (N.D. Iowa 1967).

While A's retention of the right to vote the stock will not defeat Y's right to dividends or the right to dispose of the stock, and, while the right retained by the donor will not defeat the donee's interest in the transferred property, nevertheless, A has not transferred all substantial rights in the stock to Y. Therefore, A has transferred a partial interest in property to Y within the meaning of section 170(f)(3) of the Code. See Rev. Rul. 76-143.

HOLDING

A is not entitled to a charitable contribution deduction under section 170 of the Code for the transfer of the X stock to Y.