

REV-RUL, Contributions; pledge of corporation's own stock., Rev. Rul. 75-348, 1975-2 CB 75, (Jan. 01, 1975)

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Rev. Rul. 75-348, 1975-2 CB 75

Section 170.--Charitable, Etc., Contributions and Gifts

26 CFR 1.170A-1: Charitable, etc., contributions and gifts; allowance of deduction.

[IRS Headnote] Contributions; pledge of corporation's own stock.--

A corporation that pledges to sell shares of its common stock at a specified price to an educational organization is entitled to a charitable contribution deduction, in the taxable year the pledge is exercised, for the excess of the fair market value of the shares on the date of the exercise over the exercise price.

[Text]

Advice has been requested concerning the Federal income tax treatment of a pledge of shares of a corporation's stock to a charitable organization under the circumstances set forth below.

X, a publicly owned corporation whose common stock is traded on the New York Stock Exchange, is located in the State of M. On November 1, 1974, X, with the approval of its Board of Directors, executed and delivered to U, an educational organization, a pledge agreement, in which X pledges to sell to U 1,000 shares of its common stock. The agreement provides that U may purchase the shares at any time during the period from April 1, 1979, through March 31, 1981, at a price equal to the price of such shares on the New York Stock Exchange at the close of business on November 1, 1974. It is anticipated that U will exercise its right at a time when the fair market value of the shares exceeds the purchase price.

U is an educational organization described in sections 170(b)(1)(A)(ii) and 170(c)(2)(B) of the Internal Revenue Code of 1954, contributions to which are deductible under section 170(a). Under the law of the State of M, the executed pledge is irrevocable and enforceable by U.

Section 170(a) of the Code provides that there shall be allowed as a deduction (within certain limitations) any charitable contribution (as defined in section 170(c)) payment of which is made within the taxable year.

Under section 1.170A-1(a) of the Income Tax Regulations a deduction is allowable to a corporation (with one exception not here pertinent) for charitable contributions actually paid during the taxable year, irrespective of the method of accounting employed by the taxpayer or the date on which the contribution is pledged.

Rev. Rul. 68-174, 1968-1 C.B. 81, provides that a debenture bond or a promissory note issued and delivered by the obligor to a charitable organization represents a mere promise to pay at some future date and is not a "payment" for purposes of deducting a contribution under section 170 of the Code.

Where a charitable contribution is made in property other than money, section 1.170A-1(c) of the regulations provides, in part, that the amount of the deduction is the fair market value of the property at the time of the contribution. 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 a reasonable knowledge of the relevant facts.

Section 1011(b) of the Code provides for the adjustment of basis for purposes of computing gain from the bargain sale of property sold to a charitable organization for which a deduction is allowable under section 170. Section 1.1011-2 of regulations provides, in pertinent part, that the adjustment of basis provisions in bargain sales to charitable organizations shall apply in those instances where a gain would have been recognized had the property been sold at its fair market value at the time of the bargain sale or exchange. The same provision is found in section 1.170A-4(c)(2) that also discusses bargain sales to charitable organizations.

However, section 1032 of the Code provides that no gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation. Thus, as no gain would be recognized if *X* sold the stock at its fair market value, section 1011(b) is not applicable to the pledge agreement entered into between *X* and *U*.

Section 170(e) of the Code provides for a reduction in the amount of the charitable contribution if the property contributed would have produced a recognized gain had the property been sold at its fair market value at the time of the contribution. Due to the provisions in section 1032, these reduction provisions found in section 170(e) are not applicable to the charitable contribution that arises under the pledge agreement entered into between *X* and *U*.

Accordingly, *X* is entitled to a charitable contribution deduction in the manner and to the extent provided by section 170 of the Code for its pledge of stock to *U* in the taxable year in which the pledge is exercised. The amount of the contribution will be the excess of the fair market value of the shares on the date the pledge is exercised over the exercise price, which is the price of such shares on the New York Stock Exchange at the close of business on November 1, 1974, the date of the execution and delivery of the pledge to *U*.