Bond Case Briefs

Municipal Finance Law Since 1971

IRS Rules on Donation of Depreciated Property.

The IRS ruled that if a taxpayer donates fully depreciated property to one or more charities, the resulting charitable deduction will not be reduced by 20 percent of the accumulated depreciation of the property.

Re: Request for Private Letter Ruling under

Sections 170, 291, and 1250

Dear * * *:

This letter responds to a letter dated July 27, 2012, and supplemental correspondence, submitted by Taxpayer requesting a letter ruling that, if certain section 1250 property is contributed to one or more tax-exempt organizations, the charitable deduction attributable to the value of that contribution will not be reduced by twenty percent of the accumulated depreciation of this section 1250 property under section 291(a)(1) of the Internal Revenue Code.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a State1 corporation with a principal place of business in City1, State1. Taxpayer is a wholly-owned subsidiary of A and joins in the consolidated Federal income tax return filed for the affiliated group headed by A. A files its consolidated Federal income tax return on a calendar year basis.

Taxpayer owns certain improved real property located at Taxpayer's B plant in City1, State1 (the "B property"). The B property contains certain depreciable real property that is section 1250 property. Most of this section 1250 property has been fully depreciated. Hereinafter, the fully depreciated B property that is section 1250 property will be referred to as "the Property."

Taxpayer intends to contribute some or all of the Property to one or more organizations that are exempt from Federal income tax under section 501(c)(3) as a charitable contribution under section 170. Moreover, Taxpayer intends to claim a charitable deduction under section 170 with respect to its contribution of the Property to one or more section 501(c)(3) tax-exempt organizations.

Taxpayer represents that these section 501(c)(3) tax-exempt organizations will have the same basis in the Property as Taxpayer will have at the time of the transfer pursuant to section 1015(a).

RULING REQUESTED

Taxpayer requests the following ruling:

If the Property is contributed to one or more section 501(c)(3) tax-exempt organizations, the charitable deduction attributable to the value of the contribution will not be reduced by twenty

percent of the accumulated depreciation of the Property pursuant to section 291(a)(1).

LAW AND ANALYSIS

Section 170 generally allows a deduction, subject to certain limitations, for charitable contributions made during the taxable year to or for the use of organizations described in section 170(c), including section 501(c)(3) organizations.

Section 170A-1(c)(1) of the Income Tax Regulations provides that if a charitable 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 section 170(e)(1) and section 1.170A-4(a), or section 170(e)(3) and section 1.170A-4A(c).

Section 170(e)(1) provides that the amount of any charitable contribution of property otherwise taken into account under section 170 shall be reduced by, among other amounts, the amount of gain that would not have been long-term capital gain (determined without regard to section 1221(b)(3)) if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

Section 1.170A-4(a)(1) provides that in the case of a contribution by an individual or by a corporation of ordinary income property, as defined in section 1.170A-4(b)(1), the amount of the charitable contribution that would be taken into account under section 170(a) without regard to section 170(e) shall be reduced before applying the percentage limitations under section 170(b) by the amount of gain that would have been recognized as gain that is not long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

Section 1.170A-4(b)(1) defines the term “ordinary income property” as meaning property any portion of the gain on which would not have been long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

Section 291(a)(1) provides that in a case where a corporation disposes of section 1250 property, an amount equal to twenty percent of the excess, if any, of (A) the amount that would be treated as ordinary income if such property was section 1245 property, over (B) the amount treated as ordinary income under section 1250 (determined without regard to section 291(a)(1)), shall be treated as gain which is ordinary income under section 1250 and shall be recognized notwithstanding any other provision of Subtitle A of the Code. Section 291(a)(1) further provides that under regulations prescribed by the Secretary, the provisions of section 291(a)(1) will not apply to the disposition of any property to the extent that section 1250(a) does not apply to such disposition by reason of section 1250(d).

If section 1245 property is disposed of, section 1245(a)(1) generally provides that the amount by which the lower of (A) the recomputed basis of the property, or (B) the amount realized (in the case of a sale, exchange, or involuntary conversion) or the fair market value of such property (in the case of any other disposition), exceeds the adjusted basis of such property is treated as ordinary income. Such gain is recognized notwithstanding any other provision of Subtitle A of the Code.

Section 1245(a)(2) defines the term “recomputed basis” with respect to any property as meaning, generally, its adjusted basis recomputed by adding thereto all adjustments reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation or amortization.

If section 1250 property is disposed of after December 31, 1975, section 1250(a)(1)(A) generally provides that 100 percent of the lower of (i) that portion of the additional depreciation attributable to periods after December 31, 1975, in respect of such property, or (ii) the excess of the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such property (in the case of any other disposition), over the adjusted basis of such property, is treated as gain that is ordinary income. Such gain is recognized notwithstanding any other provision of Subtitle A of the Code.

Section 1250(b)(1) defines the term "additional depreciation" as meaning, in the case of any property, the depreciation adjustments in respect of such property; except that, in the case of property held more than one year, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments that would have resulted if such adjustments had been determined for each taxable year under the straight-line method of depreciation.

Section 1250(d)(1) provides that section 1250(a) shall not apply to a disposition by gift.

Section 1.1250-3(a)(1) provides that, for purposes of section 1250(d)(1), the term "gift" shall have the same meaning as in section 1.1245-4(a).

Section 1.1245-4(a) provides that the term "gift" means, generally, a transfer of property which, in the hands of the transferee, has a basis determined under the provisions of section 1015(a) or (d) (relating to basis of property acquired by gifts).

If section 1250 property is disposed of by gift (as defined in sections 1.1250-3(a)(1) and 1.1245-4(a)), section 1250(d)(1) provides that section 1250(a) does not apply to such disposition. Consequently, section 291(a)(1) would not apply to a gift (as defined in sections 1.1250-3(a)(1) and 1.1245-4(a)) of section 1250 property.

In this case, Taxpayer represents that it intends to contribute the Property to one or more organizations that are section 501(c)(3) tax-exempt organizations, that this intended contribution will be a valid charitable contribution that meets the requirements of section 170, and that these section 501(c)(3) tax-exempt organizations will have a basis in the Property equal to Taxpayer's basis in the Property at the time of transfer pursuant to section 1015(a). These are material representations. Because the basis of the Property in the hands of the section 501(c)(3) tax-exempt organizations will be the same as Taxpayer's basis in the Property at the time of the transfer pursuant to section 1015(a), the contribution of the Property by Taxpayer to the section 501(c)(3) organizations is a gift for purposes of sections 1250(d)(1) and 1.1250-3(a)(1). Accordingly, the provisions of section 291(a)(1) will not apply to Taxpayer's disposition of the Property to the section 501(c)(3) tax-exempt organizations.

CONCLUSION

Based solely on Taxpayer's representations and the relevant law and analysis set forth above, we conclude that if the Property is contributed to one or more section 501(c)(3) tax-exempt organizations, the charitable deduction attributable to the value of the contribution will not be reduced by twenty percent of the accumulated depreciation of the Property pursuant to section 291(a)(1).

Except as specifically set forth above, no opinion is expressed or implied concerning the tax consequences of the facts described above under any other provisions of the Code. Specifically, this letter ruling is based upon Taxpayer's description of the proposed contribution of property to certain section 501(c)(3) organizations. This letter ruling does not address whether the proposed

contribution is a valid charitable contribution that meets the requirements of section 170. Further, the amount of the deduction for the proposed contribution is outside the scope of this letter ruling, and no approval of the amount should be inferred from this letter ruling. Moreover, no opinion is expressed or implied on (i) whether any of the property located at B is section 1250 property, and (ii) the propriety of Taxpayer's methods of depreciating the property located at B.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney, we are sending a copy of this letter to Taxpayer's authorized representatives. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely,

Kathleen Reed

Chief, Branch 7

Office of Associate Chief Counsel

(Income Tax and Accounting)

Citations: LTR 201318003