

Charitable Developments- 2008 in Review

Legislation

The **Heartland, Habitat, Harvest and Horticulture Act of 2008**, enacted on May 22, 2008, amends IRC section 170(b)(1)(E)(vi) to extend, through 12/31/09, **incentives for qualified conservation easements** or other qualified conservation contributions.

On October 3, 2008, Congress passed the **Emergency Economic Stabilization Act of 2008**, which includes a provision extending for 2009 the ability of IRA owners age 70 ½ and older to make **IRA distributions to qualified organizations** of up to \$100,000 per year (H.R. 1424).

Under the **Heartland Disaster Tax Relief Act** (Pub. L. No. 110-343), a part of the Emergency Economic Stabilization Act of 2008, an individual taxpayer who itemizes deductions can choose to **deduct qualifying cash contributions up to 100%** of his or her adjusted gross income, reduced by deductions for other charitable contributions. Likewise, an electing corporation may deduct qualifying cash contributions up to 100% of its taxable income, reduced by deductions for other charitable contributions. Cash contributions qualify for this special treatment if they are **made to a public charity for disaster relief efforts** related to certain areas of Arkansas, Illinois, Indiana, Iowa, Missouri, Nebraska, or Wisconsin.

Regulations

Final regulations were released clarifying the **substantive requirements for tax exemption under IRC section 501(c)(3) and the relationship between IRC sections 501(c)(3) and 4958** and how the IRS will determine whether excess benefit transactions penalized under section 4958 could jeopardize an organization's tax-exempt status (T.D. 9390).

Treas. Reg. Sec. 1.664-1, which implements the statutory change providing that **charitable remainder trusts with unrelated business taxable income** remain exempt from federal income tax but are subject to a 100% excise tax on their unrelated business taxable income, was finalized. The final regulations adopted the proposed regulations, issued on March 7, 2008, without substantive change.

Final amendments were made to Treas. Reg. Sec. 20.2036-1 and Treas. Reg. Sec.20.2039-1, which address the **inclusion in a grantor's gross estate of a charitable remainder trust, pooled income fund** or grantor retained trust.

Proposed regulations on **supporting organizations** were not issued in 2008, as initially expected. The **donor-advised fund study** will be done subsequent to the issuance of the proposed regulations.

Proposed regulations reflecting **changes to gift substantiation rules** contained in the American Jobs Creation Act of 2004 and the Pension Protection Act of 2006 were issued on August 7, 2008 (REG-140029-07). The regulations address cash, check or monetary gifts, noncash contributions and the definitions of qualified appraiser and qualified appraisal, the timing of appraisals, and deductions for used clothing and household items. Notice 2006-96, 2006-46 IRB, issued on November 13, 2006 and addressing the **definition of qualified appraiser**, remains effective until the issuance of final Treasury Regulations.

Proposed regulations providing the **income ordering rules for distributions to charity** were issued on June 18, 2008. Prop. Treas. Reg. Sec. 1.642(c)-3 and 1.643(a)-5.

The IRS issued proposed regulations that confirm the **economic effect requirement** of existing regulations on the treatment of amounts paid to the charitable beneficiary of a trust or estate under sections 642 and 643. (REG-101258-08, released on June 18, 2008). Professor Christopher Hoyt points out that language typically used to ensure a 642(c) deduction, such as “I instruct that all of my charitable gifts, bequests, and devises shall be made, to the extent possible, from property that constitutes income in respect of a decedent as that term is defined....” will no longer work. Instead, there must be an economic effect.

Temporary regulations **implementing the revised Form 990 and eliminating the advance ruling period** for publicly supported organizations were issued in September 2008 (REG-142333-07; T.D. 9423). The new regulations also **change the public support period for exempt organizations from four years to five** and clarify that **support must be reported using the organization’s overall method of accounting**. Exempt organizations whose advance rulings expired on or after June 9, 2008 do not need to file Form 8734 at the end of the advance ruling period.

The IRS issued temporary regulation 1.6033-6T implementing the **e-Postcard (Form 990-N) filing requirement for small tax-exempt organizations** (T.D.9366).

Revenue Rulings, Procedures and Notices

Rev. Rul. 2008-41 provides guidance for the **division of a charitable remainder trust** pursuant to a divorce.

The IRS has announced that it will no longer rule on whether the **early termination of a CRT** and a division of the trust assets between the noncharitable beneficiary and the charitable remainder beneficiary based on the actuarial values of their interests will cause the trust to lose its qualification as a CRT (Rev. Proc. 2008-3, §5.10 (area under study)).

The IRS released **sample documents for charitable lead unitrusts**, which complete the forms for split-interest trusts. Rev. Procs. 2008-45, 2008-46.

Notice 2008-6, 2008-3 IRB, provides transitional relief and filing procedures for certain **charitable trusts that fail the responsiveness test for Type III supporting organizations**. The procedures are intended for (1) charitable trusts that received a determination recognizing their tax-exempt status under 501(c)(3) and that met the requirements of section 509(a)(3) until August 17, 2007, and (2) non-exempt charitable trusts described in section 4947(a)(1) that are treated for certain purposes as organizations described in section 501(c)(3) and that met the requirements of 509(a)(3) until August 17, 2007.

Notice 2008-49 implements a technical correction to the Pension Protection Act regarding **public disclosure of Form 990-T**.

Notice 2008-99, issued on October 31, 2008, identifies as a "**transaction of interest**" subject to disclosure and list maintenance requirements, a **transaction involving the sale of all interests of a charitable remainder trust**.

The IRS issued Notice 2008-108, which sets forth a list of changes referred to in Rev. Proc. 2007-44 pertaining to the statutory, regulatory, and guidance changes needed for certain **requests to the Service for opinion, advisory, and determination letters** for the 12-month period beginning February 1, 2009.

Miscellaneous

The IRS mailing **address for EO determinations** has been changed. The new mailing address is Internal Revenue Service, P.O. Pox 12192, Covington, KY 41012-0192. Forms 1023, 1024, 8734 and 8718 should be mailed to this new address.

On May 12, 2008 (published in the Federal Register on May 14, 2008), comments were requested on Rev. Proc. 2005-24 and Notice 2006-15 (**spousal election for CRTs**).

The IRS has extended the due date for responding to the **university and college compliance questionnaire** to February 6, 2009.

The IRS issued **Guide Sheets** in 2008 on the following topics: IRC 509(a)(3) Supporting Organizations, Type I and II, IRC 509(a)(3) Supporting Organizations, Type III, and Donor Advised Funds.

Charitable Developments- 2009

Rev. Proc. 2009-2 outlines **procedures for issuance of determination letters and rulings** on the tax-exempt status of organizations.

Rev. Proc 2009-4 contains **revised procedures** for the issuance of ruling letters, information letters, etc. on matters related to code sections under the jurisdiction of the Commissioner, Tax Exempt and Government Entities.

Rev. Proc. 2009-5 contains **revised procedures** for furnishing technical advice to area managers and appeals offices by the Commissioner, Tax Exempt and Government Entities regarding exempt organizations matters.

Rev. Proc. 2009-8 contains **new user fees** for exempt organizations matters. Until a new Form 1023 is issued to comply with the regulations that eliminated the advance ruling process, applicants should follow certain new instructions for completing **Part IX and Part X of Form 1023**. The IRS posted these instructions in two notices on its website in January.

The **Texas Attorney General's Office** has rolled out a **new online resource** that allows charitable donors to research how nonprofit organizations are spending their donor dollars. Interested parties can log onto the website at www.texasattorneygeneral.gov and click on the "Charity Search" function.