Noncash Charitable Contributions: Issues of Enforcement
Business Inventory and Enhanced Deduction Property: Discussion Slides

Roger Colinvaux
Historical Background

• Before 1969, donors in most cases were allowed a fair market value deduction for property contributions.

• 1969 legislation changed the rule to a basis deduction for ordinary income property such as inventory.
  – Why the change? Because under the prevailing high marginal rates, some were better off donating rather than selling.

• But, Congress subsequently became concerned that certain inventory items, e.g., food and medical supplies, were no longer being contributed to help the needy.

• So in 1976, Congress enacted an enhanced deduction for inventory for the benefit of the ill, needy, or infants.
Measure for the Enhanced Deduction

• The enhanced deduction allows a donor to deduct one-half of the appreciation determined as of the contribution date plus the donor’s basis.
  – But this “enhancement” must not exceed twice the donor’s basis.
Enforcement of What?

• Donor Side Enforcement
  – Correct amount of the deduction
    • Value and basis are relevant
  – Property Restrictions/Types
    • Donated property must meet certain requirements

• Donee Side Enforcement
  – Use restrictions: e.g., property must be for related use; no sale permitted
Valuation – Issues

• Amount of deduction is derived from property value
  – No appraisal required
• Must find “usual market” for sales, in quantity contributed
  – “usual market” for manufacturer or producer is the wholesale market used
    • Unless donor sells only at retail, then retail market
• Value depends on facts and circumstances
  – Value of days-old bread? Expired drugs? Lack of Market?
    • E.g., Lucky Stores case
  – Inherent suspicion of value: why do companies donate?
    • If usual selling price not likely, then the value is what it would actually sell for. 1.170A-1(c)(3).
Valuation – Solutions?

• Special inventory valuation rules?
  – (Industry favorable) food, book special valuation rules were proposed and defeated.
  – Would legislation be required? Regulation project on inventory value – brighter lines?

• Require appraisals?
  – Legislation probably required.

• Better reporting:
  – e.g., current Form 8283 instructions: “The greater the value of the property, the more detail you must provide.”
    • Pub 526 just has food inventory rules, and worksheet for calculating enhanced dd.

• Base enhanced deduction on basis, not value (but legislation required)?

• Better data?
  – Compare Schedule M with Form 8283
  – Include enhanced deductions in regular SOI reporting
Basis – Issues

• Adjustment to COGS
  – Donor must reduce COGS by lesser of FMV or basis.
    • E.g., if item has value of $1,000 and basis of 600, deduction = $800, and COGs must be reduced by 600.
  – Must prevent double deduction

• Percentage limitation avoidance
  – E.g., donor takes charitable deduction for \( \frac{1}{2} \) the gain only, and recovers basis through COGS, thus reducing amount of charitable deduction for % limit purposes.

• Other ways to manipulate basis?
  – Not unique to charitable deduction issues; but attractiveness of twice basis deduction may encourage more schemes.
Donor Property Rules

• E.g., scientific property must be constructed or assembled by the donor, contributed within 2 years of completion; not used property.
  – Special rule on “constructed by”
• E.g., computer technology and equipment made w/in 3 years of acquisition or assembly; used only by donor; must meet “minimum functionality and suitability standards”.
• Are these requirements enforceable?
Donee Requirements – In General

• Eligible Donees
  – Not all 170(c) orgs are eligible
  – Donee acknowledgment on 8283 just refers to 170(c) orgs

• Donor must receive written statement from donee regarding use and disposition of the property
  – Explicitly required for all but computers
  – Require check box on 8283 to this effect?
  – Does this have any enforcement impact? Any consequences to donee for erroneous statements?

• Enforcement of use restrictions?
  – Must be for a related use
    • Require specific reporting on use of enhanced deduction property?
  – No transfer by donee for money, services, or property is allowed
    • 8283 just requires agreement to file 8282 if sold, and check box on use
    • Applicability, use of recapture rule (170(e)(7))?
Donee Requirements – Scientific Property and Computers

• Substantially all use of scientific property must be for research or experimentation, or research training, in physical or biological sciences.

• Computers must fit within donee’s education plan.

• Substantially all use must be within the U.S.

• Is any of this enforceable?
Reporting

• Separate Reporting for Enhanced Deduction Contributions?
• Inventory/enhanced deduction contributions are not a box on Form 8283.
• Special rule in 8283 instructions bases 8283 filing thresholds on the enhancement, not on the amount of deduction. Significance?
• Section B, Part I of 8283 does not require statement of “method used to determine fmv,” which is required in Section A, Part I.
  – This is because most Section B, Part I items are appraised, but not so with inventory.
• Schedule M of Form 990 just lists “food inventory” and “drugs and medical supplies.”
  – Schedule M does not focus on enhanced deduction property as a category for reporting purposes.