

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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CASE MIS No.: TAM-107138-99/CC:DOM:IT&A:B3

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No:

Years Involved:

Date of Conference:

LEGEND:

Taxpayer	=
Charity	=
Tax Year 1	=
Tax Year 2	=
Corporation	=
Year A	=
Year B	=
Year C	=
<u>A</u>	=
<u>B</u>	=
<u>C</u>	=
<u>D</u>	=
<u>E</u>	=
<u>F</u>	=
<u>G</u>	=
<u>H</u>	=
<u>I</u>	=
<u>J</u>	=
<u>K</u>	=
<u>L</u>	=
<u>M</u>	=
<u>N</u>	=

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ISSUE:

Is the taxpayer entitled to increased deductions under § 170(e)(3) of the Internal Revenue Code for its contributions of inventory to Charity?

CONCLUSION:

1. Taxpayer did not meet the requirements of §170(e)(3) for an increased charitable deduction for either year. There has been no showing that the donated property was actually transferred to or used for the care of the ill, the needy, or infants; nor has Taxpayer credibly shown that it reasonably anticipated at the time of contribution that the property would be so used. Section 1.170A-4A(b)(2). One reason for this is that Taxpayer has not shown that calendars and at least some of the books are useful for meeting a need of an ill or needy individual or an infant. Also, Taxpayer did not obtain the written statement required by § 170(e)(3) from Charity by the time it filed its tax return for either year as required by § 1.170A-4A(b)(4).
2. Section 170(a)(1) precludes the increased deductions because Taxpayer did not verify them as required by the regulations. Taxpayer did not attach the required Forms 8283 signed by the Charity to its tax returns; nor did Taxpayer show that such omissions were made in good faith. Section 1.170A-13(c)(4).
3. Nor did Taxpayer substantiate the contributions with a contemporaneous written acknowledgment of each from Charity as required by § 170(f)(8). Section 170(f)(8) expressly precludes any deduction without the acknowledgment.

Thus, Taxpayer is not entitled to take increased charitable deductions under §170(e)(3) for its contributions of inventory to Charity.

Moreover, Taxpayer's statement of the fair market value of the contributed calendars in Tax Year 2 is especially not credible because it had sales of a much smaller number of calendars several months earlier at a greater discount.

FACTS:

1. In general

Taxpayer, a corporation that is not a subchapter S corporation, is in the business of manufacturing calendars and books. Charity is an organization described in § 170(c)(2). In Tax Year 1 and Tax Year 2, Taxpayer donated calendars to Charity. In Tax Year 2, Taxpayer also donated books to Charity. The calendars and books were from Taxpayer's inventory.

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2. Amounts claimed as a deduction

On its Form 1120, U.S. Corporation Income Tax Return, for Tax Year 1, Taxpayer claimed an increased charitable deduction under §170(e)(3) of \$A to Charity and attached to the return were two donor pledge forms to Charity. These donor pledge forms stated that Charity offers these benefits: a tax-deductible receipt (which will be mailed upon processing this document) for the value of your gift, our pledge that your gift would not be sold, bartered, or exchanged for services, and with our own fleet of trucks, the ability to react quickly in getting your donation to disaster victims and others in need. Otherwise the donor pledge forms were completed by Taxpayer and stated that Taxpayer was contributing Year B calendars with the wholesale value of \$D for each calendar. One pledge form was undated, but apparently also attached to the Form 1120 was a faxed letter, dated January 25, Year B, from Charity advising Taxpayer that more calendars were received than stated on the pledge form. The second pledge form was dated February 16, Year B, and states that the calendars are to be picked up. Taking in account the faxed letter from Charity, Taxpayer claimed it contributed C Year B calendars.

On its Form 1120 for Tax Year 2, Taxpayer claimed an increased charitable deduction of \$B to Charity and attached to the return were two donor pledge forms to Charity. One pledge form listed the number of calendars, E, the wholesale value, F, of each calendar, was dated March 6, Year C, and stated that the calendars are to be picked up. The second pledge form lists an addresses book, a dates and anniversaries book, and seven young children's books by title with the quantity and wholesale values of each. Apparently also attached to the Form 1120 were three "Tax-Deductible Receipts" from Charity, dated March 21, 26, and 31, Year C, stating that certain numbers of pallets and truckloads of calendars and date books were received from Taxpayer.

From the request for this technical advice, it appears, and Taxpayer confirms, that the charitable deductions claimed, \$A and \$B, were for the appreciated portion of the claimed value of the contributed calendars and books and that costs of goods sold adjustments for the contributed calendars and books were also claimed, \$G and \$H, on Forms 1120 for Tax Years 1 and 2, for Taxpayer's costs of the contributed property.

3. Use of the contributed property by the donee

Taxpayer and Charity represent that § 1.170A-4A(b)(2)(ii)(D) and (E) are the sections that more aptly apply to the mission and programs of Charity, rather than those sections that deal with the care of the ill or the care of infants. Taxpayer and Charity also represent that the donated calendars are used in providing basic and fundamental education and socialization needs and that the use of the contributed materials directly contributes to the emotional and mental well-being of a person who lacks the basic necessities of life, such as education, as result of his particular circumstances.

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Taxpayer states that it has received numerous letters detailing the use of the calendars and books to provide assistance to needy families and the use of the donated materials in the charitable organization's programs for needy children. Taxpayer has provided to the Service literature about a program of Charity that ships packages of supplies to schools in impoverished areas twice a year. Taxpayer has not indicated what portion of the donated materials were used in this program, nor supplied any information how the calendars and books would satisfy a need of the needy or infants. All other information from Charity speaks only in generalities.

Taxpayer represents that Charity maintains detailed inventory records that show the programs in which the donated materials were used and that these records are available to the Service upon request. Although information about this has been requested of the Charity, no specific information has been provided.

Taxpayer has provided no specific information about the calendars contributed, except that it provided its current catalog. Apparently, its current calendars are similar to those contributed. The art work for the current calendars covers a wide spectrum of popular subjects and is not particularly educational. Many, if not most, of the calendars shown in the catalog appear to be more appropriate for adults than for minors.

4. Records

Taxpayer has supplied copies of the following correspondence from Charity

1. A fax dated January 25, Year B stating that Charity received calendars.
2. A fax dated September 25, Year B stating that Charity received children's books from the Taxpayer. (Although this fax asks Taxpayer to fax a pledge form so that a receipt can be issued, we do not have a copy of a receipt. There is, however, an unsigned filled out pledge form.)

Taxpayer received a letter from Charity, dated June 17, 1999, thanking Taxpayer for its Year C donations of E new calendars and I new books. The letter states that with reference to the donation, Charity represents the following:

1. It is an organization described in § 501(c)(3) of the Code, and is exempt under § 501(a), and is not a private foundation.
2. The goods will be used solely to for the care of the ill, needy, or infants (as those terms are described in applicable Treasury Regulations).
3. The property will be distributed to those in need in accordance with the purpose or function constituting the basis of Charity's tax exemption.
4. The material donated will not be transferred in exchange for money, other property or services.

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5. Adequate books and records will be maintained as required by applicable Treasury Regulations and made available to the Service upon request.

The letter also states that Charity did not provide goods or services as whole or partial consideration for this contribution.

Taxpayer also received a letter from Charity, dated June 17, 1999, thanking Taxpayer for its Year B donations of C new calendars. The letter also contains the information described above that was in the letter about the Year C donations.

5. Valuation

Taxpayer sells the majority of its products to large retailers. The sales price of Taxpayer's goods is based on a percentage discount of the retail value. Although the Taxpayer states that its discounts range from 45 to 55 percent of retail, Taxpayer also states that it had large sales to Corporation in December Year A and December Year B at a 60% discount. The number of calendars sold to Corporation were 6 percent and 15 percent of the number of calendars contributed to Charity in the respective tax years.

Taxpayer has provided copies of invoices for the following sales:

1. On October 17, Year A, one Year B calendar was shipped at a 45% discount off of the retail price.
2. On December 1, Year A, 6 percent of C Year B calendars were shipped to Corporation at a 60% discount off of the retail price.
3. On December 7, Year A, 27 Year B calendars and 3 books were shipped at a 55% discount off of the retail price.
4. On December 14, Year A, one Year B calendar was shipped at a discount of 55% off of the retail price.
5. On December 23, Year A, two Year B calendars were shipped at a discount of 55% off of the retail price.
6. On January 9, Year B, six Year B calendars were shipped at a 55% discount off of the retail price.
7. On February 20, Year B, one Year B calendar was shipped at a 50% discount off of the retail price.
8. On December 4, Year B, 15 percent of E Year C calendars were shipped to Corporation at a 60% discount off of the retail price.

There is a 2% discount for paying within 30 days.

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Taxpayer calculated the fair market value of the donated materials as follows for Tax Year 1:

Retail price of 12" x 12" calendar	<u>\$J</u>
Typical discount % on large sales	.55
Typical discount to large retailer	<u>\$K</u>
Typical sales price to large retailer (retail less discount)	<u>\$L</u>
Additional discount due to time of sale	.25
	<u>\$M</u>
Discounted fair market value at time of donation (amount was rounded down for ease of calculation)	<u>\$N</u>

For Tax Year 2, management felt that the additional discount should be approximately 7% rather than 25% as sales were on the rise and Taxpayer had a “best seller.”

Taxpayer still stocks and sells the book titles that were donated.

The Revenue Agent interpreted a statement in the Taxpayer’s Annual Report as suggesting that contributed calendars were valued by Taxpayer for more that they could have been sold for at the time of contribution. In reply, Taxpayer states that the reason for the change in Taxpayer’s policy from liquidating inventory at year end to giving them to charity “was to eliminate further discounting at the end of the calendar year as this can erode the prices that the Company can charge during its prime selling season. [Taxpayer’s President] is committed to helping the community and felt that discounting the calendars an additional 10 to 25 percent would not be as beneficial to the Company as donating the calendars to needy people. He was willing to forgo the additional revenue to preserve the Company’s pricing structure and help the needy.”

6. Form 8283

Taxpayer did not attach Forms 8283, “Noncash Charitable Contributions,” to the income tax returns for Tax Year 1 or Tax Year 2.

Taxpayer has recently submitted signed Forms 8283 for Tax Year 1 and Tax Year 2. Taxpayer acknowledges an amount exceeding the amount that could have been deducted under § 170(e)(3) (assuming that the contributions were “qualified contributions” as defined in § 170(e)(3)(A) and the fair market value claimed by Taxpayer was correct) is listed on the Form for Tax Year 2.

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7. Revenue Agent's Position

The Revenue Agent's position is that at the time of the contributions in Tax Year 1 and Tax Year 2, Taxpayer could not reasonably have anticipated that the property would be used in a manner consistent with § 170(e)(3). Also, statements received from Charity do not evidence that the calendars and books were used to alleviate an existing illness, to satisfy an existing need, or to provide for the physical, mental, or emotional needs of an infant.

LAW AND ANALYSIS:

Section 170(a)(1) of the Code allows a deduction for a charitable contribution made within the taxable year, but a charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary. If the contribution is made in property other than money, in general, the amount of the contribution is the fair market value of the property at the time of the contribution reduced as provided in § 170(e)(1) and § 1.170A-4(a), or § 170(e)(3) and § 1.170A-4A(c). Section 1.170A-1(c)(1) of the regulations.

There are special rules for the deduction of ordinary income property such as inventory. Section 170(e)(1) generally limits the charitable contribution for a contribution of inventory to the donor's basis in the property. Section 170(e)(1)(A) provides that the amount of a charitable contribution of property is reduced by the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of the contribution).

Section 170(e)(3) provides a special rule allowing an increased deduction in the case of qualified contributions of inventory. Among the requirements listed in § 170(e)(3)(A) for a "qualified contribution" are:

- i) the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under § 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;
- ii) the property is not transferred by the donee in exchange for money, other property, or services;
- iii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (i) and (ii).

Section 1.170A-4A(b)(1)(ii) and § 170(e)(3)(A) provide that a contribution of property qualifies under § 170(e)(3) only if it is a charitable contribution to an organization

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described in § 501(c)(3) and exempt under § 501(a), other than a private foundation, as defined in § 509(a), which is not an operating foundation, as defined in § 4942(j)(3).

Section 1.170A-4A(a) states that to be treated as a “qualified contribution,” a contribution must meet the restrictions and requirements of § 170(e)(3)(A) and § 1.170A-4A(b).

1. Use of the property solely to care for the ill, the needy or infants

The enhanced deduction of § 170(e)(3) only applies to donated property that is actually used to care for the ill, the needy, or infants. Sections 1.170A-4A(a) and 1.170A-4A(b)(2)(ii) provide that property must be used for the care of the ill, the needy, or infants. Section 1.170A-4A(b)(2)(ii) further provides that no other person may use the contributed property except as incidental to primary use in the care of the ill, needy, or infants. The organization may satisfy this requirement by transferring the property to a relative, custodian, parent, or guardian of the ill or needy individual or infant, or to any other individual if it makes a reasonable effort to ascertain that the property will ultimately be used primarily for the care of the ill or needy individual, or infant, and not for the primary benefit of any other person. Thus, any portion of the donated property that is not used for the care of the ill, the needy, or infants is not a qualified contribution under § 170(e)(3).¹

Section 1.170A-4A(b)(2)(ii)(B) of the regulations defines an ill person as a person who requires medical care within the meaning of § 1.213-1(e) of the regulations.

Section 1.170A-4A(b)(2)(ii)(C) of the regulations defines care of the ill as alleviation or cure of an existing illness and includes care of the physical, mental, or emotional needs of the ill.

Section 1.170A-4A(b)(2)(ii)(D) of the regulations defines a needy person as a person who lacks the necessities of life, involving physical, mental, or emotional well-being, as a result of poverty or temporary distress. Examples of needy persons include a person who is financially impoverished as a result of low income and lack of financial resources, a person who temporarily lacks food or shelter (and the means to provide for it), a person who is the victim of a natural disaster (such as fire or flood), a person who is the victim of a civil disaster (such as a civil disturbance), a person who is temporarily not self-sufficient as a result of a sudden and severe personal or family crisis (such as a person who is the victim of a crime of violence or who has been physically abused), a person who is a refugee or immigrant and who is experiencing language, cultural, or

¹ The Service recognizes that in certain cases, de minimis amounts of donated property may not be used or that in certain cases, an unanticipated catastrophe may prevent using the donated property.

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financial difficulties, a minor child who is not self-sufficient and who is not cared for by a parent or guardian, and a person who is not self-sufficient as a result of previous institutionalization (such as a former prisoner or a former patient in a mental institution).

Section 1.170A-4A(b)(2)(ii)(E) of the regulations defines care of the needy as alleviation or satisfaction of an existing need. Since a person may be needy in some respects and not needy in other respects, care of the needy must relate to the particular need that causes the person to be needy. For example, a person whose temporary need arises from a natural disaster may need temporary shelter and food but not recreational facilities.

Section 1.170A-4A(b)(2)(ii)(F) of the regulations defines an infant as a minor child as determined under the laws of the jurisdiction in which the child resides.

Section 1.170A-4A(b)(2)(ii)(G) of the regulations defines care of an infant as the performance of parental functions and provision for the physical, mental, and emotional needs of the infant.

To be used for the care of the needy, under the regulation discussed above, the donated property must be used with a bona fide purpose of alleviating or satisfying existing needs of needy individuals. See § 1.170A-4A(b)(2)(ii)(E). To be used for care of infants, the donated property must be used with a bona fide purpose of performing a parental function or providing for the physical, mental, or emotional needs of a minor child. See § 1.170A-4A(b)(2)(ii) (F) and (G). If the donated property is used with a bona fide purpose of providing for the education of minor children, the donated property will be used to care for infants, since education is a parental function and education provides for the mental needs of infants. See § 1.170A-4A(b)(2)(ii)(F) and (G).

Even if the donated property is given to needy individuals or to infants, the contribution does not meet the requirements of § 170(e)(3) and the regulations unless it is used with a bona fide purpose of care for the needy or for infants as discussed in the regulations. See § 1.170A-4A(b)(2)(ii)(E) (“Since a person may be needy in some respects and not needy in other respects, care of the needy must relate to the particular need which causes the person to be needy.”) Here, whether the donated property might be used to alleviate or meet a need of an ill or needy individual or infant would depend on whether the type of calendar or book was appropriate for the program to help such individuals in which it was to be used. Taxpayer has provided records showing lump sums of calendar contributed but has not indicated whether it selected specific calendar which were appropriate for the programs in which Taxpayer expected them to be used.

Since the property has to be used solely to care for the ill, the needy, or infants, it would be necessary to show that the donated property was only used to care for such persons. See § 1.170A-4A(b)(2)(ii) (“No other person may use the contributed property except as incidental to primary use in the care of the ill, needy, or infants.”). Here, if the donated

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property was sent to schools in impoverished areas it would still be necessary for the donated property to have been used solely to care for the ill, the needy, or infants in those areas. Not all persons who reside in an impoverished area are needy.

In this case, the only specific information Taxpayer or Charity has provided is literature about a program of Charity that ships packages of supplies to schools in impoverished areas twice a year. There has been no showing whether all or any of the donated property was used in the program, used in other programs, or used at all. Nor has there been any credible explanation how the contributed calendars or some of the books would alleviate the needs of the ill, the needy, or infants. Some of the children's books would appear from their titles to be usable to help meet the needs of some infants, but it has not been shown that they were so used.

As we discuss below, one of the required elements of the written statement that a donee must provide to a taxpayer is that the donee represents that adequate books and records will be maintained, and made available on to the Service upon request. Section 1.170A-4A(b)(4)(i)(D) of the regulations. Charity did not provide this statement on a timely basis.

Section 1.170-4A(b)(2) provides that if the transferred property is used or transferred by the donee organization in a manner inconsistent with the requirements of § 1.170A-4A(b)(2)(i) or (ii) or the requirements of § 1.170A-4A(b)(3), the donor's deduction is reduced to the amount allowable under § 170 or the regulations thereunder, determined without regard to § 170(e)(3). If, however, the donor establishes that, at the time of the contribution, the donor reasonably anticipated that the property would be used in a manner consistent with those requirements, then the donor's deduction is not reduced.

Here, it has not been shown that the donated property was so used, nor has the Taxpayer established that it reasonably anticipated that the property would be used in a manner consistent with the requirements of the regulation at the time of the contribution. One reason for our conclusion is that Taxpayer has not given a reasonable explanation of how the calendars would be useful for a required purpose. Nor has the taxpayer shown how the quantities donated were in accord with the number of ill or needy individuals or infants whose needs were to be addressed. Further, the Taxpayer did not have the required written statement from Charity, discussed below, representing that the donated property would be used solely for the care of the ill, the needy, or infants.

The literature that Taxpayer has provided to the Service concerning a program of Charity that ships packages of supplies to schools raises an issue about the status of these schools. If the contributed property is transferred by the donee organization to another organization, the transferee organization must be an organization described in § 501(c)(3) and exempt under § 501(a). See § 1.170A-4A(b)(1)(ii) and § 1.170A-4A(b)(2)(ii). If any schools to which Charity transferred the contributed property are not such organizations, the contributions of transferred property would not have been

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“qualified contributions.” For example, a public school or public school district is not an entity described in § 501(c)(3). If Taxpayer did not reasonably anticipate that the contributed property would be transferred only to schools that are described in § 501(c)(3) and exempt under § 501(a), Taxpayer did not reasonable anticipate that the contributed property would be used in a manner consistent with the regulation.

2. Written statement required by section 170(e)(3)(A)(iii)

Section 170(e)(3)(A)(iii) provides that a contribution is a qualified contribution only if the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of § 170(e)(3)(A)(i) and (ii).

Section 1.170A-4A(b)(4) of the regulations provides that the donee-organization must furnish to the taxpayer a written statement that--

- (A) Describes the contributed property, stating the date of its receipt;
- (B) Represents that the property will be used in compliance with § 170(e)(3) and § 1.170A-4A(b)(2) and (3);
- (C) Represents that the donee-organization meets the requirements of § 1.170A-4A(b)(1)(ii); and
- (D) Represents that adequate books and records will be maintained, and made available to the Service upon request.

Section 1.170A-4A(b)(4) adds that the written statement must be furnished within a reasonable period after the contribution, but not later than the date (including extensions) by which the donor is required to file a United States corporate income tax return for the year in which the contribution was made. The books and records need not trace the receipt and disposition of specific items of donated property if they disclose compliance with the requirements by reference to aggregate quantities of donated property. The books and records are adequate if they reflect total amounts received and distributed (or used), and outline the procedure used for determining that the ultimate recipient of the property is an ill or needy individual, or infant. However, the books and records need not reflect the names of the ultimate individual recipients or the property distributed to (or used by) each one.

Taxpayer argues that the letters, dated June 17, 1999, Taxpayer received from Charity meet this requirement. However, these letters were not received by Taxpayer by the date required by § 1.170A-4A(b)(4), which was when it filed its tax returns.

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Taxpayer has supplied copies of receipts issued by Charity to Taxpayer but these receipts do not include all of the information required by § 170(e)(3)(A)(iii) or § 1.170A-4A(b)(4).

Taxpayer has provided copies of pledge forms issued by Charity that Taxpayer filled in. Since Taxpayer was the one that filled in the Forms, these Forms were not provided by Charity to Taxpayer. Thus, they do not meet the requirements of § 170(e)(3)(A)(iii) or the regulations. Further, the pledge forms do not provide all of the information required by the Code and Regulations. The Forms merely state that Charity offers these benefits: A tax-deductible receipt for the value of your gift, our pledge that your gift will not be sold, bartered or exchanged for services, and with our own fleet of trucks, the ability to react quickly in getting your donation to disaster victims and others in need.

Taxpayer might argue that a letter from Charity meets the requirement of §170(e)(3)(A)(iii) and the regulations. Charity states in the letter that § 1.170A-4A(b)(2)(ii)(D) and (E) (which concern care of the needy) are the sections that more aptly apply to the mission and programs of Charity, rather than the sections that deal with the care of the ill or the care of infants.

This letter also is not adequate because it does not state that the donated property will be used by the donee solely for the care of the ill, the needy, or infants and does not provide the other information required by the Code and regulations. Saying that a charity's mission is to care for the needy is not the same as stating that the specific property that was donated will be used solely to care for the ill, the needy or infants and that the requirements of § 170(e)(3) and the regulations will be met. Further, § 1.170A-4A(b)(4) requires that the statement be obtained by the due date (including extensions) for filing the return, and the letter from Charity is from after the returns were filed and after the Revenue Agent questioned these charitable deductions.

Also, if Charity transferred any of the contributed property to another organization, the Charity must have obtained a written statement from the transferee organization. Section 1.170A-4A(b)(2)(ii). The requirements for this statement are described in § 1.170A-4A(b)(4)(ii). This statement must have been furnished within a reasonable time after the transfer.

3. Computation of the amounts of the contributions

Section 170(e)(1)(B) provides that the reduction under § 170(e)(1)(A) for any qualified contribution (as defined in § 170(e)(3)(A)) shall be no greater than the sum of (i) one-half of the amount computed under § 170(e)(1)(A) (computed without regard to § 170(e)(3)) and (ii) the amount (if any) by which the charitable contribution deduction under § 170 for any qualified contribution (computed by taking into account the amount determined in clause (i), but without regard to clause (ii)) exceeds twice the basis of such property.

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Section 1.170A-4A(c)(2) provides rules for determining the basis of contributed property which is inventory.

Section 1.170A-4A(c)(3) provides that notwithstanding the rules of § 1.170A-1(c)(4), the donor of the property which is inventory contributed under § 1.170A-4A must make a corresponding adjustment to the cost of goods sold by decreasing the cost of goods sold by the lesser of the fair market value of the contributed item or the amount of basis determined under § 1.170A-4A(c)(2).

Taxpayer agrees that if the contributions at issue in this Technical Advice Memorandum were qualified contributions as described in § 170(e)(3) and the fair market value of the contributed property had been the amounts claimed by Taxpayer, the amount of the contributions and the adjustments to cost of goods sold should have been computed differently.

4. Fair market value of donated property

Fair market value is determined in accordance with § 1.170A-1(c) of the regulations. If a contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution reduced as provided in § 170(e)(1) and § 1.170A-4(a), or § 170(e)(3) and § 1.170A-4A(c). Section 1.170A-1(c)(1) of the regulations.

Section 1.170A-1(c)(2) of the regulations provides that the fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. If the contribution is made in property of a type which the taxpayer sells in the course of his business, the fair market value is the price which the taxpayer would have received if he had sold the contributed property in the usual market in which he customarily sells, at the time and place of the contribution and, in the case of a contribution of goods in quantity, in the quantity contributed. The usual market of a manufacturer or other producer consists of the wholesalers or other distributors to or through whom he customarily sells, but if he sells only at retail the usual market consists of his retail customers.

Section 1.170A-1(c)(3) of the regulations provides that if the donor makes a charitable contribution of property, such as stock in trade, at a time when he could not reasonably have been expected to realize its usual selling price, the value of the gift is not the usual selling price but is the amount for which the quantity of property contributed would have been sold by the donor at the time of the contribution.

The fair market value of the calendars and the books that Taxpayer contributed to Charity should be determined in accordance with these rules. Under the regulation, the

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amount for which Taxpayer sold calendars during the previous calendar year or the amount for which Taxpayer was able to sell 6 calendars on January 9, Year B or 1 calendar on February 20, Year B is not good evidence of the fair market value of the donated material in the quantities donated at the time of the contribution. Also, the fact that Taxpayer had a “best seller” does not necessarily affect the fair market value of other calendars.

We also note that Taxpayer states that for Tax Year 2, in computing the fair market value of the donated calendars, Taxpayer took an additional discount of 7% off of the typical discount to large retailers of 55%. This, however, would result in a slightly smaller total discount than the 60% discount on the sale of a significantly smaller number of calendars to Corporation in December Year B, which was earlier than the contributions of calendars to Charity made during Tax Year 2. In addition, it is difficult to accept that the large numbers of calendars contributed could have been sold at almost any price when they were contributed one, two, or three months into the calendar year.

5. Form 8283

As pointed out above, § 170(a)(1) provides that a charitable contribution shall be allowed as a deduction only if verified under regulations prescribed by the Secretary.

Under § 1.170A-13(c)(1)(ii) and § 1.170A-13(c)(2)(ii), if a donor makes a contribution to which § 170(e)(3) applies and the amount claimed as a deduction exceeds by more than \$5,000 the amount which would have been taken into account for tax purposes by the donor as costs of goods sold if the donor had sold the contributed property to the donee, a partially completed appraisal summary form (as described in § 1.170A-13(c)(4)(iv)(A)) is required to be attached to the tax or information return specified in § 1.170A-13(c)(2)(i)(B). The appraisal summary needs to be made on a form prescribed by the Service and signed and dated by the donee. Section 1.170A-13(c)(4)(i)(A) and (B) and § 1.170A-13(c)(4)(iv)(A)(1). Instructions for Form 1120 for both Tax Year 1 and 2 state that all corporations generally must complete and attach Form 8283 to their returns for contributions of property other than money if the total claimed contribution for all property other than money if the total claimed deduction for all property contributed was more than \$5000.

Taxpayer was required to but did not attach a properly completed Form 8283 to its income tax return for either Tax Year 1 or 2. When asked about the missing Forms 8283 after this technical advice was requested, taxpayer furnished the missing Forms 8283 and these forms were signed by the donee.

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Section 1.170A-13(c)(4)(iv)(H) states that the failure to attach an appraisal summary (Form 8283) shall not cause a deduction to be disallowed provided that the failure to attach the appraisal summary was a good faith omission. Taxpayer has not made a showing that such failures were good faith omissions.

6. Contemporaneous written acknowledgment required by section 170(f)(8)

Section 170(f)(8)(A) provides that no deduction shall be allowed under § 170(a) for any contribution of \$250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of § 170(f)(8)(B). Section 170(f)(8)(C) states that for purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of – (i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or (ii) the due date (including extensions) for filing such return.

Taxpayer argues that the letters, dated June 17, 1999 that Taxpayer received from Charity meet this requirement. However, these letters were not received by Taxpayer by the date required by § 170(f)(8)(C).

Taxpayer also argues that the pledge forms and “Tax Deductible Receipts” contain the information required by § 170(f)(8). However none of these documents states, as required by § 170(f)(8)(B)(ii), whether the donee organization provided any goods or services in consideration, in whole or in part, for any of the contributed property. Further even if the pledge forms did provide this information, a pledge form is not a “contemporaneous written acknowledgment” of a contribution.

CAVEAT(S)

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.