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## **IRS: Restriction on Use of Property Affects Its Fair Market Value.**

In a legal memorandum, the IRS concluded that a restriction on the use of donated property within the boundaries of a national park affects the fair market value of the property under section 170.

A taxpayer claimed a charitable deduction for a donation to the National Park Service of land and mineral rights located in a national park. Before the donation, mining was phased out in the park after Congress passed the Mining in the National Parks Act of 1976. Mining was then resumed on a limited basis for years until the last of the mines in the park was closed.

Under section 170, the fair market value of a property determines the amount of the contribution and is calculated as the price at which the property would change hands between a buyer and a seller.

The IRS said examiners should determine if the donated property's highest and best use is for mining and whether existing legal restrictions on mining are likely to be removed for a potential owner. The IRS also said examiners should consider whether the property became worthless in the year that mining operations in the park were closed.

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