

Internal Revenue Service**Department of the Treasury**

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Washington, DC 20224

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CC:ITA:1 – PLR-119110-00

Date: July 24, 2001

LEGEND:

Taxpayer =
Company =
Website =
Charity =
Vendor =

Dear _____ :

This responds to your letter dated September 13, 2000, incorporating some of the material contained in your letter dated June 28, 2000, and other supplemental material, in which you request rulings related to §§ 61 and 170 of the Internal Revenue Code.

RULINGS REQUESTED

The following rulings are requested:

- (1) If Taxpayer purchases items through Website, Company as agent for Taxpayer receives a “rebate” from Vendor, and Taxpayer elects to donate the “rebate” to Charity, the donation is a charitable contribution deductible under § 170 of the Code;
- (2) Taxpayer’s charitable contribution is deductible in the year that Company transmits Taxpayer’s “rebate” to Charity; and
- (3) The “rebate” is not includible in Taxpayer’s gross income.

FACTS**General**

Taxpayer is an individual who itemizes deductions on Schedule A of her federal income tax return. Company is a for-profit corporation that is the registered copyright, trademark and domain name owner of Website. Website is an e-commerce Internet shopping webpage through which a customer may purchase products from specialty boutiques and companies selling general consumer products. For each purchase, Company receives a commission from the vendor, and, as agent for the customer,

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receives from the vendor a “rebate” equal to a specified percentage of the purchase price, which the customer chooses to either receive in cash or donate to charity.

Company’s shopping service program

A customer engages Website through the Internet by logging on either directly to Website or by means of an Internet link from a charity’s website. Website is affiliated with several charitable organizations described in § 170(c), which place Website’s icon on their websites in a prominent position. If a customer enters the website of a charity with which Website is contractually affiliated, the customer is advised that, if the customer wishes to make a charitable donation in connection with the purchase of certain items, the customer may click on Website’s logo. This transfers the customer to Website.

Upon entering Website, a customer is informed about Company’s program. The customer is told that, if he or she “shops” through Company’s shopping service program, the customer receives a “rebate” from the vendor, which the customer may either (1) donate to a charity, or (2) receive in cash. Before purchasing any items, the customer must exercise one of these options. To make a purchase, a customer clicks on a link of a general category of items and chooses a particular company from which to make purchases. The customer thereafter selects an item to purchase, giving a credit card or charge card number for payment.

Each vendor from which a customer makes a purchase pays a commission to Company. The vendor also pays a “rebate” to Company as agent for each purchasing customer. Amounts received by Company as agent for its customers from vendors, if designated to be donated to charity, are held in a non-interest bearing account until disbursed to the designated charity. Once funds are transferred to a charity, the transfer is irreversible. Even in the event of a customer’s return of an item purchased through Website where the customer had elected to make a donation to a charity, amounts already paid to the charity are not returned to the customer, Company, or the vendor.

The participating charity agrees to provide the customer upon request with the contemporaneous written acknowledgment required by § 170(f)(8). Company agrees to provide the participating charity with information to help Charity prepare this acknowledgment.

Taxpayer’s proposed transaction

Taxpayer plans to purchase products from Vendor through Website. Vendor agrees to pay a commission to Company. In addition, Vendor agrees to pay a “rebate” to Company as agent for Taxpayer, which Taxpayer will elect to donate to Charity, a charitable organization described in § 170(c).

LAW AND ANALYSIS:**Ruling Request #1–Charitable contribution under § 170.**

Taxpayer first asks us to rule that, in the event she purchases items through Website, Company as agent for Taxpayer receives a “rebate” from Vendor, and Taxpayer elects to donate the “rebate” to Charity, the donation is a charitable contribution deductible under § 170 of the Code.

A charitable contribution must be made voluntarily and with donative intent. U.S. v. American Bar Endowment, 477 U.S. 105 (1986). In American Bar Endowment, a membership organization maintained a group insurance program for its members. As a condition of participating in the insurance program, members were required to assign refunds from their premiums to the organization. Every year, a portion of the insurance premiums paid by members was refunded to the organization. The organization used these refunds to fund charitable grants. Members participating in the group insurance program claimed charitable contribution deductions under § 170 for their pro-rata shares of the refund amounts that funded charitable activities. The Supreme Court concluded that there was no voluntary payment of money or property. The Court suggested that it would have reached a different result if the organization were to give each member a choice between retaining his pro-rata share of dividends or assigning them to the organization. Id. at 113.

In the present case, Taxpayer will have such a choice: She will have the opportunity to donate the “rebate” held by Company on her behalf to Charity or to direct Company to pay it to her. This element of choice distinguishes the Company program from the group insurance program at issue in American Bar Endowment, where those who wished to participate in the group insurance program could not decline to have their premium refunds transferred to a charitable organization. The opportunity to decide whether payments will be made to a charity or received in cash renders the payments voluntary.

If Taxpayer complies with the substantiation requirements under § 170(f)(8) and all of the other requirements under § 170, she will be allowed a deduction for the charitable contribution of her “rebate.”

Ruling Request #2–Taxable year of deduction.

Taxpayer next asks us to rule that her charitable contribution is deductible in the year that Company transmits her “rebate” to Charity.

Rev. Rul. 78-38, 1978-1 C.B. 67, holds that a charitable contribution effected by means of a bank credit card is deductible in the year the charge is made. However, in the present case, although the charitable contribution arises as a result of Taxpayer's purchase of an item using a credit or debit card, the charitable contribution is not actually made by use of the card.

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Rev. Rul. 55-192, 1955-1 C.B. 294, concludes that the portion of a social club's membership dues earmarked by a taxpayer for distribution to a qualified charity and paid to the club's treasurer may give rise to a deductible charitable contribution. Because the social club's treasurer also serves as an authorized agent of the donee charitable organization, the ruling allows the deduction in the year the dues are paid to the treasurer. The ruling states that, if the treasurer had not been designated by the charitable organization as its agent, the contributions would have been deductible only in the year in which they were actually transferred to the charitable organization.

In Rev. Rul. 85-184, 1985-2 C.B. 84, a utility company enters into an agreement with a local chapter of a charitable organization to collect contributions for a program providing emergency energy assistance to elderly and handicapped persons. The charity designates the utility company as its authorized agent to collect contributions on the charity's behalf. Utility company customers are given the opportunity to make contributions to the emergency energy assistance program by making payments to the utility company in an amount, earmarked by the customer for donation, in excess of their monthly bills. The revenue ruling holds that customers making such extra payments are entitled to a deduction for a charitable contribution under § 170. As the utility company is acting as the agent for the charity, Rev. Rul. 85-184 holds that the deduction is allowed in the taxable year the extra payment is made to the utility company.

A charitable contribution paid to an agent of a charitable organization is deductible when paid to the agent. Section 1.170A-1(b) of the Income Tax Regulations. See also Rev. Rul. 55-192 and Rev. Rul. 85-184. In this case, however, Company does not serve as the agent for Charity. Rather, Company is authorized to act on Taxpayer's behalf. While the "rebates" are held by Company, Taxpayer retains control over them. Taxpayer may decide to receive them in cash, or she can have Company transfer them to a charitable organization. Therefore, Company serves as the agent for taxpayer with respect to the "rebates" it holds.

Delivery to a third party, for subsequent delivery to a charitable organization, does not satisfy the requirement of delivery. Londen v. Commissioner, 45 T.C. 106 (1965); Steele's Mills v. Commissioner, 4 B.T.A. 960 (1926). There is no delivery of a charitable contribution when Company receives an amount as agent for Taxpayer. Delivery occurs when Company transfers the amount to Charity.

Therefore, Taxpayer will be entitled to claim a charitable contribution deduction only during the taxable year in which Company transfers the amount it holds on Taxpayer's behalf to Charity.

Ruling Request #3—"Rebates" not included in income.

Lastly, Taxpayer asks us to rule that she does not realize any income from any "rebates" she receives.

A rebate received from the party to whom the buyer directly or indirectly paid the purchase price for an item is a reduction in the purchase price of the item; it is not an

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accession to wealth and is not includible in the buyer's gross income. See Rev. Rul. 76-96, 1976-1 C.B. 23; Rev. Rul. 84-41, 1984-1 C.B. 130.

In this case, when Taxpayer purchases a product on Website, Company receives from Vendor a "rebate" as agent for Taxpayer, which she may choose to receive in cash from Company, or donate to a charity. This payment constitutes a reduction in the purchase price and thus is a rebate. Pursuant to Rev. Rul. 76-96 and Rev. Rul. 84-41, the rebate is not includible in Taxpayer's gross income.

CONCLUSIONS:

(1) When Company transfers the amount it holds as agent for Taxpayer to Charity, the amount so transferred is a charitable contribution, deductible by Taxpayer to the extent provided by § 170.

(2) Taxpayer is entitled to a charitable contribution deduction under § 170 in the year that Company (acting as Taxpayer's agent) transfers Taxpayer's rebate to Charity.

(3) The payment received by Company (as agent for Taxpayer) from Vendor is a rebate, and is therefore not includible in Taxpayer's gross income.

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax consequences to Company or Charity.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,
Associate Chief Counsel
(Income Tax & Accounting)
By:Karin G. Gross
Senior Technician Reviewer, Branch 1

cc: