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Neil E. Harl
Iowa State University

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CHARITABLE CONTRIBUTIONS OF COMMODITIES BY LANDLORDS  
— by Neil E. Harl*

The rules governing charitable contributions of crops, livestock and other items of inventory are relatively well known. For gifts by farm operators and materially participating landlords, the gift does not trigger gain on contribution to the charity; rather, the charitable contribution is limited to the donor’s income tax basis for gifts of grain and other “ordinary income property.” For charitable gifts of grain or raised livestock, the costs of production are deductible as trade or business expenses regardless of whether the contribution occurs in the year of production or a later year. By comparison, for gifts of grain, livestock or other items of inventory to non-charitable donees, it has been assumed that gifts made after the year of production do not require that production expenses associated with the gift be reduced in terms of deductibility.

The treatment of charitable contributions of commodities by landlords has a storied past. The regulations state that “crop shares (whether or not considered rent under State law) shall be included in gross income as of the year in which the crop shares are reduced to money or equivalent of money.” IRS later ruled that if crop share rents are received in one taxable year and fed to livestock in another taxable year, the landlord must include in income an amount equal to the fair market value of the share rents at the time the crop share rents are fed to livestock. An offsetting deduction is available at the same time. Even though an offsetting feed deduction is available, including share rents in income is important for purposes of determining net income from self-employment under the optional gross income method and other provisions based on the taxpayer’s gross income.

* Charles F. Curtiss Distinguished Professor in Agriculture and Professor of Economics, Iowa State University; member of the Iowa Bar.
The courts, with one exception, have upheld the IRS position on the contribution of commodities to landlords as triggering gain to the landlord on transfer of the commodities to the charity without a distinction drawn as to whether the landlord was a materially participating or non-materially participating landlord. In Tatum v. Commissioner, the taxpayer was a crop-share landlord who shared in fertilizer and insecticide costs and “materially planned the amount and location of crops and the application of fertilizer, insecticide and water.” The tenant performed all the labor and paid all other expenses. The taxpayer made donations of crops to charities using negotiable warehouse receipts and “cotton classing cards.” The taxpayers did not include in income the value of the crops donated but did claim a charitable deduction for the amounts received by the charitable donees on sale of the crops. The court held that crop shares are potential income assets, not property, and that a landlord may not avoid taxation by assigning rights to the income prior to the reduction of crop shares to money or its equivalent.

Parmer v. Commissioner involved a similar fact situation. An individual who was both a farmer and a landlord donated crops to a charity and did not include the value of the crops as income. The grain was represented by warehouse receipts. The Tax Court and the Tenth Circuit Court of Appeals agreed that the commodity was a crop rental, not farm products and the rentals were no different from money. The court reached the same outcome in Cullison v. United States.

By contrast, the U.S. District Court in the Eastern District of Washington held, in Peterson v. United States, that for share rents given to charity, the fair market value of the commodity did not need to be included in the taxpayers’ income.

Taxability limited to non-material participation landlords?

None of the four cases cited commented definitively on whether the landlord in question was a materially participating or non-materially participating landlord. Significantly, however, the court in Tatum v. Commissioner referred approvingly to Davison v. United States. That case and Rev. Rd. 64-289 stand for the accepted proposition that share rents under a non-material participation share lease are considered income in respect of decedent and that share rents under a material participation lease are treated the same as crops of a farmer with the result that growing crops and stored crops produced under such a lease receive a new income tax basis at death.

Therefore, it would seem that share rents under a non-material participation share lease, in the event of gift to a charitable organization, are properly characterized as crop rentals which would be taxable to the donor on transfer to the charity. Share rents under a material participation lease should be properly characterized the same as farm products for a farmer.

**FOOTNOTES**

3. I.R.C. § 162.
8. E.g., Campbell v. Prothro, 209 F.2d 331 (5th Cir. 1954).
11. See notes 15-27 infra and accompanying text.
12. Treas. Reg. § 1.61-4(a), (b).
16. 400 F.2d 242 (5th Cir. 1968), aff’g, 46 T.C. 736 (1966).
17. Id.
18. Note that negotiable warehouse receipts have since been held by IRS to be the equivalent of cash. Rev. Rul. 79-207, 1979-2 C.B. 351.
19. 400 F.2d 242, n. 1 (5th Cir. 1968).
20. 400 F.2d 242 (5th Cir. 1968).
21. Id.
22. 468 F.2d 705 (10th Cir. 1972), aff’g, T.C. Memo. 1971-320.
23. See note 18 supra.
25. 468 F.2d 705 (10th Cir. 1972).
26. Id.
29. Id.
30. See notes 16, 22, 27 and 28 supra.
31. See I.R.C. § 1402(a)(1).
32. 400 F.2d 242 (5th Cir. 1968).
34. 1964-2 C.B. 173.
35. See I.R.C. § 691(a).