

(4) *Definitions.* For purposes of this paragraph:

(i) The term *substantial contributor* is as defined in section 507(d)(2) and the regulations thereunder.

(ii) The term *public charity* means an organization described in section 170(b)(1)(A) (i) through (vi). If an organization is described in section 170(b)(1)(A) (i) through (vi), and is also described in section 170(b)(1)(A)(viii), it shall be treated as a public charity for purposes of this paragraph.

(iii) The term *income attributable to* means the income earned by the fund which is properly allocable to the contributed amount by any reasonable and consistently applied method. See, for example, §1.642(c)-5(c).

(iv) The term *corpus attributable to* means the portion of the corpus of the fund attributable to the contributed amount. Such portion may be determined by any reasonable and consistently applied method.

(v) The term *donor* means any individual who makes a contribution (whether of cash or property) to the private foundation, whether or not such individual is a substantial contributor.

(j) *Section 509(a) (2) or (3) organization.* An organization is described in section 170(b)(1)(A)(viii) if it is described in section 509(a) (2) or (3) and the regulations thereunder.

(k) *Effective/applicability date—(1) In general.* These regulations shall apply to taxable years beginning after December 31, 1969.

(2) *Applicability date.* The regulations in paragraph (f) of this section shall apply to taxable years beginning on or after January 1, 2008. For tax years beginning after December 31, 1969, and beginning before January 1, 2008, see §1.170A-9(e) (as contained in 26 CFR part 1 revised April 1, 2008).

[T.D. 7242, 38 FR 12, Jan. 3, 1973; 38 FR 3598, Feb. 8, 1973, as amended by T.D. 7406, 41 FR 7096, Feb. 17, 1976; T.D. 7440, 41 FR 50650, Nov. 17, 1976; T.D. 7456, 42 FR 4436, Jan. 25, 1977; T.D. 7679, 45 FR 13452, Feb. 29, 1980; T.D. 8100, 51 FR 31614, Sept. 4, 1986; T.D. 8991, 67 FR 20437, Apr. 25, 2002; T.D. 9423, 73 FR 52533, Sept. 9, 2008; T.D. 9549, 76 FR 55750, Sept. 8, 2011]

§ 1.170A-10 Charitable contributions carryovers of individuals.

(a) *In general.* (1) Section 170(d)(1), relating to carryover of charitable contributions in excess of 50 percent of contribution base, and section 170(b)(1)(D)(ii), relating to carryover of charitable contributions in excess of 30 percent of contribution base, provide for excess charitable contributions carryovers by individuals of charitable contributions to section 170(b)(1)(A) organizations described in §1.170A-9. These carryovers shall be determined as provided in paragraphs (b) and (c) of this section. No excess charitable contributions carryover shall be allowed with respect to contributions “for the use of,” rather than “to,” section 170(b)(1)(A) organizations or with respect to contributions “to” or “for the use of” organizations which are not section 170(b)(1)(A) organizations. See §1.170A-8(a)(2) for definitions of “to” or “for the use of” a charitable organization.

(2) The carryover provisions apply with respect to contributions made during a taxable year in excess of the applicable percentage limitation even though the taxpayer elects under section 144 to take the standard deduction in that year instead of itemizing the deduction allowable in computing taxable income for that year.

(3) For provisions requiring a reduction of the excess charitable contribution computed under paragraph (b)(1) or (c)(1) of this section when there is a net operating loss carryover to the taxable year, see paragraph (d)(1) of this section.

(4) The provisions of section 170 (b)(1)(D)(ii) and (d)(1) and this section do not apply to contributions by an estate; nor do they apply to a trust unless the trust is a private foundation which, pursuant to §1.642(c)-4, is allowed a deduction under section 170 subject to the provisions applicable to individuals.

(b) *50-percent charitable contributions carryover of individuals—(1) Computation of excess of charitable contributions made in a contribution year.* Under section 170(d)(1), subject to certain conditions and limitations, the excess of:

(i) The amount of the charitable contributions made by an individual in a

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taxable year (hereinafter in this paragraph referred to as the “contribution year”) to section 170(b)(1)(A) organizations described in § 1.170A-9, over

(ii) 50 percent of his contribution base, as defined in section 170(b)(1)(F), for such contribution year, shall be treated as a charitable contribution paid by him to a section 170(b)(1)(A) organization in each of the 5 taxable years immediately succeeding the contribution year in order of time. However, such excess to the extent it consists of contributions of 30-percent capital gain property, as defined in § 1.170A-8(d)(3), shall be subject to the rules of section 170(b)(1)(D)(ii) and paragraph (c) of this section in the years to which it is carried over. A charitable contribution made in a taxable year beginning before January 1, 1970, to a section 170(b)(1)(A) organization and carried over to a taxable year beginning after December 31, 1969, under section 170(b)(5) (before its amendment by the Tax Reform Act of 1969) shall be treated in such taxable year beginning after December 31, 1969, as a charitable contribution of cash subject to the limitations of this paragraph, whether or not such carryover consists of contributions of 30-percent capital gain property or of ordinary income property described in § 1.170A-4(b)(1). For purposes of applying this paragraph and paragraph (c) of this section, such a carryover from a taxable year beginning before January 1, 1970, which is so treated as paid to a section 170(b)(1)(A) organization in a taxable year beginning after December 31, 1969, shall be treated as paid to such an organization under section 170(d)(1) and this section. The provisions of this subparagraph may be illustrated by the following examples:

Example 1. Assume that H and W (husband and wife) have a contribution base for 1970 of \$50,000 and for 1971 of \$40,000 and file a joint return for each year. Assume further that in 1970 they make a charitable contribution in cash of \$26,500 to a church and \$1,000 to X (not a section 170(b)(1)(A) organization) and in 1971 they make a charitable contribution in cash of \$19,000 to a church and \$600 to X. They may claim a charitable contributions deduction of \$25,000 in 1970, and the excess of \$26,500 (contribution to the church) over \$25,000 (50 percent of contribution base), or \$1,500, constitutes a charitable contributions

carryover which shall be treated as a charitable contribution paid by them to a section 170(b)(1)(A) organization in each of the 5 succeeding taxable years in order of time. No carryover is allowed with respect to the \$1,000 contribution made to X in 1970. Since 50 percent of their contribution base for 1971 (\$20,000) exceeds the charitable contributions of \$19,000 made by them in 1971 to section 170(b)(1)(A) organizations (computed without regard to section 170 (b)(1)(D)(ii) and (d)(1) and this section), the portion of the 1970 carryover equal to such excess of \$1,000 (\$20,000 minus \$19,000) is treated, pursuant to the provisions of subparagraph (2) of this paragraph, as paid to a section 170(b)(1)(A) organization in 1971; the remaining \$500 constitutes an unused charitable contributions carryover. No deduction for 1971, and no carryover, are allowed with respect to the \$600 contribution made to X in 1971.

Example 2. Assume the same facts as in *Example 1* except that H and W have a contribution base for 1971 of \$42,000. Since 50 percent of their contribution base for 1971 (\$21,000) exceeds by \$2,000 the charitable contribution of \$19,000 made by them in 1971 to the section 170(b)(1)(A) organization (computed without regard to section 170 (b)(1)(D)(ii) and (d)(1) and this section), the full amount of the 1970 carryover of \$1,500 is treated, pursuant to the provisions of subparagraph (2) of this paragraph, as paid to a section 170(b)(1)(A) organization in 1971. They may also claim a charitable contribution of \$500 (\$21,000 - \$20,500[\$19,000+\$1,500]) with respect to the gift to X in 1971. No carryover is allowed with respect to the \$100 (\$600-\$500) of the contribution to X which is not deductible in 1971.

(2) *Determination of amount treated as paid in taxable years succeeding contribution year.* In applying the provisions of subparagraph (1) of this paragraph, the amount of the excess computed in accordance with the provisions of such subparagraph and paragraph (d)(1) of this section which is to be treated as paid in any one of the 5 taxable years immediately succeeding the contribution year to a section 170(b)(1)(A) organization shall not exceed the lesser of the amounts computed under subdivisions (i) to (iii), inclusive, of this subparagraph:

(i) The amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of:

(a) The charitable contributions actually made (computed without regard to the provisions of section 170 (b)(1)(D)(ii) and (d)(1) and this section)

by the taxpayer in such succeeding taxable year to section 170(b)(1)(A) organizations, and

(b) The charitable contributions, other than contributions of 30-percent capital gain property, made to section 170(b)(1)(A) organizations in taxable years preceding the contribution year which, pursuant to the provisions of section 170(d)(1) and this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year.

(ii) In the case of the first taxable year succeeding the contribution year, the amount of the excess charitable contribution in the contribution year, computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section.

(iii) In the case of the second, third, fourth, and fifth taxable years succeeding the contribution year, the portion of the excess charitable contribution in the contribution year, computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section, which has not been treated as paid to a section 170(b)(1)(A) organization in a year intervening between the contribution year and such succeeding taxable year.

For purposes of applying subdivision (i)(a) of this subparagraph, the amount of charitable contributions of 30-percent capital gain property actually made in a taxable year succeeding the contribution year shall be determined by first applying the 30-percent limitation of section 170(b)(1)(D)(i) and paragraph (d) of §1.170A-8. If a taxpayer, in any one of the 4 taxable years succeeding a contribution year, elects under section 144 to take the standard deduction instead of itemizing the deductions allowable in computing taxable income, there shall be treated as paid (but not allowable as a deduction) in such standard deduction year the lesser of the amounts determined under subdivisions (i) to (iii), inclusive, of this subparagraph. The provisions of this subparagraph may be illustrated by the following examples:

Example 1. Assume that B has a contribution base for 1970 of \$20,000 and for 1971 of \$30,000. Assume further that in 1970 B contributed \$12,000 in cash to a church and in 1971 he contributed \$13,500 in cash to the

church. B may claim a charitable contributions deduction of \$10,000 in 1970, and the excess of \$12,000 (contribution to the church) over \$10,000 (50 percent of B's contribution base), or \$2,000, constitutes a charitable contributions carryover which shall be treated as a charitable contribution paid by B to a section 170(b)(1)(A) organization in the 5 taxable years succeeding 1970 in order of time. B may claim a charitable contributions deduction of \$15,000 in 1971. Such \$15,000 consists of the \$13,500 contribution to the church in 1971 and \$1,500 carried over from 1970 and treated as a charitable contribution paid to a section 170(b)(1)(A) organization in 1971. The \$1,500 contribution treated as paid in 1971 is computed as follows:

| | | |
|---|----------|--------------|
| 1970 excess contributions | | \$2,000 |
| 50 percent of B's contribution base for 1971 | | 15,000 |
| Less: | | |
| Contributions actually made in 1971 to section 170(b)(1)(A) organizations | \$13,500 | |
| Contributions made to section 170(b)(1)(A) organizations in taxable years prior to 1970 treated as having been paid in 1971 | 0 | 13,500 |
| Balance | | <u>1,500</u> |

Amount of 1970 excess treated as paid in 1971—the lesser of \$2,000 (1970 excess contributions) or \$1,500 (excess of 50 percent of contribution base for 1971 (\$15,000) over the sum of the section 170(b)(1)(A) contributions actually made in 1971 (\$13,500) and the section 170(b)(1)(A) contributions made in years prior to 1970 treated as having been paid in 1971 (\$0))

If the excess contributions made by B in 1970 had been \$1,000 instead of \$2,000, then, for purposes of this example, the amount of the 1970 excess treated as paid in 1971 would be \$1,000 rather than \$1,500.

Example 2. Assume the same facts as in *Example 1*, and, in addition, that B has a contribution base for 1972 of \$10,000 and for 1973 of \$20,000. Assume further with respect to 1972 that B elects under section 144 to take the standard deduction in computing taxable income and that his actual contributions to section 170(b)(1)(A) organizations in that year are \$300 in cash. Assume further with respect to 1973 that R itemizes his deductions, which include a \$5,000 cash contribution to a church. B's deductions for 1972 are not increased by reason of the \$500 available as a charitable contributions carryover from 1970 (excess contributions made in 1970 (\$2,000) less the amount of such excess treated as paid in 1971 (\$1,500)), since B elected to take the standard deduction in 1972. However, for purposes of determining the amount of the excess charitable contributions made in 1970 which is available as a carryover to 1973, B is required to treat such \$500 as a

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charitable contribution paid in 1972—the lesser of \$500 or \$4,700 (50 percent of contribution base (\$5,000) over contributions actually made in 1972 to section 170(b)(1)(A) organizations (\$300)). Therefore, even though the \$5,000 contribution made by B in 1973 to a church does not amount to 50 percent of B's contribution base for 1973 (50 percent of \$20,000), B may claim a charitable contribu-

tions deduction of only the \$5,000 actually paid in 1973 since the entire excess charitable contribution made in 1970 (\$2,000) has been treated as paid in 1971 (\$1,500) and 1972 (\$500).

Example 3. Assume the following factual situation for C who itemizes his deductions in computing taxable income for each of the years set forth in the example:

| | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|----------|---------|----------|----------|---------|
| Contribution base | \$10,000 | \$7,000 | \$15,000 | \$10,000 | \$9,000 |
| Contributions of cash to section 170(b)(1)(A) organizations (no other contributions) | 6,000 | 4,400 | 8,000 | 3,000 | 1,500 |
| Allowable charitable contributions deductions computed without regard to carryover of contributions | 5,000 | 3,500 | 7,500 | 3,000 | 1,500 |
| Excess contributions for taxable year to be treated as paid in 5 succeeding taxable years | 1,000 | 900 | 500 | 0 | 0 |

Since C's contributions in 1973 and 1974 to section 170(b)(1)(A) organizations are less than 50 percent of his contribution base for such years, the excess contributions for 1970, 1971, and 1972 are treated as having been paid to section 170(b)(1)(A) organizations in 1973 and 1974 as follows:

| 1973 | | | |
|-------------------|--------------|--|---|
| Contribution year | Total excess | Less: Amount treated as paid in year prior to 1973 | Available charitable contributions carryovers |
| 1970 | \$1,000 | 0 | \$1,000 |
| 1971 | 900 | 0 | 900 |
| 1972 | 500 | 0 | 500 |
| Total | | | 2,400 |

50 percent of B's contribution base for 1973 \$5,000
 Less: Charitable contributions made in 1973 to section 170(b)(1)(A) organizations 3,000
 2,000

Amount of excess contributions treated as paid in 1973—lesser of \$2,400 (available carryovers to 1973) or \$2,000 (excess of 50 percent of contribution base (\$5,000) over contributions actually made in 1973 to section 170(b)(1)(A) organizations (\$3,000)) 2,000

| 1974 | | | |
|-------------------|--------------|--|---|
| Contribution year | Total excess | Less: Amount treated as paid in year prior to 1974 | Available charitable contributions carryovers |
| 1970 | \$1,000 | \$1,000 | |
| 1971 | 900 | 900 | |
| 1972 | 500 | 100 | \$40 |
| 1973 | 0 | 0 | |
| Total | | | 400 |

50 percent of B's contribution base for 1974 \$4,500

| 1974 | | | |
|---|--------------|--|---|
| Contribution year | Total excess | Less: Amount treated as paid in year prior to 1974 | Available charitable contributions carryovers |
| Less: Charitable contributions made in 1974 to section 170(b)(1)(A) organizations | | | 1,500 |
| | | | 3,000 |
| Amount of excess contributions treated as paid in 1974—the lesser of \$400 (available carryovers to 1974) or \$3,000 (excess of 50 percent of contribution base (\$4,500) over contributions actually made in 1974 to section 170(b)(1)(A) organizations (\$1,500)) | | | 400 |

(c) 30-percent charitable contributions carryover of individuals—(1) Computation of excess of charitable contributions made in a contribution year. Under section 170(b)(1)(D)(ii), subject to certain conditions and limitations, the excess of:

(i) The amount of the charitable contributions of 30-percent capital gain property, as defined in §1.170A-8(d)(3), made by an individual in a taxable year (hereinafter in this paragraph referred to as the "contribution year") to section 170(b)(1)(A) organizations described in §1.170A-9, over

(ii) 30 percent of his contribution base for such contribution year, shall, subject to section 170(b)(1)(A) and paragraph (b) of §1.170A-8, be treated as a charitable contribution of 30-percent capital gain property paid by him to a section 170(b)(1)(A) organization in each of the 5 taxable years immediately succeeding the contribution

year in order of time. In addition, any charitable contribution of 30-percent capital gain property which is carried over to such years under section 170(d)(1) and paragraph (b) of this section shall also be treated as though it were a carryover of 30-percent capital gain property under section 170(b)(1)(D)(ii) and this paragraph. The provisions of this subparagraph may be illustrated by the following examples:

Example 1. Assume that H and W (husband and wife) have a contribution base for 1970 of \$50,000 and for 1971 of \$40,000 and file a joint return for each year. Assume further that in 1970 they contribute \$20,000 cash and \$13,000 of 30-percent capital gain property to a church, and that in 1971 they contribute \$5,000 cash and \$10,000 of 30-percent capital gain property to a church. They may claim a charitable contributions deduction of \$25,000 in 1970 and the excess of \$33,000 (contributed to the church) over \$25,000 (50 percent of contribution base), or \$8,000, constitutes a charitable contributions carryover which shall be treated as a charitable contribution of 30-percent capital gain property paid by them to a section 170(b)(1)(A) organization in each of the 5 succeeding taxable years in order of time. Since 30 percent of their contribution base for 1971 (\$12,000) exceeds the charitable contributions of 30-percent capital gain property (\$10,000) made by them in 1971 to section 170(b)(1)(A) organizations (computed without regard to section 170 (b)(1)(D)(ii) and (d)(1) and this section), the portion of the 1970 carryover equal to such excess of \$2,000 (\$12,000—\$10,000) is treated, pursuant to the provisions of subparagraph (2) of this paragraph, as paid to a section 170(b)(1)(A) organization in 1971; the remaining \$6,000 constitutes an unused charitable contributions carryover in respect of 30-percent capital gain property from 1970.

Example 2. Assume the same facts as in *Example 1* except the \$33,000 of charitable contributions in 1970 are all 30-percent capital gain property. Since their charitable contributions in 1970 exceed 30 percent of their contribution base (\$15,000) by \$18,000 (\$33,000—\$15,000), they may claim a charitable contributions deduction of \$15,000 in 1970, and the excess of \$33,000 over \$15,000, or \$18,000, constitutes a charitable contributions carryover which shall be treated as a charitable contribution of 30-percent capital gain property paid by them to a section 170(b)(1)(A) organization in each of the 5 succeeding taxable years in order of time. Since they are allowed to treat only \$2,000 of their 1970 contribution as paid in 1971, they have a remaining unused charitable contributions carryover of \$16,000 in respect of 30-percent capital gain property from 1970.

(2) *Determination of amount treated as paid in taxable years succeeding contribution year.* In applying the provisions of subparagraph (1) of this paragraph, the amount of the excess computed in accordance with the provisions of such subparagraph and paragraph (d)(1) of this section which is to be treated as paid in any one of the 5 taxable years immediately succeeding the contribution year to a section 170(b)(1)(A) organization shall not exceed the least of the amounts computed under subdivisions (i) to (iv), inclusive, of this subparagraph:

(i) The amount by which 30 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of:

(a) The charitable contributions of 30-percent capital gain property actually made (computed without regard to the provisions of section 170 (b)(1)(D)(ii) and (d)(1) and this section) by the taxpayer in such succeeding taxable year to section 170(b)(1)(A) organizations, and

(b) The charitable contributions of 30-percent capital gain property made to section 170(b)(1)(A) organizations in taxable years preceding the contribution year, which, pursuant to the provisions of section 170 (b)(1)(D)(ii) and (d)(1) and this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year.

(ii) The amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of:

(a) The charitable contributions actually made (computed without regard to the provisions of section 170 (b)(1)(D)(ii) and (d)(1) and this section) by the taxpayer in such succeeding taxable year to section 170(b)(1)(A) organizations,

(b) The charitable contributions of 30-percent capital gain property made to section 170(b)(1)(A) organizations in taxable years preceding the contribution year which, pursuant to the provisions of section 170 (b)(1)(D)(ii) and (d)(1) and this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year, and

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(c) The charitable contributions, other than contributions of 30-percent capital gain property, made to section 170(b)(1)(A) organizations which, pursuant to the provisions of section 170(d)(1) and paragraph (b) of this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year.

(iii) In the case of the first taxable year succeeding the contribution year, the amount of the excess charitable contribution of 30-percent capital gain property in the contribution year, computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section.

(iv) In the case of the second, third, fourth, and fifth succeeding taxable years succeeding the contribution year, the portion of the excess charitable contribution of 30-percent capital gain property in the contribution year (computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section) which has not been treated as paid to a section 170(b)(1)(A) organization in a year intervening between

the contribution year and such succeeding taxable year.

For purposes of applying subdivisions (i) and (ii) of this subparagraph, the amount of charitable contributions of 30-percent capital gain property actually made in a taxable year succeeding the contribution year shall be determined by first applying the 30-percent limitation of section 170(b)(1)(D)(i) and paragraph (d) of §1.170A-8. If a taxpayer, in any one of the four taxable years succeeding a contribution year, elects under section 144 to take the standard deduction instead of itemizing the deductions allowable in computing taxable income, there shall be treated as paid (but not allowable as a deduction) in the standard deduction year the least of the amounts determined under subdivisions (i) to (iv), inclusive, of this subparagraph. The provisions of this subparagraph may be illustrated by the following example:

Example. Assume the following factual situation for C who itemizes his deductions in computing taxable income for each of the years set forth in the example:

| | 1970 | 1971 | 1972 | 1973 | 1974 |
|--|----------|----------|----------|----------|----------|
| Contribution base | \$10,000 | \$15,000 | \$20,000 | \$15,000 | \$33,000 |
| Contributions of cash to section 170(b)(1)(A) organizations ... | 2,000 | 8,500 | 0 | 14,000 | 700 |
| Contributions of 30-percent capital gain property to section 170(b)(1)(A) organizations | 5,000 | 0 | 7,800 | 0 | 6,400 |
| Allowable charitable contributions deductions (computed without regard to carryover of contributions) subject to limitations of: | | | | | |
| 50 percent | 2,000 | 7,500 | 0 | 7,500 | 700 |
| 30 percent | 3,000 | 0 | 6,000 | 0 | 6,400 |
| Total | 5,000 | 7,500 | 6,000 | 7,500 | 7,100 |
| Excess of contributions for taxable year to be treated as paid in 5 succeeding taxable years: | | | | | |
| Carryover of contributions of property other than 30-percent capital gain property | 0 | 1,000 | 0 | 6,500 | |
| Carryover of contributions of 30-percent capital gain property. | 2,000 | 0 | 1,800 | 0 | |

C's excess contributions for 1970, 1971, 1972, and 1973 which are treated as having been paid to section 170(b)(1)(A) organizations in 1972, 1973, and 1974 are indicated below. The portion of the excess charitable contribution for 1972 of 30-percent capital gain property which is not treated as paid in 1974 (\$1,800-\$900) is available as a carryover to 1975.

| Contribution | Total excess | | Less: Amount treated as paid in years prior to 1971 | Available charitable contributions carryovers | |
|--|--------------|-----|---|---|-------|
| | 50% | 30% | | 50% | 30% |
| | 1970 | 0 | | \$2,000 | 0 |
| 50 percent of C's contribution base for 1971 | | | | \$7,500 | |
| 30 percent of C's contribution base for 1971 | | | | | 4,500 |

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1971

| Contribution | Total excess | | Less: Amount treated as paid in years prior to 1971 | Available charitable contributions carryovers | |
|---|--------------|-----|---|---|-------|
| | 50% | 30% | | 50% | 30% |
| Less: Charitable contributions actually made in 1971 to section 170(b)(1)(A) organizations (\$8,500, but not to exceed 50% of contribution base) | | | | 7,500 | 0 |
| Excess | | | | 0 | 4,500 |
| The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1971 is the least of: | | | | | |
| (i) Available carryover from 1970 to 1971 of contributions of 30-percent capital gain property | | | | 2,000 | |
| (ii) Excess of 50 percent of contribution base for 1971 (\$7,500) over sum of contributions actually made in 1971 to section 170(b)(1)(A) organizations (\$7,500) | | | | 0 | |
| (iii) Excess of 30 percent of contribution base for 1971 (\$4,500) over contributions of 30 percent capital gain property actually made in 1971 to section 170(b)(1)(A) organizations (\$0) | | | | 4,500 | |
| Amount treated as paid | | | | | 0 |

1972

| Contribution year | Total excess | | Less: Amount treated as paid in years prior to 1972 | Available charitable contributions carryovers | |
|---|--------------|---------|---|---|---------|
| | 50% | 30% | | 50% | 30% |
| 1970 | 0 | \$2,000 | 0 | 0 | \$2,000 |
| 1971 | \$1,000 | 0 | 0 | \$1,000 | 0 |
| | | | | 1,000 | 2,000 |
| 50 percent of C's contribution base for 1972 | | | | 10,000 | |
| 30 percent of C's contribution base for 1972 | | | | | 6,000 |
| Less: Charitable contributions actually made in 1972 to section 170(b)(1)(A) organizations (\$7,800, but not to exceed 30% of contribution base) | | | | 0 | 6,000 |
| Excess | | | | 10,000 | 0 |
| (1) The amount of excess contributions for 1971 of property other than 30-percent capital gain property which is treated as paid in 1972 is the lesser of: | | | | | |
| (i) Available carryover from 1971 to 1972 of contributions of property other than 30-percent capital gain property | | | | 1,000 | |
| (ii) Excess of 50 percent of contribution base for 1972 (\$10,000) over contributions actually made in 1972 to section 170(b)(1)(A) organizations (\$6,000) | | | | 4,000 | |
| Amount treated as paid | | | | | 1,000 |
| (2) The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1972 is the least of: | | | | | |
| (i) Available carryover from 1970 to 1972 of contributions of 30-percent capital gain property | | | | 2,000 | |
| (ii) Excess of 50 percent of contribution base for 1972 (\$10,000) over sum of contributions actually made in 1972 to section 170(b)(1)(A) organizations (\$6,000) and excess contributions for 1971 treated under item (1) above as paid in 1972 (\$1,000) | | | | 3,000 | |
| (iii) Excess of 30 percent of contribution base for 1972 (\$6,000) over contributions of 30-percent capital gain property actually made in 1972 to section 170(b)(1)(A) organizations (\$6,000) | | | | 0 | |
| Amount treated as paid | | | | | 0 |

1973

| Contribution year | Total excess | | Less: Amount treated as paid in years prior to 1973 | Available charitable contributions carryovers | |
|-------------------|--------------|---------|---|---|---------|
| | 50% | 30% | | 50% | 30% |
| 1970 | 0 | \$2,000 | 0 | 0 | \$2,000 |
| 1971 | \$1,000 | 0 | \$1,000 | 0 | 0 |
| 1972 | 0 | 1,800 | 0 | 0 | 1,800 |

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| | | 1973 | | | | |
|---|--------------|---------|---|---|---------|--|
| Contribution year | Total excess | | Less: Amount treated as paid in years prior to 1973 | Available charitable contributions carryovers | | |
| | 50% | 30% | | 50% | 30% | |
| | | | | 0 | 3,800 | |
| 50 percent of C's contribution base for 1973 | | | | \$7,500 | | |
| 30 percent of C's contribution base for 1973 | | | | | 4,500 | |
| Less: Charitable contributions actually made in 1973 to section 170(b)(1)(A) organizations (\$14,000, but not to exceed 50% of contribution base) | | | | 7,500 | 0 | |
| Excess | | | | 0 | 4,500 | |
| (1) The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1973 is the least of: | | | | | | |
| (i) Available carryover from 1970 to 1973 of contributions of 30-percent capital gain property | | | | 2,000 | | |
| (ii) Excess of 50 percent of contribution base for 1973 (\$7,500) over contributions actually made in 1973 to section 170(b)(1)(A) organizations (\$7,500) | | | | 0 | | |
| (iii) Excess of 30 percent of contribution base for 1973 (\$4,500) over contributions of 30-percent capital gain property actually made in 1973 to section 170(b)(1)(A) organizations (\$0) | | | | 4,500 | | |
| Amount treated as paid | | | | 0 | | |
| (2) The amount of excess contributions for 1972 of 30-percent capital gain property which is treated as paid in 1973 is the least of: | | | | | | |
| (i) Available carryover from 1972 to 1973 of contributions of 30-percent capital gain property | | | | 1,800 | | |
| (ii) Excess of 50 percent of contribution base for 1973 (\$7,500) over contributions actually made in 1973 to section 170(b)(1)(A) organizations (\$7,500) | | | | 0 | | |
| (iii) Excess of 30 percent of contribution base for 1973 (\$4,500) over sum of contributions of 30-percent capital gain property actually made in 1973 to section 170(b)(1)(A) organizations (\$0) and excess contributions for 1970 treated under item (1) above as paid in 1973 (\$0) | | | | 4,500 | | |
| Amount treated as paid | | | | 0 | | |
| | | 1974 | | | | |
| Contribution year | Total excess | | Less: Amount treated as paid in years prior to 1974 | Available charitable contributions carryovers | | |
| | 50% | 30% | | 50% | 30% | |
| 1970 | 0 | \$2,000 | 0 | 0 | \$2,000 | |
| 1971 | \$1,000 | 0 | \$1,000 | 0 | 0 | |
| 1972 | 0 | 1,800 | 0 | 0 | 1,800 | |
| 1973 | 6,500 | 0 | 0 | \$6,500 | 0 | |
| | | | | 6,500 | 3,800 | |
| 50 percent of C's contribution base for 1974 | | | | 16,500 | | |
| 30 percent of C's contribution base for 1974 | | | | | 9,900 | |
| Less: Charitable contributions actually made in 1974 to section 170(b)(1)(A) organizations | | | | 700 | 6,400 | |
| Excess | | | | 15,800 | 3,500 | |
| (1) The amount of excess contributions for 1973 of property other than 30-percent capital gain property which is treated as paid in 1974 is the lesser of: | | | | | | |
| (i) Available carryover from 1973 to 1974 of contributions of property other than 30-percent capital gain property | | | | 6,500 | | |
| (ii) Excess of 50 percent of contribution base for 1974 (\$16,500) over contributions actually made in 1974 to section 170(b)(1)(A) organizations (\$7,100) | | | | 9,400 | | |
| Amount treated as paid | | | | | 6,500 | |
| (2) The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1974 is the least of: | | | | | | |
| (i) Available carryover from 1970 to 1974 of contributions of 30-percent capital gain property | | | | \$2,000 | | |
| (ii) Excess of 50 percent of contribution base for 1974 (\$16,500) over sum of contributions actually made in 1974 to section 170(b)(1)(A) organizations (\$7,100) and excess contributions for 1973 of property other than 30-percent capital gain property treated under item (1) above as paid in 1974 (\$6,500) | | | | 2,900 | | |

1974

| Contribution year | Total excess | | Less: Amount treated as paid in years prior to 1974 | Available charitable contributions carryovers | |
|---|--------------|-----|--|--|---------|
| | 50% | 30% | | 50% | 30% |
| (iii) Excess of 30 percent of contribution base for 1974 (\$9,900) over contributions of 30-percent capital gain property actually made in 1974 to section 170(b)(1)(A) organizations (\$6,400) | | | | 3,500 | |
| Amount treated as paid | | | | | \$2,000 |
| (3) The amount of excess contributions for 1972 of 30-percent capital gain property which is treated as paid in 1974 is the least of: | | | | | |
| (i) Available carryover from 1972 to 1974 of contributions of 30-percent capital gain property | | | | 1,800 | |
| (ii) Excess of 50 percent of contribution base for 1974 (\$16,500) over sum of contributions actually made in 1974 to section 170(b)(1)(A) organizations (\$7,100) and excess contributions for 1973 and 1970 treated under items (1) and (2) above as paid in 1974 (\$8,500) | | | | 900 | |
| (iii) Excess of 30 percent of contribution base for 1974 (\$9,900) over sum of contributions of 30-percent capital gain property actually made in 1974 to section 170(b)(1)(A) organizations (\$6,400) and excess contributions for 1970 of 30-percent capital gain property treated under item (2) above as paid in 1974 (\$2,000) | | | | 1,500 | |
| Amount treated as paid | | | | | 900 |

(d) *Adjustments*—(1) *Effect of net operating loss carryovers on carryover of excess contributions.* An individual having a net operating loss carryover from a prior taxable year which is available as a deduction in a contribution year must apply the special rule of section 170(d)(1)(B) and this subparagraph in computing the excess described in paragraph (b)(1) or (c)(1) of this section for such contribution year. In determining the amount of excess charitable contributions that shall be treated as paid in each of the 5 taxable years succeeding the contribution year, the excess charitable contributions described in paragraph (b)(1) or (c)(1) of this section must be reduced by the amount by which such excess reduces taxable income (for purposes of determining the portion of a net operating loss which shall be carried to taxable years succeeding the contribution year under the second sentence of section 172(b)(2)) and increases the net operating loss which is carried to a succeeding taxable year. In reducing taxable income under the second sentence of section 172(b)(2), an individual who has made charitable contributions in the contribution year to both section 170(b)(1)(A) organizations, as defined in §1.170A-9, and to organizations which are not section 170(b)(1)(A) organizations must first deduct contributions made to the section 170(b)(1)(A) organizations from his adjusted gross income

computed without regard to his net operating loss deduction before any of the contributions made to organizations which are not section 170(b)(1)(A) organizations may be deducted from such adjusted gross income. Thus, if the excess of the contributions made in the contribution year to section 170(b)(1)(A) organizations over the amount deductible in such contribution year is utilized to reduce taxable income (under the provisions of section 172(b)(2)) for such year, thereby serving to increase the amount of the net operating loss carryover to a succeeding year or years, no part of the excess charitable contributions made in such contribution year shall be treated as paid in any of the 5 immediately succeeding taxable years. If only a portion of the excess charitable contributions is so used, the excess charitable contributions shall be reduced only to that extent. The provisions of this subparagraph may be illustrated by the following examples:

Example 1. B, an individual, reports his income on the calendar year basis and for the year 1970 has adjusted gross income (computed without regard to any net operating loss deduction) of \$50,000. During 1970 he made charitable contributions of cash in the amount of \$30,000 all of which were to section 170(b)(1)(A) organizations. B has a net operating loss carryover from 1969 of \$50,000. In the absence of the net operating loss deduction B would have been allowed a deduction for charitable contributions of \$25,000. After

the application of the net operating loss deduction, B is allowed no deduction for charitable contributions, and there is (before applying the special rule of section 170(d)(1)(B) and this subparagraph) a tentative excess charitable contribution of \$30,000. For purposes of determining the net operating loss which remains to be carried over to 1971, B computes his taxable income for 1970 under section 172(b)(2) by deducting the \$25,000 charitable contribution. After the \$50,000 net operating loss carryover is applied against the \$25,000 of taxable income for 1970 (computed in accordance with section 172(b)(2), assuming no deductions other than the charitable contributions deduction are applicable in making such computation), there remains a \$25,000 net operating loss carryover to 1971. Since the application of the net operating loss carryover of \$50,000 from 1969 reduces the 1970 adjusted gross income (for purposes of determining 1970 tax liability) to zero, no part of the \$25,000 of charitable contributions in that year is deductible under section 170(b)(1). However, in determining the amount of the excess charitable contributions which shall be treated as paid in taxable years 1971, 1972, 1973, 1974, and 1975, the \$30,000 must be reduced to \$5,000 by the portion of the excess charitable contributions (\$25,000) which was used to reduce taxable income for 1970 (as computed for purposes of the second sentence of section 172(b)(2)) and which thereby served to increase the net operating loss carryover to 1971 from zero to \$25,000.

Example 2. Assume the same facts as in *Example 1*, except that B's total charitable contributions of \$30,000 in cash made during 1970 consisted of \$25,000 to section 170(b)(1)(A) organizations and \$5,000 to organizations other than section 170(b)(1)(A) organizations. Under these facts there is a tentative excess charitable contribution of \$25,000, rather than \$30,000 as in *Example 1*. For purposes of determining the net operating loss which remains to be carried over to 1971, B computes his taxable income for 1970 under section 172(b)(2) by deducting the \$25,000 of charitable contributions made to section 170(b)(1)(A) organizations. Since the excess charitable contribution of \$25,000 determined in accordance with paragraph (b)(1) of this section was used to reduce taxable income for 1970 (as computed for purposes of the second sentence of section 172(b)(2)) and thereby served to increase the net operating loss carryover to 1971 from zero to \$25,000, no part of such excess charitable contributions made in the contribution year shall be treated as paid in any of the five immediately succeeding taxable years. No carryover is allowed with respect to the \$5,000 of charitable contributions made in 1970 to organizations other than section 170(b)(1)(A) organizations.

Example 3. Assume the same facts as in *Example 1*, except that B's total contributions

of \$30,000 made during 1970 were of 30-percent capital gain property. Under these facts there is a tentative excess charitable contribution of \$30,000. For purposes of determining the net operating loss which remains to be carried over to 1971, B computes his taxable income for 1970 under section 172(b)(2)(B) by deducting the \$15,000 (30% of \$50,000) contribution of 30-percent capital gain property which would have been deductible in 1970 absent the net operating loss deduction. Since \$15,000 of the excess charitable contribution of \$30,000 determined in accordance with paragraph (c)(1) of this section was used to reduce taxable income for 1970 (as computed for purposes of the second sentence of section 172(b)(2)) and thereby served to increase the net operating loss carryover to 1971 from zero to \$15,000, only \$15,000 (\$30,000—\$15,000) of such excess shall be treated as paid in taxable years 1971, 1972, 1973, 1974, and 1975.

(2) *Effect of net operating loss carryback to contribution year.* The amount of the excess contribution for a contribution year computed as provided in paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph shall not be increased because a net operating loss carryback is available as a deduction in the contribution year. Thus, for example, assuming that in 1970 there is an excess contribution of \$50,000 (determined as provided in paragraph (b)(1) of this section) which is to be carried to the 5 succeeding taxable years and that in 1973 the taxpayer has a net operating loss which may be carried back to 1970, the excess contribution of \$50,000 for 1970 is not increased by reason of the fact that the adjusted gross income for 1970 (on which such excess contribution was based) is subsequently decreased by the carryback of the net operating loss from 1973. In addition, in determining under the provisions of section 172(b)(2) the amount of the net operating loss for any year subsequent to the contribution year which is a carryback or carryover to taxable years succeeding the contribution year, the amount of contributions made to section 170(b)(1)(A) organizations shall be limited to the amount of such contributions which did not exceed 50 percent or, in the case of 30-percent capital gain property, 30 percent of the donor's contribution base, computed without regard to any of the modifications referred to in section 172(d), for

the contribution year. Thus, for example, assume that the taxpayer has a net operating loss in 1973 which is carried back to 1970 and in turn to 1971 and that he has made charitable contributions in 1970 to section 170(b)(1)(A) organizations. In determining the maximum amount of such charitable contributions which may be deducted in 1970 for purposes of determining the taxable income for 1970 which is deducted under section 172(b)(2) from the 1973 loss in order to ascertain the amount of such loss which is carried back to 1971, the 50-percent limitation of section 170(b)(1)(A) is based upon the adjusted gross income for 1970 computed without taking into account the net operating loss carryback from 1973 and without making any of the modifications specified in section 172(d).

(3) *Effect of net operating loss carryback to taxable years succeeding the contribution year.* The amount of the charitable contribution from a preceding taxable year which is treated as paid, as provided in paragraph (b)(2) or (c)(2) of this section, in a current taxable year (hereinafter referred to in this subparagraph as the "deduction year") shall not be reduced because a net operating loss carryback is available as a deduction in the deduction year. In addition, in determining under the provisions of section 172(b)(2) the amount of the net operating loss for any taxable year subsequent to the deduction year which is a carryback or carryover to taxable years succeeding the deduction year, the amount of contributions made to section 170(b)(1)(A) organizations in the deduction year shall be limited to the amount of such contributions, which were actually made in such year and those which were treated as paid in such year, which did not exceed 50 percent or, in the case of 30-percent capital gain property, 30 percent of the donor's contribution base, computed without regard to any of the modifications referred to in section 172(d), for the deduction year.

(4) *Husband and wife filing joint returns—(i) Change from joint return to separate returns.* If a husband and wife:

(a) Make a joint return for a contribution year and compute an excess charitable contribution for such year

in accordance with the provisions of paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph, and

(b) Make separate returns for one or more of the 5 taxable years immediately succeeding such contribution year, any excess charitable contribution for the contribution year which is unused at the beginning of the first such taxable year for which separate returns are filed shall be allocated between the husband and wife. For purposes of the allocation, a computation shall be made of the amount of any excess charitable contribution which each spouse would have computed in accordance with paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph if separate returns (rather than a joint return) had been filed for the contribution year. The portion of the total unused excess charitable contribution for the contribution year allocated to each spouse shall be an amount which bears the same ratio to such unused excess charitable contribution as such spouse's excess contribution, based on the separate return computation, bears to the total excess contributions of both spouses, based on the separate return computation. To the extent that a portion of the amount allocated to either spouse in accordance with the foregoing provisions of this subdivision is not treated in accordance with the provisions of paragraph (b)(2) or (c)(2) of this section as a charitable contribution paid to a section 170(b)(1)(A) organization in the taxable year in which a separate return or separate returns are filed, each spouse shall for purposes of paragraph (b)(2) or (c)(2) of this section treat his respective unused portion as the available charitable contributions carryover to the next succeeding taxable year in which the joint excess charitable contribution may be treated as paid in accordance with paragraph (b)(1) or (c)(1) of this section. If such husband and wife make a joint return in one of the 5 taxable years immediately succeeding the contribution year with respect to which a joint excess charitable contribution is computed and following such first taxable year for which such husband and wife filed a separate return, the amounts allocated to each

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spouse in accordance with this subdivision for such first year reduced by the portion of such amounts treated as paid to a section 170(b)(1)(A) organization in such first year and in any taxable year intervening between such first year and the succeeding taxable year in which the joint return is filed shall be aggregated for purposes of determining the amount of the available charitable contributions carryover to such succeeding taxable year. The provisions of this subdivision may be illustrated by the following example:

Example. (a) H and W file joint returns for 1970, 1971, and 1972, and in 1973 they file separate returns. In each such year H and W itemize their deductions in computing taxable income. Assume the following factual situation with respect to H and W for 1970:

| | 1970 | | |
|---|----------|----------|-------------------|
| | H | W | Joint re- turn |
| Contribution base | \$50,000 | \$40,000 | \$90,000 |
| Contributions of cash to section 170(b)(1)(A) organizations (no other contributions) | 37,000 | 28,000 | 65,000 |
| Allowable charitable contributions deductions | 25,000 | 20,000 | 45,000 |
| Excess contributions for taxable year to be treated as paid in 5 succeeding taxable years | 12,000 | 8,000 | 20,000 |

(b) The joint excess charitable contribution of \$20,000 is to be treated as having been paid to a section 170(b)(1)(A) organization in the 5 succeeding taxable years. Assume that in 1971 the portion of such excess treated as paid by H and W is \$3,000, and that in 1972 the portion of such excess treated as paid is \$7,000. Thus, the unused portion of the excess charitable contribution made in the contribution year is \$10,000 (\$20,000 less \$3,000 [amount treated as paid in 1971] and \$7,000 [amount treated as paid in 1972]). Since H and W file separate returns in 1973, \$6,000 of such \$10,000 is allocable to H, and \$4,000 is allocable to W. Such allocation is computed as follows:

- \$12,000 (excess charitable contributions made by H (based on separate return computation) in 1970)/\$20,000 (total excess charitable contributions made by H and W (based on separate return computation) in 1970)×\$10,000=\$6,000
- \$8,000 (excess charitable contributions made by W (based on separate return computation) in 1970)/\$20,000 (total excess charitable contributions made by H and W

(based on separate return computation) in 1970)×\$10,000=\$4,000

(c) In 1973 H has a contribution base of \$70,000, and he contributes \$14,000 in cash to a section 170(b)(1)(A) organization. In 1973 W has a contribution base of \$50,000, and she contributes \$10,000 in cash to a section 170(b)(1)(A) organization. Accordingly, H may claim a charitable contributions deduction of \$20,000 in 1973, and W may claim a charitable contributions deduction of \$14,000 in 1973. H's \$20,000 deduction consists of the \$14,000 contribution made to the section 170(b)(1)(A) organization in 1973 and the \$6,000 carried over from 1970 and treated as a charitable contribution paid by him to a section 170(b)(1)(A) organization in 1973. W's \$14,000 deduction consists of the \$10,000 contribution made to a section 170(b)(1)(A) organization in 1973 and the \$4,000 carried over from 1970 and treated as a charitable contribution paid by her to a section 170(b)(1)(A) organization in 1973.

(d) The \$6,000 contribution treated as paid in 1973 by H, and the \$4,000 contribution treated as paid in 1973 by W, are computed as follows:

| | H | W |
|---|---------|---------|
| Available charitable contribution carryover (see computations in (b)) | \$6,000 | \$4,000 |
| 50 percent of contribution base | 35,000 | 25,000 |
| Contributions of cash made in 1973 to section 170(b)(1)(A) organizations (no other contributions) | 14,000 | 10,000 |
| | 21,000 | 15,000 |
| Amount of excess contributions treated as paid in 1973: The lesser of \$6,000 (available carryover of H to 1973) or \$21,000 (excess of 50 percent of contribution base (\$35,000) over contributions actually made in 1973 to section 170(b)(1)(A) organizations (\$14,000)) | \$6,000 | |
| The lesser of \$4,000 (available carryover of W to 1973) or \$15,000 (excess of 50 percent of contribution base (\$25,000) over contributions actually made in 1973 to section 170(b)(1)(A) organizations (\$10,000)) | | \$4,000 |

(e) It is assumed that H and W made no contributions of 30-percent capital gain property during these years. If they had made such contributions, there would have been similar adjustments based on 30 percent of the contribution base.

(ii) *Change from separate returns to joint return.* If in the case of a husband and wife:

(a) Either or both of the spouses make a separate return for a contribution year and compute an excess charitable contribution for such year in accordance with the provisions of paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph, and

(b) Such husband and wife make a joint return for one or more of the taxable years succeeding such contribution year, the excess charitable contribution of the husband and wife for the contribution year which is unused at the beginning of the first taxable year for which a joint return is filed shall be aggregated for purposes of determining the portion of such unused charitable contribution which shall be treated in accordance with paragraph (b)(2) or (c)(2) of this section as a charitable contribution paid to a section 170(b)(1)(A) organization. The provisions of this subdivision also apply in the case of two single individuals who are subsequently married and file a joint return. A remarried taxpayer who filed a joint return with a former spouse in a contribution year with respect to which an excess charitable contribution was computed and who in any one of the 5 taxable years succeeding such contribution year files a joint return with his or her present spouse shall treat the unused portion of such excess charitable contribution allocated to him or her in accordance with subdivision (i) of this subparagraph in the same manner as the unused portion of an excess charitable contribution computed in a contribution year in which he filed a separate return, for purposes of determining the amount which in accordance with paragraph (b)(2) or (c)(2) of this section shall be treated as paid to an organization specified in section 170(b)(1)(A) in such succeeding year.

(iii) *Unused excess charitable contribution of deceased spouse.* In case of the death of one spouse, any unused portion of an excess charitable contribution which is allocable in accordance with subdivision (i) of this subparagraph to such spouse shall not be treated as paid in the taxable year in which such death occurs or in any subsequent taxable year except on a separate return made for the deceased spouse by a fiduciary for the taxable year which

ends with the date of death or on a joint return for the taxable year in which such death occurs. The application of this subdivision may be illustrated by the following example:

Example. Assume the same facts as in the example in subdivision (i) of this subparagraph except that H dies in 1972 and W files a separate return for 1973. W made a joint return for herself and H for 1972. In the example, the unused excess charitable contribution as of January 1, 1973, was \$10,000, \$6,000 of which was allocable to H and \$4,000 to W. No portion of the \$6,000 allocable to H may be treated as paid by W or any other person in 1973 or any subsequent year.

(e) *Information required in support of a deduction of an amount carried over and treated as paid.* If, in a taxable year, a deduction is claimed in respect of an excess charitable contribution which, in accordance with the provisions of paragraph (b)(2) or (c)(2) of this section, is treated (in whole or in part) as paid in such taxable year, the taxpayer shall attach to his return a statement showing:

(1) The contribution year (or years) in which the excess charitable contributions were made,

(2) The excess charitable contributions made in each contribution year, and the amount of such excess charitable contributions consisting of 30-percent capital gain property,

(3) The portion of such excess, or of each such excess, treated as paid in accordance with paragraph (b)(2) or (c)(2) of this section in any taxable year intervening between the contribution year and the taxable year for which the return is made, and the portion of such excess which consists of 30-percent capital gain property.

(4) Whether or not an election under section 170(b)(1)(D)(iii) has been made which affects any of such excess contributions of 30-percent capital gain property, and

(5) Such other information as the return or the instructions relating thereto may require.

(f) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969. For purposes of applying section 170(d)(1) with respect to contributions paid in a taxable year beginning before January 1, 1970, subsection (b)(1)(D),

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subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 shall not apply. See section 201(g)(1)(D) of the Tax Reform Act of 1969 (83 Stat. 564).

[T.D. 7207, 37 FR 20787, Oct. 4, 1972; 37 FR 22982, Oct. 27, 1972, as amended by T.D. 7340, 40 FR 1240, Jan. 7, 1975]

§ 1.170A-11 Limitation on, and carryover of, contributions by corporations.

(a) *In general.* The deduction by a corporation in any taxable year for charitable contributions, as defined in section 170(c), is limited to 5 percent of its taxable income for the year, computed without regard to:

(1) The deduction under section 170 for charitable contributions,

(2) The special deductions for corporations allowed under Part VIII (except section 248), Subchapter B, Chapter 1 of the Code,

(3) Any net operating loss carryback to the taxable year under section 172, and

(4) Any capital loss carryback to the taxable year under section 1212(a)(1).

A charitable contribution by a corporation to a trust, chest, fund, or foundation described in section 170(c)(2) is deductible under section 170 only if the contribution is to be used in the United States or its possessions exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals. For the purposes of section 170, amounts excluded from the gross income of a corporation under section 114, relating to sports programs conducted for the American National Red Cross, are not to be considered contributions or gifts.

(b) *Election by corporations on an accrual method.* (1) A corporation reporting its taxable income on an accrual method may elect to have a charitable contribution treated as paid during the taxable year, if payment is actually made on or before the 15th day of the third month following the close of such year and if, during such year, its board of directors authorizes the charitable contribution. If by reason of such an election a charitable contribution (other than a contribution of a letter, memorandum, or property similar to a

letter or memorandum) paid in a taxable year beginning after December 31, 1969, is treated as paid during a taxable year beginning before January 1, 1970, the provisions of § 1.170A-4 shall not be applied to reduce the amount of such contribution. However, see section 170(e) before its amendment by the Tax Reform Act of 1969.

(2) The election must be made at the time the return for the taxable year is filed, by reporting the contribution on the return. There shall be attached to the return when filed a written declaration stating that the resolution authorizing the contribution was adopted by the board of directors during the taxable year. For taxable years beginning before January 1, 2003, the declaration shall be verified by a statement signed by an officer authorized to sign the return that it is made under penalties of perjury, and there shall also be attached to the return when filed a copy of the resolution of the board of directors authorizing the contribution. For taxable years beginning after December 31, 2002, the declaration must also include the date of the resolution, the declaration shall be verified by signing the return, and a copy of the resolution of the board of directors authorizing the contribution is a record that the taxpayer must retain and keep available for inspection in the manner required by § 1.6001-1(e).

(c) *Charitable contributions carryover of corporations*—(1) *In general.* Subject to the reduction provided in subparagraph (2) of this paragraph, any charitable contributions made by a corporation in a taxable year (hereinafter in this paragraph referred to as the “contribution year”) in excess of the amount deductible in such contribution year under the 5-percent limitation of section 170(b)(2) are deductible in each of the five succeeding taxable years in order of time, but only to the extent of the lesser of the following amounts:

(i) The excess of the maximum amount deductible for such succeeding taxable year under the 5-percent limitation of section 170(b)(2) over the sum of the charitable contributions made in that year plus the aggregate of the excess contributions which were made in taxable years before the contribution