

**26 CFR Part 1**

**(T.D. 8802)**

**Income Tax; Taxable Years Beginning  
After December 31, 1953;  
Substantiation of Charitable  
Contributions**

**AGENCY:** Internal Revenue Service,  
Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final Income Tax Regulations relating to substantiation requirements for charitable contributions by itemizing and nonitemizing taxpayers. This document reflects changes to the applicable tax law made by the Economic Recovery Tax Act of 1981. These regulations provide guidance to all taxpayers claiming deductions for charitable contributions.

**DATES:** This document is effective with respect to charitable contributions made during taxable years beginning on or after January 1, 1983.

**FOR FURTHER INFORMATION CONTACT:**  
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CC:LR-T) (202-566-3297).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 121 of the Economic Recovery  
Tax Act of 1981 amended sections 63  
and 170 of the Code by providing a  
deduction from adjusted gross income

for charitable contributions made by taxpayers who do not itemize deductions. The legislative history of the new provision reflects the expectation that regulations be developed to provide appropriate substantiation requirements, in addition to the currently applicable requirements, to assure substantiation and verification of charitable deductions.

On April 25, 1983, proposed amendments to the Regulations on Income Tax (26 CFR Part 1) under sections 63 and 170 of the Internal Revenue Code of 1954 were published in the Federal Register (48 FR 17616). These amendments were proposed to conform the regulations to amendments made to the Code by section 121 of the Economic Recovery Tax Act of 1981 (95 Stat. 196). These amendments proposed new substantiation requirements for taxpayers claiming charitable deductions.

No public hearing was held because none was requested. After consideration of all comments received regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. Additionally, section 155 of the Tax Reform Act of 1984 (Pub. L. 98-368, 98 Stat. 801) provides for substantiation requirements for a deduction in excess of \$5,000 claimed for certain charitable contributions. Temporary regulations implementing section 155, together with a cross-reference notice, appear in this Federal Register.

#### Explanation of Provisions, Comments, and Changes to the Regulations

For taxable years beginning after December 31, 1982, the final regulations require a corporate or individual taxpayer making a charitable contribution of money to keep a cancelled check, a receipt, or in the absence of a cancelled check or receipt, other reliable written records showing the name of the donee, the date of the contribution, and the amount of the contribution. This information will have to be stated in the taxpayer's income tax return if required by the return form or its instructions. For purposes of these amendments, a letter or other communication from the donee acknowledging receipt of the contribution and showing the date and amount of the contribution would constitute a receipt. The reliability of the other written records will depend on the facts and circumstances of a particular case but, in all events, the burden shall be on the taxpayer to establish reliability. Factors indicating that such other written evidence is reliable include, but are not limited to, the

contemporaneous nature of the writing evidencing the contribution, the regularity of the taxpayer's recordkeeping procedures, and, in the case of a contribution of a small amount, any other written evidence from the donee charitable organization evidencing receipt of a donation that would not otherwise constitute a receipt under § 1.170A-13(a)(1)(ii).

Also, for taxable years beginning after December 31, 1982, the final regulations require a corporate or individual taxpayer making a charitable contribution of property other than money to have a receipt from the donee charitable organization and a reliable written record of specified information with respect to the donated property. A receipt must include the name of the donee, the date and location of the contribution, and a description of the property in detail reasonable under the circumstances (including the value of the property). An exception to the receipt requirement is provided in cases where the contribution is made in circumstances where it is impractical to obtain a receipt. In these cases, the taxpayer is required to maintain a reliable written record of specified information with respect to each item of donated property. The rules regarding the reliability of the written records are similar to those previously explained. The information required by these amendments must be stated in the taxpayer's income tax return if required by the return form or its instructions.

Finally, for charitable contributions of property other than money for which the taxpayer claims a deduction in excess of \$500, the taxpayer is required to maintain additional records regarding the manner of acquisition of the property and the property's cost or other basis if it was held for less than 6 months prior to the date of contribution. For property held for 6 months or more preceding the date of construction, cost or other basis information should be maintained by the taxpayer if it is available.

Two comments suggested that the regulations require that receipts be signed by a representative of the donee charitable organizations because a signed receipt would give the Internal Revenue Service an additional method of verifying authentic receipts and would limit the number of fraudulent deductions. This suggestion is not adopted in the final regulations because it is considered unnecessarily burdensome.

Other comments objected to the December 31, 1982, retroactive effective date of the notice of proposed

rulemaking. These comments pointed out that taxpayers could not have anticipated the precise requirements of the notice before it was published. Therefore, this Treasury decision provides that at the option of the taxpayer the requirements provided for in the regulations before amendment by this Treasury decision, instead of the requirements contained in this Treasury decision, shall apply to all charitable contributions made on or before December 31, 1984.

#### Drafting Information

The principal author of these final regulations was Beverly A. Baughman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, on matters of both substance and style.

#### Special Analyses

The Secretary of the Treasury has certified that this final rule will not have a significant impact on a substantial number of small entities because the number of significantly affected small entities is not substantial. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB 1545-0754.

#### List of Subjects in 26 CFR 1.61-1-1.281-4

Income Taxes, Taxable income, Deductions, Exemptions.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. New § 1.170A-13 is added immediately after 1.170A-12 to read as follows:

§ 1. 170A-13 Recordkeeping and return requirements for deductions for charitable contributions.

(a) Charitable contributions of money made in taxable years beginning after December 31, 1982—(1) In General. If a taxpayer makes a charitable

contribution of money in a taxable year beginning after December 31, 1982, the taxpayer shall maintain for each contribution one of the following:

(i) A cancelled check.

(ii) A receipt from the donee charitable organization showing the name of the donee, the date of the contribution, and the amount of the contribution. A letter or other communication from the donee charitable organization acknowledging receipt of a contribution and showing the date and amount of the contribution constitutes a receipt for purposes of this paragraph (a).

(iii) In the absence of a canceled check or receipt from the donee charitable organization, other reliable written records showing the name of the donee, the date of the contribution, and the amount of the contribution.

(2) *Special rules—(i) Reliability of records.* The reliability of the written records described in paragraph (a)(1)(iii) of this section is to be determined on the basis of all of the facts and circumstances of a particular case. In all events, however, the burden shall be on the taxpayer to establish reliability. Factors indicating that the written records are reliable include, but are not limited to:

(A) The contemporaneous nature of the writing evidencing the contribution.

(B) The regularity of the taxpayer's recordkeeping procedures. For example, a contemporaneous diary entry stating the amount and date of the donation and the name of the donee charitable organization made by a taxpayer who regularly makes such diary entries would generally be considered reliable.

(C) In the case of a contribution of a small amount, the existence of any written or other evidence from the donee charitable organization evidencing receipt of a donation that would not otherwise constitute a receipt under paragraph (a)(1)(ii) of this section (including an emblem, button, or other token traditionally associated with a charitable organization and regularly given by the organization to persons making cash donations).

(ii) *Information stated in income tax return.* The information required by paragraph (a)(1)(iii) of this section shall be stated in the taxpayer's income tax return if required by the return form or its instructions.

(3) *Taxpayer option to apply paragraph (d)(1) to pre-1983 contribution.* See paragraph (d)(1) of this section with regard to contributions of money made on or before December 31, 1984.

(b) *Charitable contributions of property other than money made in*

*beginning after December 31, 1982—(1) In general.* If a taxpayer makes charitable contribution of property other than money in a taxable year beginning after December 31, 1982, the taxpayer shall maintain for each contribution a receipt from the donee charitable organization showing the following information:

(i) The name of the donee.

(ii) The date and location of the contribution.

(iii) A description of the property in detail reasonable under the circumstances (including the value of the property).

A letter or other written communication from the donee charitable organization acknowledging receipt of the contribution, showing the date of the contribution, and containing the required description of the property contributed constitutes a receipt for purposes of this paragraph. A receipt is not required if the contribution is made in circumstances where it is impractical to obtain a receipt (e.g., by depositing property at a charity's unattended drop site). In all cases, however, the taxpayer shall maintain reliable written records with respect to each item of donated property that include the information required by paragraph (b)(2)(ii) of this section.

(2) *Special rules—(i) Reliability of records.* The rules described in paragraph (a)(2)(i) of this section also apply to this paragraph (b) for determining the reliability of the written records described in paragraph (b)(1) of this section.

(ii) *Content of records.* The written records described in paragraph (b)(1) of this section shall include the following information and such information shall be stated in the taxpayer's income tax return if required by the return form or its instructions:

(A) The name and address of the donee organization to which the contribution was made.

(B) The date and location of the contribution.

(C) A description of the property in detail reasonable under the circumstances (including the value of the property), and, in the case of securities, the name of the issuer, the type of security, and whether or not such security is regularly traded on a stock exchange or in an over-the-counter market.

(D) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by

the appraiser.

(E) In the case of property to which section 170(e) applies, the cost or other basis, adjusted as provided by section 1018, the reduction by reason of section 170(e)(1) in the amount of the charitable contribution otherwise taken into account, and the manner in which such reduction was determined. A taxpayer who elects under paragraph (d)(2) of § 1.170A-8 to apply section 170(e)(1) to contributions and carryovers of 30 percent capital gain property shall maintain a written record indicating the years for which the election was made and showing the contributions in the current year and carryovers from preceding years to which it applies. For the definition of the term "30-percent capital gain property," see paragraph (d)(5) of § 1.170A-8.

(F) If less than the entire interest in the property is contributed during the taxable year, the total amount claimed as a deduction for the taxable year due to the contribution of the property, and the amount claimed as a deduction in any prior year or years for contributions of other interests in such property, the name and address of each organization to which any such contribution was made, the place where any such property which is tangible property is located or kept, and the name of any person, other than the organization to which the property giving rise to the deduction was contributed, having actual possession of the property.

(G) The terms of any agreement or understanding entered into by or on behalf of the taxpayer which relates to the use, sale, or other disposition of the property contributed, including for example, the terms of any agreement or understanding which—

(1) Restricts temporarily or permanently the donee's right to use or dispose of the donated property.

(2) Reserves to, or confers upon, anyone (other than the donee organization or an organization participating with the donee organization in cooperative fundraising) any right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or

(3) Earmarks donated property for a particular use.

(3) *Deductions in excess of \$500 claimed for a charitable contribution of property other than money—(i) In general.* In addition to the information

required under paragraph (b)(2)(ii) of this section, if a taxpayer makes a charitable contribution of property other than money in a taxable year beginning after December 31, 1982, and claims a deduction in excess of \$500 in respect of the contribution of such item, the taxpayer shall maintain written records that include the following information with respect to such item of donated property, and shall state such information in his or her income tax return if required by the return form or its instructions:

(A) The manner of acquisition, as for example by purchase, gift bequest, inheritance, or exchange, and the approximate date of acquisition of the property by the taxpayer or, if the property was created, produced, or manufactured by or for the taxpayer, the approximate date the property was substantially completed.

(B) The cost or other basis, adjusted as provided by section 1016, of property, other than publicly traded securities held by the taxpayer for a period of less than 6 months immediately preceding the date on which the contribution was made and, when the information is available, of property, other than securities, held for a period of 6 months or more preceding the date on which the contribution was made.

(ii) *Information on acquisition date or cost basis not available.* If the return form or its instructions require the taxpayer to provide information on either the acquisition date of the property or the cost basis as described in paragraph (b)(3)(i) (A) and (B), respectively, of this section, and the taxpayer has reasonable cause for not being able to provide such information, the taxpayer shall attach an explanatory statement to the return. If a taxpayer has reasonable cause for not being able to provide such information, the taxpayer shall not be disallowed a charitable contribution deduction under section 170 for failure to comply with paragraph (b)(3)(i) (A) and (B) of this section.

(4) *Taxpayer option to apply paragraph (d) (1) and (2) to pre-1983 contributions.* See paragraph (d) (1) and (2) of this section with regard to contributions of property made on or before December 31, 1984.

(c) [Reserved]

Par. 2 Paragraph (a) § 1.170A-1 is amended by removing its heading, redesignating paragraph (a)(1) as paragraph (a), adding two cross-references, and removing "section 170(h)" and adding "section 170(g)" in lieu thereof. These redesignated, added, and revised provisions read as follows:

§ 1.170A-1 Charitable, etc., contributions and gross allowance of deduction.

(a) *Allowance of deduction.* Any charitable contribution, as defined in section 170(c), actually paid during the taxable year is allowable as a deduction in computing taxable income irrespective of the method of accounting employed or of the date on which the contribution is pledged. However, charitable contributions by corporations may under certain circumstances be deductible even though not paid during the taxable year as provided in section 170(a)(2) and § 1.170A-11. For rules relating to record keeping and return requirements in support of deductions for charitable contributions (whether by an itemizing or nonitemizing taxpayer) see § 1.170A-13. The deduction is subject to the limitations of section 170(b) and § 1.170A-8 or § 1.170A-11. Subject to the provisions of section 170(d) and §§ 1.170A-10 and 1.170A-11, certain excess charitable contributions made by individuals and corporations shall be treated as paid in certain succeeding taxable years. For provisions relating to direct charitable deductions under section 63 by nonitemizers, see section 63 (b)(1)(C) and (i) and section 170(i). For rules relating to the determination of, and the deduction for, amounts paid to maintain certain students as members of the taxpayer's household and treated under section 170(g) as paid for the use of an organization described in section 170(c) (2), (3), or (4), see § 1.170A-2. For the reduction of any charitable contributions for interest on certain indebtedness, see section 170(f)(5) and § 1.170A-3. For a special rule relating to the computation of the amount of the deduction with respect to a charitable contribution of certain ordinary income or capital gain property, see section 170(e) and § 1.170A-4 and § 1.170A-4A. For rules for postponing the time for deduction of a charitable contribution of a future interest in tangible personal property, see section 170(a)(3) and § 1.170A-5. For rules with respect to transfers in trust and of partial interests in property, see section 170(e), section 170(f)(2) and (3), § 1.170A-4, § 1.170A-6, and § 1.170A-7. For definition of the term "section 170(b)(1)(A) organization," see § 1.170A-8. For valuation of a remainder interest in real property, see section 170(f)(4) and the regulations thereunder. The deduction for charitable contributions is subject to verification by the district director.

Par. 3 Paragraph (a)(2)(i) of § 1.170A-1 is redesignated as paragraph (d)(1) of new § 1.170A-13, paragraph (a)(2)(ii)(a),

(a), (c), (d), (e), (f), (h), (j), (k), and (l) and (2) of § 1.170A-1 is redesignated as paragraph (d)(2) (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (A), (B), and (C), and (ix), respectively, of new § 1.170A-13, the heading of redesignated paragraph (d) is revised, and two new sentences are added at the beginning of redesignated paragraph (d) (1) and (2) of new § 1.170A-13, to read as follows:

§ 1.170A-13 Record keeping and return requirements for deductions for charitable contributions.

(d) *Charitable contributions: information required in support of deductions for taxable years beginning before January 1, 1983—(1) In general.* This paragraph (d)(1) shall apply to deductions for charitable contributions made in taxable years beginning before January 1, 1983. At the option of the taxpayer the requirements of this paragraph (d)(1) shall also apply to all charitable contributions made on or before December 31, 1984 (in lieu of the requirements of paragraphs (a) and (b) of this section).

(2) *Contribution by individual of property other than money.* This paragraph (d)(2) shall apply to deductions for charitable contributions made in taxable years beginning before January 1, 1983. At the option of the taxpayer, the requirements of this paragraph (d)(2) shall also apply to contributions of property made on or before December 31, 1984 (in lieu of the requirements of paragraph (b) of this section).

§ 1.170A-1 (Amended)

Par. 4 Paragraph (a)(2)(iii) of § 1.170A-1 is redesignated as paragraph (d)(3) of new § 1.170A-13, and "\$200" is removed therefrom and "\$500 (\$200 in the case of a charitable contribution made in a taxable year beginning before January 1, 1983)" is added in its place.

Par. 5 The following new section is added immediately after § 1.63-1:

§ 1.63-2 Cross reference.

For rules with respect to charitable contribution deductions for nonitemizing taxpayers, see section 63(b)(1)(C) and (i) and section 170(i) of the Internal Revenue Code of 1954.

This Treasury decision is issued under the authority contained in sections 170(a)(1) and 7805 of the Internal Revenue Code of 1954 (88A Stat. 58, 26 U.S.C. 170(a)(1); 88A Stat. 97, 26 U.S.C. 7805, respectively). These regulations have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3507). Approved by the Office of

Management and Budget under control  
number 13-45-0734.

Russell L. Eggen, Jr.

Commissioner of Internal Revenue.

Approved: December 28, 1984.

Charles E. McLara, Jr.

Acting Assistant Secretary of the Treasury.

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