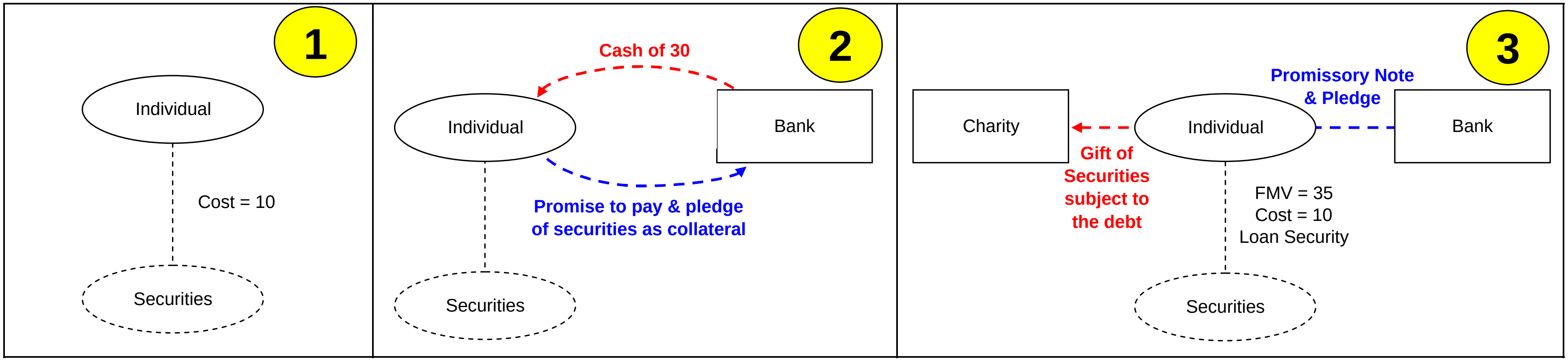
Revenue Ruling 70-626

Gift of Appreciated Securities Pledged As Collateral for Loan That Exceeds Basis

Initial Structure (1967) | **Collaterized Borrowing (1968)** | **Charitable Contribution (1968)**



The taxpayer, an individual, purchased securities as an investment for 10x dollars in 1967. Subsequently, in 1968, he borrowed 30x dollars from a bank, pledging the securities as collateral for the loan. Later, in 1968, at a time when the securities had been held for more than six months and at a time when the fair market value of the securities had appreciated to 35x dollars, the taxpayer made a gift of the securities to a charitable organization described in section 170(c). The securities were given subject to the indebtedness. Although the taxpayer remained liable to the bank on the full amount of the indebtedness, the charitable organization agreed to pay the debt.

The questions were whether the taxpayer was in receipt of taxable income as a result of the transaction, and as to the amount allowable as a charitable contribution. Section 1001(a) provides, in part, that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain. Section 1001(b) provides, in part, that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Reg. 1.1001-1(e) provides, in part, that where a transfer of property is in part a sale and in part a gift, the transferor has a gain to the extent that the amount realized by him exceeds his adjusted basis in the property.

In Crane v. Commissioner, 331 U.S. 1 (1947), the Supreme Court held that where real property is transferred subject to a mortgage, the amount of the mortgage is properly included in the "amount realized" on the transfer. For purposes of the instant case, the effect of a mortgage of real property to secure an indebtedness and of a pledge of stock to secure an indebtedness are so similar that their tax treatment should be the same. Therefore, a gift or donation of property pledged to secure a debt, the amount of which is less than the fair market value of such property, is a transfer of property in part a sale and in part a gift within the meaning of Reg. 1.1001-1(e). The amount of such debt is the "amount realized" by the transferor on the sale part of the transfer.

Accordingly, the taxpayer's gift of the pledged securities to a charitable organization described in section 170(c) resulted in his realizing a long-term capital gain of 20x dollars. This is the difference between the 30x dollars of debt to which the securities are subject and the taxpayer's basis in the securities of 10x dollars. Furthermore, the 5x dollar-excess of the fair market value of the securities (35x dollars) over the encumbrance (30x dollars) is a charitable gift deductible under section 170(a).