

Anthony P. Curatola, Editor

Charitable Contributions by Donors and the Pension Protection Act

BY JANET TREWIN, CMA, CPA, AND ANTHONY P. CURATOLA

The Pension Protection Act of 2006 (PPA) made several changes to tax provisions not related to deferred compensation, including charitable contributions. In April, we looked at personal giving and the revised recordkeeping requirements, the loss of deductible safari travel, and the \$100,000 exclusion for charitable contributions from IRAs by those over 70.5. This

month, we continue the discussion of changes in the charitable contribution area.

Accuracy and Gross Valuation Misstatement Penalties. The bad news is that Act §1219 of PPA *lowers* the thresholds for accuracy and gross valuation misstatement penalties. Accuracy-related penalties are now imposed when the value claimed for any contributed property is 150% (formerly 200%) or more of the value later determined to be correct. A gross valuation misstatement is now imposed when the claimed value of any property is 200% (formerly 400%) or more of the amount determined to be correct. Additionally, the reasonable cause exception to the accuracy-related penalty doesn't apply to cases of gross valua-

tion misstatement, and there are new penalties for preparers of an appraisal to be used to support a tax position if that appraisal results in a substantial or gross valuation misstatement.

But there's some good news, too. The Secretary is now authorized to discipline appraisers *after* notice and hearing; that is, the civil penalty for aiding and abetting the understatement of tax is no longer required to be assessed before disciplinary action.

Property not used for an Exempt Purpose. Act §1215 of PPA enacted a provision for the recapture of tax benefits received from charitable contributions of appreciated tangible personal property if the deduction claimed for the property is more than \$5,000 and the property

isn't used for exempt purposes. New IRC §6720B provides that if a donee (charity) disposes of donated property in the tax year during which it was contributed, the donor has a deduction for his or her *basis* in the property rather than for its fair market value (FMV). If the charity disposes of the property in the second or third year after it was donated, the donor must include, as ordinary income in the year of the disposition, the excess (if any) of the deduction claimed for the property over his or her basis in the property at the time of the contribution.

No adjustment of the tax benefit is necessary in certain situations, however, if the donee provides certification of those situations to both the Secretary and the donor. A certification is a written statement signed under penalties of perjury by an officer of the organization either attesting that the use of the property by the donee was related to the donee's exempt purpose, including a description of how the property was used and how that furthered the donee's exempt purpose, or stating the intended use of the property when it was donated and certifying that it became impossible or infeasible

ble to implement. It should be noted that there is a \$10,000 penalty for any person who knowingly misidentifies property as being related to a charity's tax-exempt purpose.

Fractional Interests Property.

Both pre- and post-PPA law provide that a charitable contribution deduction isn't allowed for a contribution of a future interest in tangible personal property or, in general, for a contribution of a partial interest in

property, such as an income interest, a remainder interest, or a right to use property.

A future interest exists when a donor gives property to a charity with the understanding or agreement that the donor has the right to use, possess, or otherwise control the property until some future date or event. Treas. Reg. §1.170A-5(a)(2) states that IRC §170(a)(3), which generally denies a deduction for the

contribution of a future interest in tangible personal property, doesn't apply to a transfer of an undivided present interest in property. For example, a contribution of an undivided 25% interest in a painting that the donee is entitled to possess for three months of each year is treated as made when the donee receives a formally executed and acknowledged deed of gift, but the donee's period of initial possession must begin within one year after the contribution date.

Act §1218 of PPA restricts the deduction for a partial interest contribution, provides rules for valuing future partial interest contributions, and identifies circumstances under which deductions for such contributions will be recaptured.

The new rules provide that no income or gift tax charitable deduction is allowed for a contribution of a fractional interest in tangible personal property unless, immediately before the contribution, all interests in the property are owned by the donor or by the donor and the donee organization. Thus, ownership by more than one person generally won't qualify for a charitable deduction. An exception to this rule may be made by the Secretary, but only in the case where all who hold an undivided interest in the property make proportional contributions of their interest to the donee. For example, if two individuals each held an undivided interest in a painting, the Secretary may provide that the first person could take a charitable contribution deduction for less than his or her entire undivided interest as long as both individuals made proportional contributions of their undivided interests to the same donee. The result is that both own-

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ers will qualify for the deduction (See JXC 3 8-06, Staff of the Joint Committee on Taxation).

There are two circumstances where an income and gift tax charitable contribution deduction may be recaptured. The recapture requires all donors of the property to include in their income the amount of all previous charitable deductions taken (plus interest) for contributions of interests in the property concerned. More specifically, the recapture rules apply if a donor makes an initial fractional contribution and then fails to contribute all of his or her remaining interest to the same donee before the earlier of 10 years from the initial fractional contribution or the donor's death or if the donee fails to take substantial physical possession of the property during the period described above (the possession requirement) or fails to use the property for an exempt purpose during that period (the related-use requirement).

This provision applies to contributions, bequests, and gifts made after August 17, 2006 (the date of enactment). In addition, contributions made before the date of enactment won't be treated as an initial fractional contribution for purposes of the provision. Instead, the first fractional contribution by a taxpayer after the date of enactment will be considered the initial fractional contribution under the provision, regardless of whether the taxpayer had made a prior contribution of a fractional interest in the same tangible personal property.

Contributions of Conservation Easements. PPA revises the rules for a qualified conservation contribution for property located within a registered historic district. Although

a deduction for the donation of land within a registered historic district is no longer allowed, a deduction is still allowed for buildings. But in order to qualify, the entire exterior of the building (front, sides, rear, and space above the building) must be preserved. In addition, no part of the exterior of the building may be changed in a manner inconsistent with its historic character.

To be allowed the deduction for any contribution (rather than just for property worth \$5,000 or more) to a registered historic district, the donor must include supporting documentation with his or her return for the year of the contribution. In addition, if the qualified conservation contribution deduction claimed is greater than \$10,000, the donor must pay a \$500 fee to the IRS for the enforcement of qualified conservation contributions.

PPA also reduces the qualified conservation contribution deduction if a rehabilitation credit for a certified historic structure has been claimed for that building during the last five years. The amount of the reduction is the percentage determined by dividing the sum of the credits for the last five years by the building's FMV at the date of the contribution. ■

Janet Trewin, Ph.D., CMA, CPA, is an associate professor of accounting at the University of Nebraska at Kearney. She can be contacted at (308) 865-8107 or trewinj1@unk.edu.

Anthony P. Curatola is the Joseph F. Ford Professor of Accounting at Drexel University in Philadelphia, Pa. You can reach Tony at (215) 895-1453 or curatola@drexel.edu.

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