



New Substantiation Rules Required for Contributions of Intellectual Property *By Bruce R. Hopkins*

One of the last pre-election acts by the 108th Congress was completion of its work on the American Jobs Creation Act of 2004 (Pub. L. 108-357). The President signed the measure into law on October 22. The Act contains several provisions directly pertaining to the law of tax-exempt organizations and charitable giving.

In this issue on *Nonprofit Insights*, we'll look at how the act impacts charitable contributions of patents and other forms of intellectual property.

Charitable Contributions of Intellectual Property

Certain properties have been added to the list of gifts that give rise to a charitable contribution deduction that is confined to the donor's basis. In this instance, however, there may be one or more subsequent charitable deductions. This property consists of:

- Patents
- Copyrights (with exceptions)
- Trademarks
- Trade names
- Trade secrets, know-how, software (with exceptions), or similar property, or applications or registrations of such property

Collectively, these properties are termed *qualified intellectual property* (except in instances when contributed to standard private foundations).

A person who makes this type of gift — a *qualified intellectual property contribution* — is provided a charitable contribution deduction (subject to the annual percentage limitations) equal to a percentage of net income that flows to the charitable donee as a result of the property. This income is termed *qualified donee income*.

A portion of qualified donee income is allocated to a tax year of the donor. This income allocation process does not apply to income received or accrued to the donee after 10 years from the date of the gift, and the process is inapplicable to donee income received after the expiration of the legal life of the property.

The donee income that materializes into a charitable deduction is determined by the *applicable percentage*, which is a percentage determined by the following table that appears in the Internal Revenue Code:

Donor's Tax Year	Applicable Percentage
1st	100%
2nd	100%
3rd	90%
4th	80%
5th	70%
6th	60%
7th	50%
8th	40%
9th	30%
10th	20%
11th	10%
12th	10%

Thus, if following a qualified intellectual property contribution, the charitable donee receives qualified donee income in the year following the gift, that amount becomes, in full, a charitable contribution deduction (subject to the general limitations). If such income is received by the charitable donee eight years after the gift, the donor receives a charitable deduction equal to 40 percent of the qualified donee income. As this table indicates, the opportunity for a qualified intellectual property deduction arising out of a qualified intellectual property contribution terminates after 12 years from the date of the gift.

The reporting requirements concerning certain dispositions of contributed property have been amended to encompass qualified intellectual property contributions. A donee of such a contribution is required to make a return, with respect to each applicable tax year of the donee, showing the following:

- 1) The name, address and tax identification number of the donor.
- 2) A description of the intellectual property contributed.
- 3) The date of the contribution.
- 4) The amount of net income of the donee for the tax year that is properly allocable to the qualified intellectual property. A copy of this return must be furnished to the donor in a timely manner.

Note that to report income from qualified intellectual property, you'll need to file a new Form 8899, *Notice of Income from Donated Intellectual Property*.

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