

“Congress Clamps Down on Charitable Deductions,” Erik Dryburgh, Adler & Colvin, as published in *Charitable Gift Planning News*, Vol. 22/No. 10 (October 2004)

CONGRESS CLAMPS DOWN ON CHARITABLE DEDUCTIONS

The President signed the Jumpstart Our Business Strength (JOBS) Act (HR 4520) on October 22, 2004. The final bill covers a broad range of tax matters, including several that will impact charitable giving. As you will note, these provisions are designed to stem gift transactions in which Congress believes taxpayers are claiming inflated deductions.

Gifts of Intellectual Property

The bill provides that if a taxpayer contributes a patent or other intellectual property (other than certain copyrights or inventory), the charitable deduction will initially be limited to the lesser of the taxpayer's basis or fair market value (similar to gifts of short-term capital gain property or tangible personal property not put to a related use by the charity). Thereafter, the taxpayer will be entitled to deduct certain additional amounts based on a percentage of the income received or accrued by the charity with respect to the donated property. For this purpose, “income” is limited to income allocable to the property itself (such as royalties), not income from activities in which the intellectual property is used.

The income percentage allowed as an additional contribution is based on a sliding-scale percentage, starting at 100% for the first two years and dropping 10% a year thereafter. This additional contribution is allowed only to the extent that the aggregate of these amounts exceeds the initial deduction claimed at the time of gift. No additional deduction is allowed after the expiration of the legal life of the intellectual property, or the tenth anniversary of the contribution. Finally, no additional deductions are allowed if the contribution is to a private grant making foundation.

The donor must inform the charity at the time of contribution that he/she intends to treat the contribution as subject to the additional contribution rules. In return, the charity is required to report any income allocable to the property to the donor (so the donor can calculate the additional deduction) and to the IRS.

Vehicle Donations

The bill is likely to reduce the charitable contribution deduction available for gifts of automobiles and other vehicles. Under current law, a donor who gives a used auto to charity generally deducts the current fair market value of the auto. Under the bill, if the charity sells the vehicle without either materially improving it or putting it to a significant use, the donor's

deduction will be limited to the charity's gross sales proceeds. Further, for contributions of vehicles with a claimed value in excess of \$500, the charity must provide the donor with a contemporaneous written acknowledgement which provides the donor's name and tax identification number, and the vehicle identification number. If the charity sells the vehicle, the acknowledgment must certify that the vehicle was sold in an arm's length transaction, report the sales price, and state that the deduction may not exceed the sales price. Significant penalties are imposed for knowingly issuing a false receipt. If the charity does not sell the vehicle, the acknowledgment must contain a certification by the charity that it will either improve the vehicle before sale or put it to a significant use, and that the vehicle will not be sold until such improvement or use is complete.

While the deduction limitation does not apply if the charity uses the vehicle in the direct furtherance of its charitable purpose, the use must be significant. A food bank which drives a donated auto 10,000 miles while delivering meals every day will satisfy the "significant" test; however, a volunteer which merely uses the vehicle over a brief period of time to drive to or from the charity's premises will be not.

Likewise, while the deduction limitation does not apply if the charity intends to improve the vehicle before sale, the improvement must be material. A material improvement would include major repairs to the vehicle which substantially increase its value, but not routine cleaning or maintenance.

Finally, the Secretary is directed to issue regulations that exempts vehicles which are sold in the direct furtherance of the charity's exempt purpose (such as a charity which sells autos to needy people at a discount).

Increased Reporting

Under present law, C Corporations are not required to obtain a qualified appraisal to support a charitable contribution deduction. The bill will change that, and make C Corporations subject to the same appraisal rules as other donors. Further, if a donor contributes property with a value in excess of \$500,000, the donor must attach the qualified appraisal (not just the appraisal summary Form 8283) to the donor's tax return.