



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

March 17, 2009

Number: **INFO 2009-0061**
Release Date: 3/27/2009

CC:ITA:B01
GENIN-153632-08

UIL: 170.02-00

Dear _____ :

Thank you for your inquiry. In your correspondence dated December 15, 2008, you ask about the proper interpretation of significant intervening use under § 170(f)(12) of the Internal Revenue Code. You describe "bareboat charters", and ask if they constitute significant intervening use.

As you describe a bareboat charter, a donee organization leases out a donated boat for a term of three years. The lessee is granted an option to purchase the boat at the end of the term. There may be an option fee payable upfront. The sum of the option and rental payments approximate the price at which the boat reasonably could have been sold. There may be a nominal amount payable at the end of the term, when the lessee exercises the option to buy the boat.

Section 170(a) allows as a deduction, subject to certain limitations, any charitable contribution (as defined in § 170(c)), payment of which is made within the taxable year.

Section 170(f)(12)(A)(i) provides that no deduction is allowed under § 170(a) for a contribution of a qualified vehicle the claimed value of which exceeds \$500 unless the donor substantiates the contribution by a contemporaneous written acknowledgement that meets the requirements of § 170(f)(12)(B). Section 170(f)(12)(E)(ii) provides that a boat may be a qualified vehicle. Section 170(f)(12)(A)(i) also provides that § 170(f)(8) does not apply to a contribution of a qualified vehicle the claimed value of which exceeds \$500.

If a donee organization sells a qualified vehicle the claimed value of which exceeds \$500 without any significant intervening use or material improvement by the donee organization, the deduction allowed under § 170(a) may not exceed the gross

proceeds received from the sale. Section 170(f)(12)(A)(ii). Section 170(f)(12)(F) provides that the Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of § 170(f)(12).

Section 7.01(1) of Notice 2005-44, 2005-1 C.B. 1287, states that to constitute a significant intervening use, a donee organization must actually use the qualified vehicle to substantially further the organization's regularly conducted activities, and the use must be significant. Incidental use by an organization is not a significant intervening use. Whether a use is a significant intervening use depends on its nature, extent, frequency, and duration. See H.R. Conf. Rep. No. 755, 108th Cong., 2d Sess. 750-751 (2004). For this purpose, use by the donee organization includes use of the qualified vehicle to provide transportation on a regular basis for a significant period of time or significant use directly related to the instruction in vehicle repair. However, use by the donee organization does not include use of the qualified vehicle to provide training in general business skills, such as marketing and sales. Section 7.01(1) of Notice 2005-44.

Congressional intent is clear from H.R. Conf. Rep. No. 755; significant intervening use should be narrowly construed. Examples 7 and 8 of Notice 2005-44 show that daily delivery of meals to the needy for one year, or traveling 10,000 miles in one year delivering meals to the needy can constitute significant intervening use.

Use of a boat is not significant intervening use if the boat is not used to substantially further the organization's regularly conducted activities, such as using a boat to deliver food to needy individuals. Moreover, the use of the boat must be significant.

This letter is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2009-1, §2.04, 2009-1 I.R.B. 7 (Jan. 5, 2009). If you have any additional questions please contact me or _____ at _____.

Sincerely,

Karin G. Gross
Senior Technician Reviewer, Branch 1
(Income Tax & Accounting)