Interested Party Testimony – Ohio S.B. 333 – Ohio Association of Foodbanks

Testimony from Lisa Hamler-Fugitt, executive director, Ohio Association of Foodbanks, Senate Government Oversight & Reform Committee Hearing, November 30, 2022

Chair Roegner, Vice Chair McColley, Ranking Member Craig, and Members of the Senate Government Oversight & Reform Committee:

Thank you for the opportunity to provide testimony today on Senate Bill 333, which pertains to the Good Samaritan Law that protects food donors from civil liability when donating perishable food.

Section 2305.37 - Ohio Revised Code | Ohio Laws

I represent the Ohio Association of Foodbanks – our statewide network includes 12 regional foodbanks and 3,600 food pantries, soup kitchens, homeless shelters, and other supplemental feeding programs. Last year, our statewide network distributed 242 million pounds of food to Ohioans in need. More than 100 million pounds, or 41.5%, of that food was donated by retailers, manufacturers, agricultural producers, and through community-based and corporate food drives.

I want to extend my appreciation to the bill sponsor, Senator Wilson, for introducing legislation that protects current and future food donors from civil liability when donating perishable foods to nonprofits like the 3,600 hunger relief programs I stand before you representing today. We count on straightforward measures like the Good Samaritan Law to be able to coordinate with a variety of retailers, farmers, growers, manufacturers, restaurants, commercial food service operations and caterers to rescue perishable foods that are close-to-code, over produced, unmarketable, and/or in surplus and ensure those wholesome foods can be efficiently redirected, free of change to hungry Ohioans, experiencing food insecurity, instead of going to waste. We follow strict food safety and food handling rules and regulations to provide further protection to recipients of the food, to the donors, and to our charitable hunger relief partners. Including requirements that all member charities be complaint with ServSafe Person In Charge certifications through the Ohio Department of Health as meeting the requirements of their food protection rule: 3701-21-25 of the Administrative Code and the Ohio Department of Job and Family Services program compliance and guidelines established by ODJFS and the United States Department of Agriculture (USDA) federal program regulations found at 7 Code of Federal Regulations (CFR) 250 and 251 for TEFAP and 7 CFR 247 and 250 for CSFP and state funded food programs.

https://www.servsafe.com/access/ss/catalog/productlist/52
https://jfs.ohio.gov/ofam/Food-Programs-Manual_April-2019.stm
http://www.odjfs.state.oh.us/forms/num/JFS04221/pdf/
http://www.odjfs.state.oh.us/forms/num/JFS01426/pdf/
http://www.odjfs.state.oh.us/forms/num/JFS01427/pdf/

For many reasons, including our responsibility as stewards of public and private resources and our role as members of the national Feeding America network we are subject to many guidelines and regulations. One of those guidelines is that we are strictly prohibited from ever charging a person in need for the food we provide – which I'm sure you can appreciate is a sensible, straightforward rule that protects consumers and ensures resources that are donated or appropriated charitably are handled as such and is complaint with the IRS Section tax code, Section 170(e)(3) *that provides a special rule for the deduction of certain qualified contributions of inventory and certain other property.* To be treated as a "qualified contribution", a contribution must meet the restrictions and requirements of section 170(e)(3)(A) and paragraph (b) of this section. Therefore, while this adjustment to the Good Samaritan Law will not impact any of our 12 foodbanks and 3,600 member agencies, we appreciate that it has been introduced in the spirit of supporting the many wellmeaning organizations throughout Ohio eager to continue to innovate to feed more people in need and prevent food waste.

https://www.ecfr.gov/current/title-26/chapter-I/subchapter-A/part-1/subject-group-ECFRcc67ec453a5e514/section-1.170A-1

In fact, Ohio's food pantries provided take-home groceries 2.92 million times in the first quarter of the current state fiscal year – that level of demand for help at our food pantries was up 42% compared to one year ago. We served 50% more children from July to September of this year than we did in the same period a year earlier. Ohio families are struggling at never-before-seen levels under the strain of nearly 3 years of Pandemic health, economic and supply chain disruptions, that has resulted in a 40 year rate of inflation and high prices for basic needs like food, shelter, and utilities.

Our major food donors continue to step up as much as they are able to help, and we are grateful that their generosity is protected under the Good Samaritan Law. But donated foods are not enough to meet to current historical high levels of need in our communities. In the spirit of this legislation, urge you to join with your colleagues to consider other opportunities to invest in the foodbanks, faith-based food pantries, and community-based hunger relief providers that need your support to keep their doors open and keep nourishing their neighbors. Thank you and I am happy to take any questions you might have at this time.

Please view our urgent request for one-time funding: https://ohiofoodbanks.org/arpa/

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Title 26 - Internal Revenue
Chapter I - Internal Revenue Service, Department of the Treasury
Subchapter A - Income Tax
Part 1 - Income Taxes
Itemized Deductions for Individuals and Corporations (Continued) Itemized Deductions...

Authority: 26 U.S.C 7805, unless otherwise noted. 26 U.S.C. 7805, unless otherwise noted. 26 U.S.C. 7805. *See Part 1 for more*

Source: T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, unless otherwise noted. T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, T.D. 9381, 73 FR 8604, Feb. 15, 2008, unless otherwise noted. T.D. 6500, 25 FR 11607, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, unless otherwise noted. *See Part 1 for more*

§ 1.170A-1 Charitable, etc., contributions and gifts; allowance of deduction.

(a) ***Allowance of deduction.*** Any charitable contribution, as defined in section 170(c), actually paid during the taxable year is allowable as a deduction in computing taxable income irrespective of the method of accounting employed or of the date on which the contribution is pledged. However, charitable contributions by corporations may under certain circumstances be deductible even though not paid during the taxable year as provided in section 170(a)(2) and § 1.170A-11. For rules relating to record keeping and return requirements in support of deductions for charitable contributions (whether by an itemizing or nonitemizing taxpayer), see §§ 1.170A-13 (generally applicable to contributions on or before July 30, 2018), 1.170A-14, 1.170A-15, 1.170A-16, 1.170A-17, and 1.170A-18. The deduction is subject to the limitations of section 170(b) and § 1.170A-8 or § 1.170A-11. Subject to the provisions of section 170(d) and §§ 1.170A-10 and 1.170A-11, certain excess charitable contributions made by individuals and corporations shall be treated as paid in certain succeeding taxable years. For provisions relating to direct charitable deductions under section 63 by nonitemizers, see section 63 (b)(1)(C) and (i) and section 170(i). For rules relating to the detemination of, and the deduction for, amounts paid to maintain certain students as members of the taxpayer's household and treated under section 170(g) as paid for the use of an organization described in section 170(c) (2), (3), or (4), see § 1.170A-2. For the reduction of any charitable contributions for interest on certain indebtedness, see section 170(f)(5) and § 1.170A-3. For a special rule relating to the computation of the amount of the deduction with respect to a charitable contribution of certain ordinary income or capital gain property, see section 170(e) and §§ 1.170A-4 and 1.170A-4A. For rules for postponing the time for deduction of a charitable contribution of a future interest in tangible personal property, see section 170(a)(3) and § 1.170A-5. For rules with respect to transfers in trust and of partial interests in property, see section 170(e), section 170(f) (2) and (3), §§ 1.170A-4, 1.170A-6, and 1.170A-7. For definition of the term *section 170(b)(1)(A) organization,* see § 1.170A-9. For valuation of a remainder interest in real property, see section 170(f)(4) and the regulations thereunder. The deduction for charitable contributions is subject to verification by the district director.

(b) ***Time of making contribution.*** Ordinarily, a contribution is made at the time delivery is effected. The unconditional delivery or mailing of a check which subsequently clears in due course will constitute an effective contribution on the date of delivery or mailing. If a taxpayer unconditionally delivers or mails a properly endorsed stock certificate to a charitable donee or the donee's agent, the gift is completed on the date of delivery or, if such certificate is received in the ordinary course of the mails, on the date of mailing. If the donor delivers the stock certificate to his bank or broker as the donor's agent, or to the issuing corporation or its agent, for transfer into the name of the donee, the gift is completed on the date the stock is transferred on the books of the corporation. For rules relating to the date of payment of a contribution consisting of a future interest in tangible personal property, see section 170(a)(3) and § 1.170A-5.

(c) *Value of a contribution in property.*

(1) If a charitable contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution reduced as provided in section 170(e)(1) and paragraph (a) of § 1.170A-4, or section 170(e)(3) and paragraph (c) of § 1.170A-4A.

(2) The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. If the contribution is made in property of a type which the taxpayer sells in the course of his business, the fair market value is the price which the taxpayer would have received if he had sold the contributed property in the usual market in which he customarily sells, at the time and place of the contribution and, in the case of a contribution of goods in quantity, in the quantity contributed. The usual market of a manufacturer or other producer consists of the wholesalers or other distributors to or through whom he customarily sells, but if he sells only at retail the usual market consists of his retail customers.

(3) If a donor makes a charitable contribution of property, such as stock in trade, at a time when he could not reasonably have been expected to realize its usual selling price, the value of the gift is not the usual selling price but is the amount for which the quantity of property contributed would have been sold by the donor at the time of the contribution.

(4) Any costs and expenses pertaining to the contributed property which were incurred in taxable years preceding the year of contribution and are properly reflected in the opening inventory for the year of contribution must be removed from inventory and are not a part of the cost of goods sold for purposes of determining gross income for the year of contribution. Any costs and expenses pertaining to the contributed property which are incurred in the year of contribution and would, under the method of accounting used, be properly reflected in the cost of goods sold for such year are to be treated as part of the costs of goods sold for such year. If costs and expenses incurred in producing or acquiring the contributed property are, under the method of accounting used, properly deducted under section 162 or other section of the Code, such costs and expenses will be allowed as deductions for the taxable year in which they are paid or incurred whether or not such year is the year of the contribution. Any such costs and expenses which are treated as part of the cost of goods sold for the year of contribution, and any such costs and expenses which are properly deducted under section 162 or other section of the Code, are not to be treated under any section of the Code as resulting in any basis for the contributed property. Thus, for example, the contributed property has no basis for purposes of determining under section 170(e)(1)(A) and paragraph (a) of § 1.170A-4 the amount of gain which would have been recognized if such property had been sold by the donor at its fair market value at the time of its contribution. The amount of any charitable contribution for the taxable year is not to be reduced by the amount of any costs or expenses pertaining to the contributed property which was properly deducted under section 162 or other section of the Code for any taxable year preceding the year of the contribution. This subparagraph applies only to property which was held by the taxpayer for sale in the course of a trade or business. The application of this subparagraph may be illustrated by the following examples:

> *Example 1.* In 1970, A, an individual using the calendar year as the taxable year and the

accrual method of accounting, contributed to a church property from inventory having a fair market value of $600. The closing inventory at the end of 1969 properly included $400 of costs attributable to the acquisition of such property, and in 1969 A properly deducted under section 162 $50 of administrative and other expenses attributable to such property. Under section 170(e)(1)(A) and paragraph (a) of § 1.170A-4, the amount of the charitable contribution allowed for 1970 is $400 ($600−[$600−$400]). Pursuant to this subparagraph, the cost of goods sold to be used in determining gross income for 1970 may not include the $400 which was included in opening inventory for that year.

Example 2. The facts are the same as in *Example 1* except that the contributed property was acquired in 1970 at a cost of $400. The $400 cost of the property is included in determining the cost of goods sold for 1970, and $50 is allowed as a deduction for that year under section 162. A is not allowed any deduction under section 170 for the contributed property, since under section 170(e)(1)(A) and paragraph (a) of § 1.170A-4 the amount of the charitable contribution is reduced to zero ($600−[$600−$0]).

Example 3. In 1970, B, an individual using the calendar year as the taxable year and the accrual method of accounting, contributed to a church property from inventory having a fair market value of $600. Under § 1.471-3(c), the closing inventory at the end of 1969 properly included $450 costs attributable to the production of such property, including $50 of administrative and other indirect expenses which, under his method of accounting, was properly added to inventory rather than deducted as a business expense. Under section 170(e)(1)(A) and paragraph (a) of § 1.170A-4, the amount of the charitable contribution allowed for 1970 is $450 ($600−[$600−$450]). Pursuant to this subparagraph, the cost of goods sold to be used in determining gross income for 1970 may not include the $450 which was included in opening inventory for that year.

Example 4. The facts are the same as in *Example 3* except that the contributed property was produced in 1970 at a cost of $450, including $50 of administrative and other indirect expenses. The $450 cost of the property is included in determining the cost of goods sold for 1970. B is not allowed any deduction under section 170 for the contributed property, since under section 170(e)(1)(A) and paragraph (a) of § 1.170A-4 the amount of the charitable contribution is reduced to zero ($600−[$600−$0]).

Example 5. In 1970, C, a farmer using the cash method of accounting and the calendar year as the taxable year, contributed to a church a quantity of grain which he had raised having a fair market value of $600. In 1969, C paid expenses of $450 in raising the property which he properly deducted for such year under section 162. Under section 170(e)(1)(A) and paragraph (a) of § 1.170A-4, the amount of the charitable contribution in 1970 is reduced to zero ($600−[$600−$0]). Accordingly, C is not allowed any deduction under section 170 for the contributed property.

Example 6. The facts are the same as in *Example 5* except that the $450 expenses incurred in raising the contributed property were paid in 1970. The result is the same as in *Example 5,* except the amount of $450 is deductible under section 162 for 1970.

(5) For payments or transfers to an entity described in section 170(c) by a taxpayer carrying on a trade or business, see § 1.162-15(a).

(d) ***Purchase of an annuity.***

(1) In the case of an annuity or portion thereof purchased from an organization described in section 170(c), there shall be allowed as a deduction the excess of the amount paid over the value at the time of purchase of the annuity or portion purchased.

(2) The value of the annuity or portion is the value of the annuity determined in accordance with paragraph (e)(1)(iii) (*b*)(*2*) of § 1.101-2.

(3) For determining gain on any such transaction constituting a bargain sale, see section 1011(b) and § 1.1011-2.

(e) ***Transfers subject to a condition or power.*** If as of the date of a gift a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an interest in property passes to, or is vested in, charity on the date of the gift and the interest would be defeated by the subsequent performance of some act or the happening of some event, the possibility of occurrence of which appears on the date of the gift to be so remote as to be negligible, the deduction is allowable. For example, A transfers land to a city government for as long as the land is used by the city for a public park. If on the date of the gift the city does plan to use the land for a park and the possibility that the city will not use the land for a public park is so remote as to be negligible, A is entitled to a deduction under section 170 for his charitable contribution.

(f) ***Special rules applicable to certain contributions.***

(1) See section 14 of the Wild and Scenic Rivers Act (Pub. L. 90-542, 82 Stat. 918) for provisions relating to the claim and allowance of the value of certain easements as a charitable contribution under section 170.

(2) For treatment of gifts accepted by the Secretary of State or the Secretary of Commerce, for the purpose of organizing and holding an international conference to negotiate a Patent Corporation Treaty, as gifts to or for the use of the United States, see section 3 of joint resolution of December 24, 1969 (Pub. L. 91-160, 83 Stat. 443).

(3) For treatment of gifts accepted by the Secretary of the Department of Housing and Urban Development, for the purpose of aiding or facilitating the work of the Department, as gifts to or for the use of the United States, see section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535), as added by section 905 of Pub. L. 91-609 (84 Stat. 1809).

(g) ***Contributions of services.*** No deduction is allowable under section 170 for a contribution of services. However, unreimbursed expenditures made incident to the rendition of services to an organization contributions to which are deductible may constitute a deductible contribution. For example, the cost of a uniform without general utility which is required to be worn in performing donated services is deductible. Similarly, out-of-pocket transportation expenses necessarily incurred in performing donated services are deductible. Reasonable expenditures for meals and lodging necessarily incurred while away from home in the course of performing donated services also are deductible. For the purposes of this paragraph, the phrase *while away from home* has the same meaning as that phrase is used for purposes of section 162 and the regulations thereunder.

(h) ***Payment in exchange for consideration*** -

(1) ***Burden on taxpayer to show that all or part of payment is a charitable contribution or gift.*** No part of a payment that a taxpayer makes to or for the use of an organization described in section 170(c) that is in consideration for (as defined in paragraph (h)(4)(i) of this section goods or services (as defined in paragraph (h)(4)(ii) of this section is a contribution or gift within the meaning of section 170(c) unless the taxpayer -

(i) Intends to make a payment in an amount that exceeds the fair market value of the goods or services; and

(ii) Makes a payment in an amount that exceeds the fair market value of the goods or services.

(2) ***Limitation on amount deductible*** -

(i) ***In general.*** The charitable contribution deduction under section 170(a) for a payment a taxpayer makes partly in consideration for goods or services may not exceed the excess of -

(A) The amount of any cash paid and the fair market value of any property (other than cash) transferred by the taxpayer to an organization described in section 170(c); over

(B) The fair market value of the goods or services received or expected to be received in return.

(ii) ***Special rules.*** For special limits on the deduction for charitable contributions of ordinary income and capital gain property, see section 170(e) and §§ 1.170A-4 and 1.170A-4A.

(3) ***Payments resulting in state or local tax benefits*** -

(i) ***State or local tax credits.*** Except as provided in paragraph (h)(3)(vi) of this section, if a taxpayer makes a payment or transfers property to or for the use of an entity described in section 170(c), the amount of the taxpayer's charitable contribution deduction under section 170(a) is reduced by the amount of any state or local tax credit that the taxpayer receives or expects to receive in consideration for the taxpayer's payment or transfer.

(ii) ***State or local tax deductions*** -

(A) ***In general.*** If a taxpayer makes a payment or transfers property to or for the use of an entity described in section 170(c), and the taxpayer receives or expects to receive state or local tax deductions that do not exceed the amount of the taxpayer's payment or the fair market value of the property transferred by the taxpayer to the entity, the taxpayer is not required to reduce its charitable contribution deduction under section 170(a) on account of the state or local tax deductions.

(B) ***Excess state or local tax deductions.*** If the taxpayer receives or expects to receive a state or local tax deduction that exceeds the amount of the taxpayer's payment or the fair market value of the property transferred, the taxpayer's charitable contribution deduction under section 170(a) is reduced.

(iii) ***In consideration for.*** For purposes of paragraph (h) of this section, the term *in consideration for* has the meaning set forth in paragraph (h)(4)(i) of this section.

(iv) ***Amount of reduction.*** For purposes of paragraph (h)(3)(i) of this section, the amount of any state or local tax credit is the maximum credit allowable that corresponds to the amount of the taxpayer's payment or transfer to the entity described in section 170(c).

(v) ***State or local tax.*** For purposes of paragraph (h)(3) of this section, the term *state or local tax* means a tax imposed by a State, a possession of the United States, or by a political subdivision of any of the foregoing, or by the District of Columbia.

(vi) ***Exception.*** Paragraph (h)(3)(i) of this section shall not apply to any payment or transfer of property if the total amount of the state and local tax credits received or expected to be received by the taxpayer is 15 percent or less of the taxpayer's payment, or 15 percent or less of the fair market value of the property transferred by the taxpayer.

(vii) ***Examples.*** The following examples illustrate the provisions of this paragraph (h)(3). The examples in paragraph (h)(6) of this section are not illustrative for purposes of this paragraph (h)(3).

(A) ***Example 1. A,*** an individual, makes a payment of $1,000 to X, an entity described in section 170(c). In exchange for the payment, A receives or expects to receive a state tax credit of 70 percent of the amount of A's payment to X. Under paragraph (h)(3)(i) of this section, A's charitable contribution deduction is reduced by $700 (0.70 × $1,000). This reduction occurs regardless of whether A is able to claim the state tax credit in that year. Thus, A's charitable contribution deduction for the $1,000 payment to X may not exceed $300.

(B) ***Example 2. B,*** an individual, transfers a painting to Y, an entity described in section 170(c). At the time of the transfer, the painting has a fair market value of $100,000. In exchange for the painting, B receives or expects to receive a state tax credit equal to 10 percent of the fair market value of the painting. Under paragraph (h)(3)(vi) of this section, B is not required to apply the general rule of paragraph (h)(3)(i) of this section because the amount of the tax credit received or expected to be received by B does not exceed 15 percent of the fair market value of the property transferred to Y. Accordingly, the amount of B's charitable contribution deduction for the transfer of the painting is not reduced under paragraph (h)(3)(i) of this section.

(C) ***Example 3. C,*** an individual, makes a payment of $1,000 to Z, an entity described in section 170(c). In exchange for the payment, under state M law, C is entitled to receive a state tax deduction equal to the amount paid by C to Z. Under paragraph (h)(3)(ii)(A) of this section, C's charitable contribution deduction under section 170(a) is not required to be reduced on account of C's state tax deduction for C's payment to Z.

(viii) ***Safe harbor for payments by C corporations and specified passthrough entities.*** For payments by a C corporation or by a specified passthrough entity to an entity described in section 170(c), where the C corporation or specified passthrough entity receives or expects to receive a State or local tax credit that reduces the charitable contribution deduction for such payments under paragraph (h)(3) of this section, see § 1.162-15(a)(3) (providing safe harbors under section 162(a) to the extent of that reduction).

(ix) ***Safe harbor for individuals.*** Under certain circumstances, an individual who itemizes deductions and makes a payment to an entity described in section 170(c) in consideration for a State or local tax credit may treat the portion of such payment for which a charitable contribution deduction is disallowed under paragraph (h)(3) of this section as a payment of State or local taxes under section 164. See § 1.164-3(j), providing a safe harbor for certain payments by individuals in exchange for State or local tax credits.

(x) ***Effective/applicability date.*** This paragraph (h)(3) applies to amounts paid or property transferred by a taxpayer after August 27, 2018.

(4) ***Definitions.*** For purposes of this paragraph (h), the following definitions apply:

(i) ***In consideration for.*** A taxpayer receives goods or services in consideration for a taxpayer's payment or transfer to an entity described in section 170(c) if, at the time the taxpayer makes the payment to such entity, the taxpayer receives or expects to receive goods or services from that entity or any other party in return.

(ii) ***Goods or services.*** Goods or services means cash, property, services, benefits, and privileges.

(iii) ***Applicability date.*** The definitions provided in this paragraph (h)(4) are applicable to amounts paid or property transferred on or after December 17, 2019.

(5) ***Certain goods or services disregarded.*** For purposes of section 170(a) and paragraphs (h)(1) and (h)(2) of this section, goods or services described in § 1.170A-13(f)(8)(i) or § 1.170A-13(f)(9)(i) are disregarded.

(6) ***Donee estimates of the value of goods or services may be treated as fair market value -***

(i) ***In general.*** For purposes of section 170(a), a taxpayer may rely on either a contemporaneous written acknowledgment provided under section 170(f)(8) and § 1.170A-13(f) or a written disclosure statement provided under section 6115 for the fair market value of any goods or services provided to the taxpayer by the donee organization.

(ii) ***Exception.*** A taxpayer may not treat an estimate of the value of goods or services as their fair market value if the taxpayer knows, or has reason to know, that such treatment is unreasonable. For example, if a taxpayer knows, or has reason to know, that there is an error in an estimate provided by an organization described in section 170(c) pertaining to goods or services that have a readily ascertainable value, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services. Similarly, if a taxpayer is a dealer in the type of goods or services provided in consideration for the taxpayer's payment and knows, or has reason to know, that the estimate is in error, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services.

(7) ***Examples.*** The following examples illustrate the rules of this paragraph (h).

> *Example 1. Certain goods or services disregarded.* Taxpayer makes a $50 payment to Charity *B,* an organization described in section 170(c), in exchange for a family membership. The family membership entitles Taxpayer and members of Taxpayer's family to certain

> benefits. These benefits include free admission to weekly poetry readings, discounts on merchandise sold by *B* in its gift shop or by mail order, and invitations to special events for members only, such as lectures or informal receptions. When *B* first offers its membership package for the year, *B* reasonably projects that each special event for members will have a cost to *B,* excluding any allocable overhead, of $5 or less per person attending the event. Because the family membership benefits are disregarded pursuant to § 1.170A-13(f)(8)(i), Taxpayer may treat the $50 payment as a contribution or gift within the meaning of section 170(c), regardless of Taxpayer's intent and whether or not the payment exceeds the fair market value of the goods or services. Furthermore, any charitable contribution deduction available to Taxpayer may be calculated without regard to the membership benefits.

> *Example 2. Treatment of good faith estimate at auction as the fair market value.* Taxpayer attends an auction held by Charity *C,* an organization described in section 170(c). Prior to the auction, *C* publishes a catalog that meets the requirements for a written disclosure statement under section 6115(a) (including *C*'s good faith estimate of the value of items that will be available for bidding). A representative of *C* gives a copy of the catalog to each individual (including Taxpayer) who attends the auction. Taxpayer notes that in the catalog *C*'s estimate of the value of a vase is $100. Taxpayer has no reason to doubt the accuracy of this estimate. Taxpayer successfully bids and pays $500 for the vase. Because Taxpayer knew, prior to making her payment, that the estimate in the catalog was less than the amount of her payment, Taxpayer satisfies the requirement of paragraph (h)(1)(i) of this section. Because Taxpayer makes a payment in an amount that exceeds that estimate, Taxpayer satisfies the requirements of paragraph (h)(1)(ii) of this section. Taxpayer may treat *C*'s estimate of the value of the vase as its fair market value in determining the amount of her charitable contribution deduction.

> *Example 3. Good faith estimate not in error.* Taxpayer makes a $200 payment to Charity *D,* an organization described in section 170(c). In return for Taxpayer's payment, *D* gives Taxpayer a book that Taxpayer could buy at retail prices typically ranging from $18 to $25. *D* provides Taxpayer with a good faith estimate, in a written disclosure statement under section 6115(a), of $20 for the value of the book. Because the estimate is within the range of typical retail prices for the book, the estimate contained in the written disclosure statement is not in error. Although Taxpayer knows that the book is sold for as much as $25, Taxpayer may treat the estimate of $20 as the fair market value of the book in determining the amount of his charitable contribution deduction.

(i) [Reserved]

(j) ***Exceptions and other rules.***

(1) The provisions of section 170 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 section 642(c)(6) and § 1.642(c)-4, is allowed a deduction under section 170 subject to the provisions applicable to individuals.

(2) No deduction shall be allowed under section 170 for a charitable contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4), subject to the conditions specified in such sections and the regulations thereunder.

(3) For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950, as amended (50 U.S.C. 790).

(4) For denial of deductions for charitable contributions as trade or business expenses and rules with respect to treatment of payments to organizations other than those described in section 170(c), see section 162 and the regulations thereunder.

(5) No deduction shall be allowed under section 170 for amounts paid to an organization:

(i) Which is disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, or

(ii) Which participates in, or intervenes in (including the publishing or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

For purposes of determining whether an organization is attempting to influence legislation or is engaging in political activities, see sections 501(c)(3), 501(h), 4911 and the regulations thereunder.

(6) No deduction shall be allowed under section 170 for expenditures for lobbying purposes, the promotion or defeat of legislation, etc. See also the regulations under sections 162 and 4945.

(7) No deduction for charitable contributions is allowed in computing the taxable income of a common trust fund or of a partnership. See sections 584(d)(3) and 703(a)(2)(D). However, a partner's distributive share of charitable contributions actually paid by a partnership during its taxable year may be allowed as a deduction in the partner's separate return for his taxable year with or within which the taxable year of the partnership ends, to the extent that the aggregate of his share of the partnership contributions and his own contributions does not exceed the limitations in section 170(b).

(8) For charitable contributions paid by a nonresident alien individual or a foreign corporation, see § 1.170A-4(b)(5) and sections 873, 876, 877, and 882(c), and the regulations thereunder.

(9) Charitable contributions paid by bona fide residents of a section 931 possession as defined in § 1.931-1(c)(1) or Puerto Rico are deductible only to the extent allocable to income that is not excluded under section 931 or 933. For the rules for allocating deductions for charitable contributions, see the regulations under section 861.

(10) For carryover of excess charitable contributions in certain corporate acquisitions, see section 381(c)(19) and the regulations thereunder.

(11) No deduction shall be allowed under section 170 for out-of-pocket expenditures on behalf of an eligible organization (within the meaning of § 1.501(h)-2(b)(1)) if the expenditure is made in connection with influencing legislation (within the meaning of section 501(c)(3) or § 56.4911-2), or in connection with the payment of the organization's tax liability under section 4911. For the treatment of similar expenditures on behalf of other organizations see paragraph (h)(6) of this section.

(k) ***Effective/applicability date.*** In general this section applies to contributions made in taxable years beginning after December 31, 1969. Paragraph (j)(11) of this section, however, applies only to out-of-pocket expenditures made in taxable years beginning after December 31, 1976. In addition, paragraph (h) of this section applies only to payments made on or after December 16, 1996. However, taxpayers may rely on the rules of paragraph (h) of this section for payments made on or after January 1, 1994. Paragraph (j)(9) of this section is applicable for taxable years ending after April 9, 2008. The third sentence of paragraph (a) applies as provided in the sections referenced in that sentence.

(68A Stat. 58, 26 U.S.C. 170(a)(1); 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 7207, 37 FR 20771, Oct. 4, 1972, as amended by T.D. 7340, 40 FR 1238, Jan. 7, 1975; T.D. 7807, 47 FR 4510, Feb. 1, 1982; T.D. 8002, 49 FR 50666, Dec. 31, 1984; T.D. 8308, 55 FR 35587, Aug. 31, 1990; T.D. 8690, 61 FR 65951, Dec. 16, 1996; T.D. 9194, 70 FR 18928, Apr. 11, 2005; T.D. 9391, 73 FR 19358, Apr. 9, 2008; T.D. 9836, 83 FR 36421, July 30, 2018; 83 FR 45827, Sept. 11, 2018; T.D. 9864, 84 FR 27530, June 13, 2019; T.D, 9907, 85 FR 48474, Aug. 11, 2020]