

Goods or Services Provided to Donor's Employees

The proposed regulations also contain relief where donee organizations provide goods or services to the employees of their donors. Goods or services that may be disregarded for the purposes specified above when provided directly to a donor may also be disregarded for the same purposes when provided to a donor's employees.

Any other goods or services provided to the donor's employees must be taken into account for purposes of calculating any charitable contribution the donor claims as a deduction. If a contemporaneous written acknowledgment of the donor's contribution is required under section 170(f)(8), it must include a description of these goods or services. However, the proposed regulations provide that the contemporaneous written acknowledgment may omit the otherwise required good faith estimate of the value of these goods or services; similarly, the proposed regulations provide that a written disclosure statement required by section 6115 for a payment made in exchange for these goods or services may include a description of them in lieu of the otherwise required good faith estimate of their value.

Good Faith Estimate

For purposes of sections 170 and 6115, the proposed regulations define a good faith estimate of the value of goods or services provided by an organization described in section 170(c) as an estimate of the fair market value of those goods or services. The fair market value of goods or services may differ from their cost to the donee organization. The organization may use any reasonable methodology that it applies in good faith in making the good faith estimate. However, a taxpayer is not required to determine how the donee organization made the estimate.

The proposed regulations further provide that a donee organization may make a good faith estimate of the value of goods or services that are not available in a commercial transaction by reference to the fair market value of similar or comparable goods or services. Goods or services may be similar or comparable even though they do not have the unique qualities of the goods or services that are being valued.

Reliance on Donee Estimates

The proposed regulations provide that a taxpayer generally may treat an estimate of the value of goods or services as the fair market value for

purposes of section 170(a) if the estimate is in a contemporaneous written acknowledgment (as required by section 170(f)(8)) or a written disclosure statement (as required by section 6115). Thus, a taxpayer that makes a payment to an organization described in section 170(c) and receives an item in return generally may rely on the organization's estimate of the value of the item in calculating its charitable contribution deduction if the estimate is included in a contemporaneous written acknowledgment or a written disclosure statement.

However, a taxpayer may not treat an estimate as the fair market value of the goods or services if the taxpayer knows, or has reason to know, that such treatment is unreasonable. For example, if the taxpayer is a dealer in the type of goods or services it receives from an organization described in section 170(c), or if the goods or services are readily valued, it is unreasonable for the taxpayer to treat the donee organization's estimate as the fair market value of the goods or services if that estimate is in error and the taxpayer knows, or has reason to know, the fair market value of the goods or services.

An estimate of the value of goods or services in a contemporaneous written acknowledgment or written disclosure statement is not in error if the estimate is within the typical range of retail prices for the goods or services. For example, if an organization provides a book in exchange for a \$100 payment, and the book is sold at retail prices ranging from \$18 to \$25, the taxpayer may rely on any estimate of the organization that is within the \$18 to \$25 range.

Substantiation of Contributions to a Split Interest Trust

Section 170(f)(8)(E) provides the Secretary with authority to issue regulations that relieve taxpayers, in appropriate cases, from some or all of the requirements of section 170(f)(8).

The grantor of a charitable lead trust, a charitable remainder annuity trust, or a charitable remainder unitrust is not required to designate a specific organization as the charitable beneficiary at the time the grantor transfers property to the trust. As a result, there is often no designated donee organization available to provide a contemporaneous written acknowledgment to a taxpayer. In addition, even if a specific beneficiary is designated, the designation is often revocable. In contrast, a pooled income fund is created and maintained by one charitable organization to which the remainder interest is contributed.

The IRS and the Treasury Department believe that for these reasons it is appropriate to exempt from the requirements of section 170(f)(8) transfers of property to charitable lead trusts, charitable remainder annuity trusts, or charitable remainder unitrusts while not exempting transfers to pooled income funds.

Substantiation of Out-of-Pocket Expenses

Section 1.170A-1(g) provides that an unreimbursed expenditure made incident to the rendition of services to a donee organization may be a deductible charitable contribution. Some taxpayers may make individual unreimbursed expenditures of \$250 or more (such as for a plane ticket) that will require substantiation under section 170(f)(8). The IRS and the Treasury Department recognize that a donee organization typically has no knowledge of the amount of out-of-pocket expenditures incurred by a taxpayer, and therefore, would have difficulty providing taxpayers with substantiation of unreimbursed expenditures.

To address this concern, the proposed regulations provide that where a taxpayer has individual unreimbursed expenditures made incident to the rendition of services and of an amount requiring substantiation, the expenditures may be substantiated by the donor's normal records (see § 1.170A-13(a)) and an abbreviated written acknowledgment provided by the donee organization. This written acknowledgment from the donee organization must contain a description of the services provided by the donor, the date the services were provided, whether or not the donee organization provided any goods or services in return and, if the donee organization provided any goods or services, a description and good faith estimate of the fair market value of those goods or services. This written acknowledgment must be obtained by the taxpayer on or before the earlier of the date the taxpayer files its original return for the taxable year in which the contribution was made, or the due date (including extensions) for filing the taxpayer's original return for that year.

Contributions Made by a Partnership or an S Corporation

The proposed regulations provide that if a partnership or an S corporation makes a charitable contribution of \$250 or more, the partnership or S corporation will be treated as the taxpayer for purposes of section 170(f)(8). Therefore, the partnership or S