

[Jen Wickham](#) - Tue, 3/10/2015 - 11:39

This revenue ruling confirms that the transfer of a life income interest in a charitable remainder annuity trust qualifies for a charitable deduction.

Full Text Rev. Rul. 86-60 ISSUE Under the circumstances described below, if the grantor/life- interest beneficiary and the successive life-interest beneficiary of a charitable remainder annuity trust donate their annuity interest in the trust to the charitable remainder beneficiary, do the donations qualify for the charitable deductions under sections 170 and 2522 of the Internal Revenue Code? FACTS Situation 1. In 1980, A created a charitable remainder annuity trust (hereinafter, CRAT) described in section 664(d)(1) of the Code. A retained the annuity interest in the trust for life. The remainder beneficiary was X, a charitable organization described in sections 170(c) and 2522(a).

In 1984 A transferred the annuity interest in the trust to X. Situation 2. In 1980, A created a CRAT described in section 664(d)(1) of the Code. The trust instrument provides that the trustee shall pay the annuity amount annually to A for life and upon A's death to B, the successive life interest beneficiary, for such time as B survives. Upon the death of the survivor of A and B, the corpus is to be distributed to X, a charitable organization that meets the requirements of sections 170(c) and 2522(a). In 1984, A and B assigned their interests in the trust to the charitable remainder beneficiary. No property interests were created for the purpose of avoiding the rules of section 170(f)(2) and (f)(3)(A). LAW AND ANALYSIS Section 170(a)(1) of the Code allows as an income tax deduction any contribution or gift to or for the use of organizations described in section 170(c), payment of which is made within the taxable year. Section 170(f)(2)(B) of the Code provides that no charitable contribution deduction is allowed for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or a fixed percentage distributed annually of the fair market value of the trust property, determined annually, and the grantor is treated as the owner of the interest for purposes of applying section 671 (relating to grantor trusts). Section 170(f)(3)(A) of the Code provides that a contribution (not made by a transfer in trust) of less than the taxpayer's entire interest in property is not allowed as a charitable deduction except to the extent such contribution would have been allowed as a deduction had it been transferred in trust. Sections 1.170A-6(a)(2) and

1.170A-7(a)(2)(i) of the Income Tax Regulations provide that a deduction is allowed 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 the rules of section 170(f)(2) and (f)(3)(A), the deduction is not allowed. Section 1.170A-1(c)(1) of the regulations provides that, if a charitable contribution is made in property other than money, the amount of the contribution is generally the fair market value of the property at the time of the contribution. Section 2501 of the Code imposes a tax on the transfer of property by gift. The gift tax applies, under section 2511, to all transfers by gift, whether the transfer is in trust or otherwise, and whether the gift is direct or indirect. Section 2522 of the Code provides for a gift tax charitable deduction for the value of property transferred to organizations described in section 2522(a). However, section 2522(c)(2) of the Code and section 25.2522(c)-3(c)(1) and (2) of the Gift Tax Regulations provide that if a donor transfers an interest in property for charitable purposes and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than adequate and full consideration) for private purposes, no gift tax deduction is allowed under section 2522 unless the charitable interest is: (A) an undivided portion of the donor's entire interest, (B) a remainder interest in a personal residence, (C) a remainder interest in a farm, (D) A remainder interest in a charitable remainder trust or a pooled income fund, (E) a guaranteed annuity interest, (F) a unitrust interest, or (G) a qualified conservation contribution. A guaranteed annuity interest is an irrevocable right to receive a determinable amount periodically, but not less often than annually, for a specified term or for the life or lives of a named individual or individuals, each of whom is living and identifiable at the date of the gift. Section 1.170A-6(c)(2)(i) of the Income Tax Regulations and section 25.2522(c)-3(c)(2)(v) of the Gift Tax Regulations. Section 1.170A-1(e) of the Income Tax Regulations and section 25.2422(c)-3(6) of the Gift Tax Regulations provide that if, as of the date of the 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. In Situation 1, in 1984 A transferred A's entire life annuity interest to X charity, an organization described in section 170(c) of the Code. Although A had previously divided the interest A held in the property, the division was not to avoid section 170(f)(2)(A). Thus, under section 1.170A-7(a)(2)(i), A's transfer of A's entire life annuity interest qualifies for an

income tax charitable deduction. A's transfer also qualifies for a gift tax charitable deduction. Following the 1984 transfer, A did not retain any interest in the trust, and neither at that time nor at any prior time did A make a transfer from the trust for private purposes. Although the transfer of the remainder interest to X divided A's prior interest, that transfer was for charitable, not private purposes. Consequently, in order to qualify for a gift tax charitable deduction, A's 1984 transfer to X need not be in a form described in section 2522 of the Code and section 25.2522(c)-3(c)(2) of the regulations. Accordingly, A's transfer of the life annuity interest to X qualifies for a gift tax deduction under section 2522 of the Code. In Situation 2, A transferred to X charity A's life annuity interest in 1984. The life annuity interest was the only interest in the charitable remainder annuity trust that A owned at the time of the transfer. Although A had previously divided the interest A held in the property, that division was not to avoid section 170(f)(3)(A). Thus, under section 1.170A-7(a)(2)(i) of the regulations, A's transfer of A's entire life annuity interest qualifies for an income tax deduction. Further, in 1984, B transferred to X charity B's secondary life annuity interest, the only interest in the charitable remainder trust that B ever owned. Therefore, under section 1.170A-7(a)(2)(i) of the regulations, B's transfer of B's entire secondary life annuity interest qualifies for an income tax deduction. The transfers by A and B also qualify for the gift tax charitable deduction. A made a completed gift under section 2511 of the Code to B of the secondary life annuity interest in the trust in 1980. Because A made a completed gift in the trust to a noncharitable beneficiary, the restrictions in section 2522(c)(2) apply. Thus, Situation 2 differs from Situation 1. In Situation 2 no gift tax deduction is allowed for A's 1984 transfer to X of A's life interest in the trust unless it is described in section 25.2522(c)-3(c)(2) of the regulations. Because A's 1984 transfer to X is of a right to receive a fixed amount annually for the life of A and qualifies as a guaranteed annuity, it is a transfer of a guaranteed annuity interest as described in section 25.2522(c)-3(c)(2)(v). Consequently, the gift qualifies for a gift tax charitable deduction under section 2522. Further, B has made a completed gift under section 2522 of the Code of B's secondary life annuity interest in the trust in 1984. Following this transfer, B did not retain any interest in the trust, and at no time had B made a transfer of an interest in the trust for a private purpose. Consequently, there is no requirement that B's 1984 transfer to X be in one of the forms set out in section 25.2522(c)-3(c)(2) of the regulations in order to qualify for a gift tax charitable deduction. Thus, B's transfer of the secondary life annuity interest to X in 1984 qualifies for a gift tax reduction under section 2522. Sections 1.170A-1(e) and 25.2522(c)-3(b) of the regulations are not applicable to the transfer of these

annuities because, immediately after A and B transferred their respective annuity interests to charity, the interests transferred were not in any way dependent upon the happening of an event or a condition precedent in order that the interests might become effective. HOLDINGS In Situation 1, the gift by A, the grantor, to the remainder beneficiary of A's retained life annuity interest in a charitable remainder annuity trust qualifies for an income tax charitable deduction under section 170 of the Code and a gift tax charitable deduction under section 2522. In Situation 2, where A has created a charitable remainder annuity trust with life annuity interest to A and survivor life annuity interest to B, the gifts by A and B of their life annuity interests in the trust to the charitable remainder beneficiary qualify for an income tax charitable deduction and a gift tax charitable deduction. A's gift of the life annuity, however, qualified for the gift tax charitable deduction only because the interest that was transferred was in one of the forms set out in section 25.2522(c)-3(c)(2) of the regulations.

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