

provides that a charitable contribution of an open space easement in gross in perpetuity shall 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. For this purpose an easement in gross is a mere personal interest in, or right to use, the land of another; it is not supported by a dominant estate but is attached to, and vested in, the person to whom it is granted. Thus, for example, a deduction is allowed under section 170 for the value of a restrictive easement gratuitously conveyed to the United States in perpetuity whereby the donor agrees to certain restrictions on the use of his property, such as restrictions on the type and height of buildings that may be erected, the removal of trees, the erection of utility lines, the dumping of trash, and the use of signs.

Under the law of state *X*, an easement in gross in perpetuity is a valuable property right or interest in favor of the party for whose benefit the easement is created and is enforceable by that party.

In the instant case, the easement in gross in perpetuity is an open space easement within the meaning of section 1.170A-7(b)(1)(ii) of the regulations.

Accordingly, in the instant case, the taxpayer is entitled to a charitable contribution deduction in the manner and to the extent provided by section 170 of the Code for the value of the restricted easement granted. For the rules applicable in valuing the contribution, see Rev. Rul 73-339, 1973-2 C.B. 68.

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*26 CFR 1.170A-7: Contributions not in trust of partial interests in property.*

**Charitable contribution; interest in property.** A taxpayer contributed improved real property, used only for summer vacations, to an organization described in section 170(c)(2) of the Code. The deed of gift

reserved to the donor the right to free and exclusive use of the property each summer and to storage of personal belongings in the main residence year-round, and prohibited the organization from making changes to the property without the donor's consent and conveying the property until the later of the donor's death or 10 years after the gift. The contribution qualifies as a gift of a remainder interest in a personal residence and an undivided interest in property within the meaning of section 170(f)(3)(B)(i) and (ii) and may be deducted as a charitable contribution.

#### **Rev. Rul. 75-420**

Advice has been requested whether, under the circumstances described below, a taxpayer may deduct a donation of real property as a charitable contribution under section 170 of the Internal Revenue Code of 1954.

A taxpayer conveyed real property by a deed of gift to an organization described in section 170(c)(2) of the Code, subject to the reservation of certain interests and rights. The property conveyed, which is bounded on two sides by a river, consists of 20 acres of land and the improvements thereon. The improvements include items such as a principal dwelling house with 25 rooms, a caretaker's cottage, a barn, a swimming pool, a gymnasium, and a tennis court. Members of the taxpayer's family have owned the property since 1900, and the taxpayer acquired it in 1960. Since that time the taxpayer has used the property only for summer vacations.

The organization to which the taxpayer conveyed the property is a college located in the vicinity of the property. During the academic year the college will use the property for educational purposes, primarily as a study center for public affairs, and as a site for such educational activities as academic conferences, cultural events, and advanced study projects.

The taxpayer in the deed of gift conveying the property to the college reserved the right for life (1) to use the property for summer vacations, that is, the right to the free and exclusive use of the property each year from August 1 through September 15; and (2) to store personal property at all times of the year in the storerooms in the principal dwelling house located on the property.

The deed of gift also provides that the college is restricted from conveying the property until the taxpayer's death or 10 years after the execution of the deed of gift, whichever is later. Further, the college is restricted from making structural or decorative changes to the property during the taxpayer's life without the taxpayer's consent.

Section 170 of the Code provides the general rule that there shall be allowed as a 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)(3)(A) of the Code denies a deduction in the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the donor's entire interest in such property. However, section 170(f)(3)(B) provides that section 170(f)(3)(A) shall not apply to a contribution of (i) a remainder interest in a personal residence or farm, or (ii) an undivided portion of the taxpayer's entire interest in property.

Section 1.170A-7(b)(3) of the Income Tax Regulations provides, in part, that for purposes of section 170(f)(3)(B)(i) of the Code, the term "personal residence" means any property used by the taxpayer as his personal residence even though it is not used as his principal residence. Section 1.170A-7(b)(3) further provides that, for example, the taxpayer's vacation home may be a personal residence. Thus, in the instant case the real

property qualifies as a personal residence for purposes of section 170(f)(3)(B)(i) of the Code.

Section 1.170A-7(b)(1)(i) of the regulations provides, in part, that a deduction is allowed for the value of a charitable contribution not in trust of an undivided portion of a donor's entire interest in property. 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 and must extend over the entire term of the donor's interest in such property and in other property into which such property is converted. A deduction is allowed under section 170 of the Code for a contribution of property to a charitable organization whereby such organization is given the right, as a tenant in common with the donor, to possession, dominion, and control of the property for a portion of each year appropriate to its interest in such property. However, a charitable contribution in perpetuity of an interest in property not in trust where 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) does not apply.

In this case the taxpayer contributed a remainder interest in a personal residence to the college and reserved a life estate. The taxpayer, however, limited the life estate in the property by sharing such life estate with the college as tenants in common. Under the tenancy in common relationship, the taxpayer has free and exclusive use of the property between August 1 and September 15 of each year, the right at all times of the year to store personal property in the storerooms in the principal dwelling house, and the right to prohibit structural or decorative changes in the property. The college has free and exclusive use of the property for the remaining portion of

each year, subject to the taxpayer's rights, which are not substantial restrictions on the interests of the college.

Accordingly, the taxpayer has contributed (1) a remainder interest in a personal residence within the meaning of section 170(f)(3)(B)(i) of the Code, and (2) an undivided portion of the entire interest in the property within the meaning of section 170(f)(3)(B)(ii). Thus, section 170(f)(3)(A) does not apply and the taxpayer's contribution is deductible as a charitable contribution under section 170, subject to the limitations contained therein.

If, however, the taxpayer had given the remainder interest to a relative and limited the life estate in the property by sharing such estate with the college as tenants in common for life or simply made a gift of the life estate to the college, no deduction would be allowable if the partial interest, that is, the remaining life estate, was created in order to avoid the provisions of section 170(f)(3)(A) of the Code. See section 1.170A-7(a)(2)(i) of the regulations. In addition, a gift of a tenancy in common for the taxpayer's life, where the taxpayer owns the entire fee, is not deductible under section 170(f)(3) because it is not a gift of an undivided portion of the taxpayer's entire interest in property.

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26 *CFR* 1.170A-8: *Limitations on charitable deductions by individuals.*

**Contributions; voluntary association of counties.** Contributions to a voluntary association of counties, separate from but qualifying as a wholly owned instrumentality of its member counties, and organized and operated exclusively for public purposes will not qualify for the 50 percent limitation under section 170(b)(1)(A) of the Code but are deductible charitable contributions subject to the 20 percent limitation of section 170(b)(1)(B).

## Rev. Rul. 75-359

Advice has been requested concerning the deductibility, under section 170 of the Internal Revenue Code of 1954, of contributions to the organization described below.

*X* is a voluntary association of counties organized for exclusively public purposes to "provide more adequate and efficient local government in keeping with a democratic society," and to represent the best interests of State *Y* by performing research in the field of local government, providing training to county officials with respect to their public duties, providing information and materials to permit the more efficient operation of county government, representing the best public interests of the counties at the State legislature.

There are four classes of membership in *X*: (1) active membership; limited to county court judges, county supervisors, commissioners, and councilmen, representing their counties, (2) honorary membership; for distinguished persons invited to membership by *X*'s board of directors, (3) sustaining membership; for other county and state officials, and (4) associate membership; open to any person, firm or corporation manufacturing or selling materials, equipment or supplies, purchased or used by a county. An insignificant amount of the association's operating funds comes from annual membership dues of 10x dollars for sustaining members and 125x dollars for associate members. The remainder of the operating funds come from the member counties associated with the organization. Only the holders of the active memberships are entitled to vote on association matters.

Section 170(c)(1) of the Code provides, in part, that the term "charitable contribution" means a contribution or gift to or for the use of a state, a possession of the United States, or any political subdivision of any of the foregoing, but only if the contribution or gift is made for exclusively public purposes.