

**Letter Ruling 9623035, March 8, 1996**

CCH IRS Letter Rulings Report No. 1006, 06-12-96

IRS REF: Symbol: CC:DOM:1T&A:3-TR-31-1870-95

**Uniform Issue List Information:**

UIL No. 0170.07-08

[Code Sec. 170]

This responds to your letter of August 17, 1995 (as supplemented by your letter of March 8, 1996) requesting a ruling concerning the applicability of section 170(a)(1) of the Internal Revenue Code to proposed payments by Company to charitable organizations.

**ISSUES**

Your ruling request presents the following issues:

1. Does a Company cardholder make a charitable contribution under §170 when a percentage of the price of an item (less an administration fee) purchased with a Company card at a participating retailer is transferred to a qualified charitable organization selected by the cardholder?
2. In what taxable year can cardholders claim a deduction under §170 for amounts transferred by Company to the charitable organization?
3. Does §170(l)(8) apply to amounts transferred by Company to the charitable organization?
4. Does a Company cardholder realize income from participation in the program?

**CONCLUSIONS**

1. Company's payments to qualified charitable organizations on behalf of a Company cardholder are charitable contributions by the cardholder within the meaning of §170.
2. A cardholder may claim a deduction under §170 for the taxable year in which Company made payments to charitable organizations on the cardholder's behalf.
3. A cardholder must obtain substantiation under §170(f)(8) for each payment of \$250 or more by Company to a charitable organization on behalf of the cardholder.
4. Cardholders do not realize income from participation in Company's program.

**FACTS**

Company intends to sponsor a line of credit and debit cards, to be known as Company cards. These cards will be issued to cardholders across the United States by banks entering into license agreements with Company. Banks may charge an to cardholders Company will negotiate agreements with retailers that want to become participating Company card retailers. Pursuant to these agreements, when a cardholder uses a Company card to purchase an item from a participating retailer, a percentage of the purchase price will be transferred to Company. When they first receive their Company cards, and periodically thereafter, cardholders will receive a list of participating retailers. They will also be informed of the percentage of the retail purchase price that each participating retailer will pay to Company.

After a sale by a participating retailer to a cardholder, the agreed-upon percentage of the purchase price

will be transferred by the bank (or its agent) processing the transaction to Company. Of this amount, an administration fee, expected to be in the neighborhood of 20 percent, will be retained by Company. The balance of the amount transferred to Company will be transferred to a custodial account maintained by Company on behalf of each cardholder. For purposes of this ruling, the amounts transferred to cardholders' custodial accounts are referred to as "rebates."

When they apply for a Company card, applicants will be asked to designate a charitable organization (an organization listed in IRS Publication 78, "Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986") to which they want to have their rebates paid. Cardholders will be free to change their designation at any time, upon written notice to Company. Rebates earned will appear as a line item on the cardholders' monthly statements from the issuing bank. If the cardholder returns to the retailer an item of merchandise purchased with the Company card, the amount of the corresponding rebate will be deducted from the rebate amount held in the cardholder's custodial account. At the end of each calendar quarter, Company will transfer rebates that have accumulated in the custodial account to the charitable organization selected by the cardholder. For the fourth calendar quarter, these transfers will be made before the end of the calendar year.

Cardholders will not receive anything in exchange for the payments to charitable organizations of their rebates. Instead of having Company pay their rebates to a charitable organization, cardholder may obtain the rebates for their personal use. Unless they advise Company in writing of their intention to obtain the rebates for themselves, cardholders' rebates will automatically be paid over to the charitable organization they have designated. When Company makes a payment to a charitable organization on behalf of a cardholder, Company will provide the organization with the amount of the cardholder's contribution, together with the cardholder's name and address. Company will also provide each cardholder with an annual statement reflecting the total amount transferred to a charitable organization with respect to that cardholder, together with the amount of each quarterly transfer.

## LAW

Section 61 of the Code provides that gross income means all income from whatever source derived.

Section 170 of the Code allows, with certain limitations, a deduction for contributions and gifts to or for the use of organizations described in section 170(c). Section 1.170A-1(b) of the Income Tax Regulations provides that a contribution is ordinarily made at the time delivery is effected. The delivery or mailing of a check that subsequently clears in due course constitutes an effective contribution on the date of delivery or mailing.

Section 170(f)(8)(A) of the Code provides that no deduction is allowed under §170(a) for a contribution of \$250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the charitable organization. Section 170(f)(8)(B) sets forth the information that must be included in the contemporaneous written acknowledgment.

Rev Rul. 78-38, 1978-1 C.B. 67, holds that a charitable contribution by means of a bank credit card is deductible in the year in which the charge is made

Rev Rul. 85-184, 1985-2 C.B. 84, concludes that a utility company's customers are entitled to deductions for charitable contributions under §170 for payments to the company in excess of their monthly bills for a program designed to help elderly and handicapped persons meet their emergency energy-related needs. As the utility company was acting as the agent for the charity, Rev Rul. 85-184 holds that the deduction is allowed in the taxable year that the payment is made to the utility company.

Similarly, Rev Rul. 55-192 concludes that a portion of a social club's membership dues earmarked 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 served 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.

These revenue rulings indicate that a charitable contribution paid to an agent of a charitable organization is deductible when paid to the agent. In this case, however, Company does not serve as the agent for the donee charities. Rather, Company is authorized to act on a cardholder's behalf with respect to the rebated funds. Therefore, Company serves as the agent for the cardholders with respect to the rebate amounts it holds. See Restatement, Second, Agency §1.

While the rebates are held by Company, the cardholder retains control over the rebates. Cardholders may decide to use the rebates for personal purposes. Alternatively, they can have Company transfer the rebates to a charitable organization. Under the rules of the Company card program, cardholders will have a time period during which they may claim rebate amounts for personal use. Even after expiration of that time period, however, there is no contractual relationship between Company and designated charitable organizations that establishes the charitable organizations' right to receive the rebates. Accordingly, the rebates held by Company do not leave the control of the Company or its cardholders until they are actually paid over to charitable organizations.

Delivery to a third party, for subsequent delivery to a charitable organization, does not satisfy the requirement of delivery. London v. Commissioner, 45 T.C. 106 (1965)[CCH Dec. 27,600]; Steele's Mills, 4 B.T.A. 960 (1926)[CCH Dec. 1645]; Rev. Rul. 55-192, supra. Accordingly, there is no delivery of a charitable contribution when Company receives rebate amounts, or when cardholders fail to claim rebates for their personal use. Rather, delivery occurs when Company transfers the rebate funds to the designated charities.

Company cardholders, therefore, will be entitled to claim charitable deductions only with respect to rebate funds that Company transfers to charitable organizations during the taxable year.

### 3. Application of §170(f)(8).

Section 170(f)(8)(A) of the Code provides that no deduction shall be allowed for a charitable contribution of \$250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution. The requirements for the contemporaneous written acknowledgment are set forth in §170(f)(8)(B). This provision was enacted in the Omnibus Budget Reconciliation Bill of 1993, and the conference report to this bill indicates that for purposes of this substantiation requirement, separate payments will be treated as separate contributions and will not be aggregated for purposes of applying the \$250 threshold. See H.R. Conf. Rep. No. 213, 103d Cong., 1<sup>st</sup> Sess. 565, n. 29 (1993).

Under §170(f)(8), if Company makes a lump-sum transfer to a charitable organization of \$250 or more on behalf of a Company cardholder, the cardholder will have to substantiate the contribution by means of a contemporaneous written acknowledgment from the charitable organization that meets the requirements of §170(f)(8)(B). Company has indicated that it intends to supply donee charitable organizations with the amounts of cardholders' contributions, as well as the names and addresses of Company cardholders. With this information, charitable organizations can provide the substantiation required by §170(f)(8).

Rev. Rul. 55-192, 1995-1 C.B. 294, holds that taxpayers can claim a deduction under §170 for a portion of a social club's membership dues earmarked for distribution to a qualified charity and paid to a social club's treasurer, who served as an authorized agent of the donee charitable organizations.

Rev. Rul. 76-96, 1976-1 C.B. 23, holds that rebates paid by an automobile manufacturer to qualifying retail customers who purchase new automobiles are not included in the gross income of the customers.

## ANALYSIS

### 1. Cardholder makes charitable contribution.

A charitable contribution must be made voluntarily and with donative intent. US v. American Bar Endowment, 477 U.S. 105 (1986)[86-1 USTC ¶9482]. In American Bar Endowment, a membership organization maintained a group insurance program for its members. Every year, a portion of the insurance premiums paid by members were refunded to the organization. As a condition of participating in the insurance program, members were required to assign refunds from their premiums to the organization. The organization used these refunds to fund charitable grants. Members participating in the group insurance program claimed charitable deductions under §170 for their pro-rata shares of the refund amounts that funded charitable activities. The Supreme Court disallowed these deductions, concluding that they were not voluntary. 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, cardholders will have such a choice: they will have the opportunity to direct Company to refund rebate amounts to them. This element of choice distinguishes the Company card 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. Furthermore, the Company cardholders will also have the opportunity to select the charitable organizations that will receive payments of their rebates. In American Bar Endowment, by contrast, payments were made to a charitable organization selected by the sponsoring organization. The opportunity to decide whether payments will be made to a charity, together with the ability to designate the charity to receive the payments, renders the payments voluntary.

### 2. Deduction claimed in the year of transfer to charity.

Rev. Rul. 78-38, holds that a charitable contribution by means of a bank credit card is deductible in the year the charge is made. In the present case, the charitable contribution arises because of a cardholder's purchase of an item using a credit or debit card, but the charitable contribution is not actually made by use of the card. Rather, the charitable contribution is made when Company transfers a rebate that accumulates in the custodial account to a designated charitable organization.

In Rev. Rul. 85-184, a utility company entered into an agreement with a local chapter of a national charitable organization to collect contributions for a program providing emergency energy assistance to elderly and handicapped persons. The charity designated the utility company as its authorized agent to collect contributions on the charity's behalf. Utility company customers were given the opportunity to make contributions to the emergency energy assistance program by making payments to the utility company in an amount, earmarked 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 was 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.

6. Rebates not included in income.

A rebate paid by a retailer participating in the Company card program is not included in the gross income of a cardholder under §61. Rather, the rebate reflects a reduction in the purchase price paid for an item purchased with the Company card. See Rev. Rul. 76-96, supra.

This ruling is directed only to Company, which requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

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