

Private Letter Ruling 9247018, 8/24/1992, IRC Sec(s). 170

Full Text:

Date: August 24, 1992

CC:IT&A:03/TR-31-311-92

Dear ***

This is in response to your request for a ruling dated February 21, 1992, on behalf of the taxpayer, that stock that is prohibited from being sold by Securities and Exchange Commission Rule 144 is "qualified appreciated stock" as defined in section 170(e)(5)(B) of the Internal Revenue Code.

The taxpayer acquired 5.5 percent of the outstanding stock of X corporation and plans to contribute this stock to Foundation, a section 501(c)(3) and 509(a) organization, on date 1. Securities and Exchange Commission Rule 144 prohibits the taxpayer from selling to or exchanging with a third party the X stock prior to date 2. The X stock is listed on the New York Stock Exchange.

The taxpayer represents that the fair market value of the stock exceeds the taxpayer's basis in the stock and that the stock will be capital gain property, as defined in section 170(b)(1)(C)(iv) of the Code, when the taxpayer contributes the stock to the Foundation. The taxpayer also represents that the Foundation is not a private foundation described in section 170(b)(1)(E).

The taxpayer requests that we rule that the stock it proposes to contribute is "qualified appreciated stock" as defined in section 170(e)(5)(B) of the Code.

Section 170(e)(5)(A) of the Code excepts "qualified appreciated stock" from the rule of section 170(e)(1)(B)(ii) that when property is contributed to a private foundation as defined in section 509(a) (other than a private foundation described in section 170(b)(1)(E)) the amount of the charitable contribution is reduced by the amount of long-term capital gain that would have resulted if the contributed property had been sold.

Section 170(e)(5)(B) of the Code provides that the term "qualified appreciated stock," except as provided in section 170(e)(5)(C), means any stock of a corporation (i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and (ii) which is capital gain property (as defined in section 170(b)(1)(C)(iv)).

Section 170(b)(1)(C)(iv) of the Code defines the term "capital gain property" to mean, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain.

Section 170(e)(5)(C) of the Code provides that, in the case of any donor, the term "qualified appreciated stock" does not include any stock of a corporation contributed by the donor in a contribution to which section 170(e)(1)(B)(ii) applies (determined without regard to section 170(e)(5)) to the extent that the amount of the stock so contributed

(when increased by the aggregate amount of all prior contributions by the donor of that stock) exceeds 10 percent (in value) of all of the outstanding stock of the corporation.

Under section 170(e)(5)(D) of the Code, section 170(e)(5) will not apply to contributions made after December 31, 1994.

The exception for "qualified appreciated stock" was enacted because Congress believed "that deductibility at full fair market value for gifts of appreciated stock to private nonoperating foundations should be permitted in certain situations in which the potential for abuse, including overvaluations, is minimized." H. Rep. No. 432, Part 2, 98th Cong., 2d Sess. 1464 (1984); Joint Committee on Taxation Staff, General Explanation of Revenue Provisions of the Deficit Reduction Act of 1984, 98th Cong. 667 (1984).

Stock for which market quotations are readily available on an established securities market are excepted from the general rule of section 170(e)(1)(B)(ii) because there is less danger that the stock will be overvalued by the taxpayer since it can use the value of the stock listed on the exchange. In this case, however, although the stock is listed on the New York Stock Exchange, the value of the stock the taxpayer is contributing is less than the value listed on the exchange because of the resale restrictions. When the value of the stock cannot be determined from established securities market quotations, the section 170(e)(5) safeguard against overvaluation is not present. Due to the SEC Rule 144 restrictions, the X stock is not stock for which market quotations are readily available on an established securities market. Therefore, the X stock is not "qualified appreciated stock" within the definition of section 170(e)(5) so that the amount of the contribution will have to be reduced by any long-term capital gain that would result if the stock were sold.

The taxpayer contends that since section 170(e)(5)(C) allows taxpayers to contribute up to 10 percent of the stock of a corporation and a block of less than 10 percent of stock may trade at a discount, stock that needs to be appraised can be "qualified appreciated stock." Thus, the taxpayer believes that stock subject to SEC Rule 144, which needs to be appraised to be valued, can qualify as "qualified appreciated stock."

The 10 percent is determined on an aggregate basis of all prior contributions of that stock by the taxpayer. Therefore, the 10 percent requirement was not designed to prevent overvaluation by limiting the amount of stock that could be contributed at one time. Even if less than 10 percent of the stock is contributed, in order to be qualified appreciated stock, the stock must satisfy the requirement of section 170(e)(5)(B) of the Code that a market quotation be readily available for the stock on an established securities market. Since the X stock does not satisfy this requirement of section 170(e)(5)(B), it is not qualified appreciated stock for purposes of section 170.

No opinion is expressed concerning the federal income tax consequences of these donations under any other provisions of the Internal Revenue Code.

A copy of this ruling should be attached to the taxpayer's federal income tax returns for the tax years affected.

This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel (Income
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By: Karin G. Gross

Senior Technical Reviewer,

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Enclosure:

Section 6110 copy