

Charitable Split-Dollar Insurance Reporting Requirements

Notice 2000-24

I. PURPOSE

This notice provides guidance to help charitable organizations comply with the information reporting requirements imposed by the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. No. 106-170 (Dec. 17, 1999) (“Act”). The reporting requirements apply to charitable organizations that pay premiums after February 8, 1999, in connection with certain life insurance, annuity, and endowment contracts.

II. BACKGROUND

a. Overview.

Section 537 of the Act added § 170(f)(10) to the Internal Revenue Code. Section 170(f)(10)(A) provides that, in two circumstances, no charitable contribution deduction is allowed under § 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for any transfer to, or for the use of, an organization described in § 170(c) or a charitable remainder trust described in § 664(d) (such an organization or trust is referred to herein as a “charitable organization”). No charitable contribution deduction is allowed if, in connection with the transfer, (1) the charitable organization directly or indirectly pays, or has previously paid, any premium on a personal benefit contract with respect to the transferor, or (2) there is an understanding or expectation that any person will directly or indirectly pay any premium on a personal benefit contract with respect to the transferor.

b. Personal Benefit Contract.

In general, § 170(f)(10)(B) defines a “personal benefit contract” as any life insurance, annuity, or endowment contract that benefits, directly or indirectly, the transferor, a member of the transferor’s family, or any other person designated by the transferor (other than an organization described in § 170(c)). Under § 170(f)(10)(D), a person receiving payments under a charitable gift annuity (as defined in § 501(m)) funded by an annuity contract purchased by a charitable organization is not treated as an indirect beneficiary of a personal benefit contract if the timing and amount of the payments under the annuity contract are substantially the same as the charitable organization’s obligations under the charitable gift annuity. For this exception to apply, the charitable organization must possess all the incidents of ownership and be entitled to all the payments under the annuity contract.

III. REPORTING AND EXCISE TAX REQUIREMENTS

Section 170(f)(10)(F) requires any charitable organization that pays premiums on a personal benefit contract in connection with a transfer for which a deduction is not allowed under § 170(f)(10)(A) to pay an excise tax and to report certain information related to the premium payments.

a. Form 4720 – Excise Tax Return

Section 170(f)(10)(F)(i) imposes on a charitable organization an excise tax equal to the premiums paid by the organization after December 17, 1999, on any personal benefit contract, if the payment of premiums is in connection with a transfer for which a deduction is not allowed under § 170(f)(10)(A). For purposes of this excise tax, § 170(f)(10)(F)(ii) provides that premium payments made by any other person pursuant to an understanding or expectation described in § 170(f)(10)(A) are treated as made by the charitable organization.

A charitable organization liable for excise taxes under § 170(f)(10)(F)(i), must file a return on Form 4720, Return of Certain Excise Tax on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code, to report and pay the taxes due. The charitable organization must include the amount of the § 170(f)(10)(F) tax on line 8 of Part I and should write in the amount of the § 170(f)(10)(F) tax, preceded by “Sec 170(f)(10)(F)” on the dotted line to the left of the entry space for line 8 of the 1999 Form 4720. The Service will revise Form 4720 for taxable years beginning after December 31, 1999.

Some charitable organizations may not yet be aware of this new excise tax requirement. Therefore, this Notice extends the due dates for the 1999 Form 4720 only with respect to the § 170(f)(10)(F) tax as follows. For a taxable year beginning prior to January 1, 2000, a charitable organization liable for the § 170(f)(10)(F) tax must report and pay that tax on a Form 4720 filed by the later of July 24, 2000 or the regular due date specified in § 53.6071-1 of the Procedure and Administration Regulations. For a charitable organization, other than a charitable remainder trust described in § 664(d), the regular due date for filing Form 4720 occurs on the fifteenth day of the fifth month following the close of the organization’s taxable year. For a charitable remainder trust, the regular due date for filing Form 4720 occurs on the fifteenth day of the fourth month following the close of the trust’s tax year. Charitable organizations that are required to report items other than the § 170(f)(10)(F) tax must report those items on a 1999 Form 4720 filed by the regular due date. A charitable organization may request an extension of time to file Form 4720 by filing Form 2758, Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns, on or before the due date of the return.

If a 1999 Form 4720 reporting the § 170(f)(10)(F) tax is filed and the tax is paid by the later of July 24, 2000 or the regular due date specified in § 53.6071-1, the Service will not assess penalties under § 6651 for failure to file a tax return or to pay the tax required under § 170(f)(10)(F). The law does not, however, permit the Service to waive the interest due under § 6601. Section 6601 requires that taxpayers pay interest from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date the taxes are paid.

b. Form 8870 – Information Return Required By § 170(f)(10)(F)(iii)

Section 170(f)(10)(F)(iii) requires charitable organizations to report annually (1) the amount of premiums paid during the year which are subject to the tax under § 170(f)(10)(F) (to be determined in the case of premiums paid after February 8, 1999 and before December 18, 1999 as if the excise tax applied to premiums paid during that period); (2) the name and taxpayer identification number (“TIN”) of each beneficiary under each contract to which the premiums relate; and (3) any other information the Secretary may require. Section 170(f)(10)(F)(iii) makes returns required by § 170(f)(10)(F)(iii) subject to the penalties applicable to returns filed under § 6033.

The Internal Revenue Service expects to issue a new form, Form 8870, Information Return for Transfers Associated with Personal Benefit Contracts (Under section 170(f)(10)), for reporting the information required by § 170(f)(10)(F)(iii). For a taxable year beginning prior to January 1, 2000, a charitable organization that paid any such premiums during the taxable year must file Form 8870 by the later of 90 days after the date of the Service’s announcement in the Internal Revenue Bulletin of the availability of Form 8870, or the date the charitable organization is required to file its annual information return under § 1.6033-2(e) or § 53.6071-1(c), as applicable. The Service expects to publish the announcement by May 15, 2000. Section 1.6033-2(e) requires a charitable organization, other than a charitable remainder trust described in § 664(d), to file its annual information return by the fifteenth day of the fifth month following the close of the charitable organization’s taxable year. Section 53.6071-1(c) requires a charitable remainder trust to file its annual information return by the fifteenth day of the fourth month following the close of the trust’s taxable year. A charitable organization, including a charitable remainder trust, may obtain an extension of time to file Form 8870 by filing Form 2758 on or before the due date of the return, stating on line 4 of Form 2758 that it is requesting an extension to file Form 8870 pursuant to this notice. For any taxable year beginning after December 31, 1999, Form 8870 will be due on the date the charitable organization is required to file its annual information return.

c. Forms 990, 990-PF, and 5227 -- Information Returns By Charitable Organizations

Section 6033 requires most charitable organizations to file annual information returns with the Service. Generally, an organization described in § 170(c) files either Form 990, Return of Organization Exempt From Income Tax, or Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation. The regulations under § 6011 require a split-interest trust described in § 4947(a)(2), including a charitable remainder trust described in § 664(d), to file Form 5227, Split-Interest Trust Information Return. Form 5227 is used by a split-interest trust to report its financial activities and whether it is subject to excise taxes under Chapter 42 of the Code. The Service will revise Forms 990, 990-PF, and 5227 for taxable years beginning after December 31, 1999, to add questions relating to charitable split-dollar insurance arrangements described in § 170(f)(10)(F).

DRAFTING INFORMATION

The principal author of this notice is Michael B. Blumenfeld of the Office of Associate Chief Counsel (Employee Benefits & Exempt Organizations). For further information regarding this notice contact Mr. Blumenfeld at (202) 622-6070 (not a toll-free call).