

1979 WL 43512 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 9, 1979

\*1 Richard B. Kale, Jr., Esq.  
Senior Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

Dear Dick:

Mr. Allen asked me to research the question you presented in your letter of August 7, 1979, regarding the gift of an antique car to the State Museum with the car being loaned back to the owner for him to show it at antique auto shows.

[Section 12-7-700\(14\), Code of Laws of South Carolina](#), 1976, as amended, provides for a charitable deduction in computing net income by the following language:

‘(14) Contributions or gifts made by individuals within the taxable year to the State or any political subdivision thereof for public purposes and not in excess of thirty percent of a taxpayer's adjusted gross income.’

It is the position of the Tax Commission and this office that the gift, to be deductible for income tax purposes, must be complete. That is, the donor must relinquish all control, dominion, possession and enjoyment of the item in question to the donee.

Along these lines, the Internal Revenue Service had numerous problems in the past with art collectors donating pieces to public museums, but retaining possession of them for their own personal enjoyment for a specified time, usually until the death of the donor. To deal with this problem, Congress, in the 1960s, added [§ 170\(a\)\(3\) to the Internal Revenue Code](#) which deals with future interest in tangible personal property. This section basically states that a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired.

A gift to be deductible from taxable income must not only be sufficient to transfer and vest legal title in the donee without the power of revocation, but there must also be a relinquishment of the dominion, possession, control and enjoyment of the subject matter of the gift by delivery to the donee. [Pauley v. United States, 459 F. 2d 624 \(1972\)](#); [Orr v. United States, 343 F. 2d 553 \(1965\)](#); [Nehring v. C.I.R., 131 F. 2d 790 \(1943\)](#).

Under the procedure outlined in your letter and Mr. Stroup's letter, the gift of the antique car to the Museum would not be deductible for tax purposes as a charitable contribution in the year in which the gift was made.

If I can be of any further assistance or you need some discussion on this, give me a call.

With kind regards, I am  
Very truly yours,

Jackson E. Fields, Jr.  
Staff Attorney

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