



TaxNewsFlash

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Proposed regulations: Payments made to charities in return for consideration

The U.S. Treasury Department and the IRS this afternoon released for publication in the Federal Register proposed regulations (REG-107431-19) concerning the treatment of certain payments made to charitable entities in return for consideration.

The [proposed regulations](#) [PDF 311 KB] are intended to:

- Update the regulations under section 162 to reflect current law regarding the application of section 162 to a taxpayer that makes a payment or transfer to an entity described in section 170(c) for a business purpose
- Provide safe harbors under section 162 to allow for certainty with respect to the treatment of payments made by business entities to an entity described in section 170(c)
- Provide a safe harbor under section 164 for payments made to an entity described in section 170(c) by individuals who itemize deductions and receive or expect to receive a state or local tax credit in return
- Update the regulations under section 170 to reflect past guidance and case law regarding the application of the quid pro quo principle under section 170 to benefits received or expected to be received by a donor from a third party

As explained by the preamble, several ancillary issues were raised in response to prior IRS notices and 2018 regulations. These issues involved: (1) treatment of business entity payments to entities described in section 170(c); (2) treatment of payments by individuals with total state and local tax liabilities that were less than or equal to the section 164(b)(6) limitations; and (3) application of the quid pro quo principle under section 170 to benefits received or expected to be received by the donor from a party other than the donee. The preamble continues to explain that while “sub-regulatory” safe harbors relating to the first two issues (released in Rev. Proc. 2019-12 and Notice 2019-12), the IRS and Treasury Department “...believe that it is appropriate to include these safe harbors in proposed regulations and to request comments.”

The preamble to today's release further explains that the IRS and Treasury "...extensively addressed the third issue – whether a benefit received or expected to be received from a party other than the donee may constitute a quid pro quo that reduces the taxpayer's charitable contribution deduction under section 170" and that this release proposes additional regulations setting forth a general rule for benefits received or expected to be received from third parties.

Today's release provides guidance on these three issues.

The purpose of this report is to provide text of the 39-page proposed regulations (scheduled to appear in the Federal Register on December 17, 2019).

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