
Section 170.—Charitable, etc., Contributions and Gifts

Is a trust allowed a charitable deduction under section 642(c) of the Internal Revenue Code or a distribution deduction under section 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h)? See Rev. Rul. 2003-123, page 1200.

Section 641.—Imposition of Tax

26 CFR 1.641(a)-2: *Gross income of estates and trusts.*

Is a trust allowed a charitable deduction under section 642(c) of the Internal Revenue Code or a distribution deduction under section 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h)? See Rev. Rul. 2003-123, page 1200.

Section 642.—Special Rules for Credits and Deductions

26 CFR 1.642(c)-1: *Unlimited deduction for amounts paid for a charitable purpose.* (Also §§ 170, 661, 662, 663; 1.641(a)-2, 1.663(a)-2.)

Qualified conservation contribution.

This ruling clarifies the Service's position that a trust is not allowed either a charitable deduction under section 642(c) or a distribution deduction under section 661(a)(2)

of the Code with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h). Rev. Rul. 68-667 amplified.

Rev. Rul. 2003-123

ISSUE

Is a trust allowed a charitable deduction under § 642(c) of the Internal Revenue Code or a distribution deduction under § 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under § 170(h)?

FACTS

Trust is a complex trust subject to the provisions of §§ 661-663. Since its inception, Trust has owned two adjacent parcels of real property located in State A. One parcel is 20 acres of undeveloped land, and the other parcel is 50 acres with improvements. The governing instrument of Trust authorizes the trustee to make contributions to charity, including contributions of Trust's gross income. The trustee conveys a perpetual conservation easement, valued at \$10x, in the 20-acre parcel to State Agency, an organization described in § 170(c)(1). The contribution meets the requirements of a qualified conservation contribution within the meaning of § 170(h). For the year of the contribution, Trust's gross income is \$20x, and no distributions are made to Trust's beneficiaries.

LAW AND ANALYSIS

Section 642(c)(1) provides that a trust (other than a trust subject to §§ 651 and 652) is allowed a deduction in computing its taxable income for any amount of gross income, without limitation, that pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in § 170(c) (determined without regard to § 170(c)(2)(A)). This deduction is in lieu of the charitable deduction allowed by § 170(a).

Section 1.641(a)-2 of the Income Tax Regulations provides that the gross income of an estate or trust is determined in the same manner as that of an individual.

Section 661(a) provides that a trust (other than a trust subject to §§ 651 and 652) is allowed as a deduction in computing its taxable income the sum of (1) any amount of income for the taxable year required to be distributed currently (including any amount required to be distributed that may be paid out of income or corpus to the extent the amount is paid out of income for the taxable year) and (2) any amount properly paid or credited or required to be distributed for a taxable year. The deduction, however, cannot exceed the distributable net income of the trust.

Section 662(a) provides that the beneficiary of a trust must include in the beneficiary's gross income the amount described in § 661(a) that is paid, credited, or required to be distributed by the trust to that beneficiary.

Section 663(a)(2) provides that any amount paid or permanently set aside or otherwise qualifying for the deduction provided in § 642(c) (computed without regard to §§ 508(d), 681, and 4948(c)(4)) shall not be included as an amount falling within §§ 661(a) and 662(a).

Section 1.663(a)-2 provides that any amount that is paid, permanently set aside, or to be used for the charitable purposes specified in § 642(c) and that is allowable as a deduction under that section is not allowed as a deduction to an estate or trust under § 661 or treated as an amount distributed for purposes of determining the amounts includible in gross income of beneficiaries under § 662. Amounts paid, permanently set aside, or to be used for charitable purposes are deductible by estates or trusts only as provided in § 642(c). See also Rev. Rul. 68-667, 1968-2 C.B. 289, holding that an amount paid to charity from a trust's corpus does not qualify either for the charitable deduction under § 642(c) or for the distribution deduction under § 661(a)(2).

Under § 642(c), a trust is generally allowed an unlimited charitable deduction for amounts that are paid from gross income for charitable purposes pursuant to the terms of the governing instrument. Because § 642(c) specifically requires that a charitable deduction is available only if the source of the contribution is

gross income, tracing of the contribution is required in determining its source. *Van Buren v. Commissioner*, 89 T.C. 1101, 1109 (1987); *Riggs National Bank v. United States*, 352 F.2d 812 (Ct. Cl. 1965); *Mott v. United States*, 462 F.2d 512 (Ct. Cl. 1972), *cert. denied*, 409 U.S. 1108 (1973); *see also Crestar Bank v. Internal Revenue Service*, 47 F. Supp. 2d 670 (E.D. Va. 1999).

In the present situation, Trust's contribution of the conservation easement in the 20-acre parcel is made pursuant to the terms of Trust's governing instrument. The contribution meets the requirements of a qualified conservation contribution within the meaning of § 170(h) and thus is for a charitable purpose. The charitable contribution, however, is made with respect to Trust principal, not from the gross income of Trust. Because the contribution of the conservation easement is not paid from Trust's gross income, Trust is not allowed a charitable deduction under § 642(c) for the contribution.

Furthermore, no deduction is allowed under § 661(a)(2) because amounts paid, permanently set aside, or to be used for charitable purposes are deductible by trusts only as provided in § 642(c). Section 1.663(a)-2. *See also U.S. Trust Company v. Internal Revenue Service*, 803 F.2d 1363 (5th Cir. 1986); *Mott, supra*; Rev. Rul. 68-667.

HOLDING

A trust is not allowed a charitable deduction under § 642(c) and is not allowed a distribution deduction under § 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under § 170(h).

EFFECT ON OTHER REVENUE RULING

Rev. Rul. 68-667 is amplified.

DRAFTING INFORMATION

The principal author of this revenue ruling is DeAnn K. Malone of the Office of the Associate Chief Counsel (Passthroughs

and Special Industries). For further information regarding this revenue ruling, contact DeAnn K. Malone at (202) 622-7830 (not a toll-free call).

Section 661.—Deduction for Estates and Trusts Accumulating Income or Distributing Corpus

Is a trust allowed a distribution deduction under section 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h)? See Rev. Rul. 2003-123, page 1200.

Section 662.—Inclusion of Amounts in Gross Income of Beneficiaries of Estates and Trusts Accumulating Income or Distributing Corpus

Is a trust allowed a distribution deduction under section 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h)? See Rev. Rul. 2003-123, page 1200.

Section 663.—Special Rules Applicable to Sections 661 and 662

26 CFR 1.663(a)-2: *Charitable, etc., distributions.*

Is a trust allowed a distribution deduction under section 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h)? See Rev. Rul. 2003-123, page 1200.