BRADFORD TAX INSTITUTE

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Private Letter Ruling 199939021

Legend

Taxpayer =

Company =

Dear :

This responds to your letter dated January 28, 1999, requesting a ruling concerning the application of §§ 61 and 170(a)(1) of the Internal Revenue Code.

ISSUES

1. Are the rebates paid pursuant to the coupon program described below includible in the taxpayer's gross income?

2. Are the payments to charity, pursuant to the coupon program, charitable contributions under § 170(a)?

CONCLUSIONS

1. The rebates are not includible in the taxpayer's gross income.

2. The payments to charity are charitable contributions, deductible to the extent otherwise provided by § 170.

FACTS

Company is sponsoring a coupon program. Under this program, holders of Company cards are issued manufacturer's coupons redeemable at local supermarkets and other retail establishments upon the purchase of specified items. There is no charge to cardholders wishing to participate in the program. When individuals apply for a Company card, they are asked to designate whether they would like all or a portion of the face value of the coupon to be (1) redeemed at the point of sale, or (2) collected by Company and paid to a charity described in §170(c). Cardholders designate the portion (if any) to be redeemed at point of sale and the portion (if any) to be paid to charity. Cardholders may change this designation at any time, upon written notice to Company.

Taxpayer, a Company cardholder, designates that 100 percent of her coupon discounts are to be collected by Company and paid to a charity described in §170(c). Company collects the coupons from the retailers and presents them to the manufacturer for payment. Upon receipt of payment from the manufacturer, Company sends the face value of the coupons to the charity. Company provides the charity with a quarterly record of the dates and amounts paid to charity on behalf of Taxpayer, together with her name and address.

LAW

Section 61 of the Internal Revenue 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 § 170(c).

Section 1.170A-1(b) of the Income Tax Regulations provides that a charitable 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 a charitable organization. Section 170(f)(8)(B) sets forth the information that must be included in the contemporaneous written acknowledgment.

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.

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 includible in the gross income of the customers.

ANALYSIS

Issue #1

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 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.

Company's coupon program involves the purchase of products that are subject to a manufacturer's rebate. Under the facts presented, Taxpayer elects to donate the amount of the rebate to a pre-selected charity. The fact that Taxpayer could have opted to receive the rebate at the point of sale indicates that she is the recipient of the rebate for tax purposes, even though the amount of the rebate is paid to charity. However, pursuant to Rev. Rul. 76-96 and Rev. Rul. 84-41, the rebates are not includible in her gross income.

Issue #2

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. Every year, a portion of the insurance premiums paid by members were refunded 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 ABE to give each member a choice between retaining his pro-rata share of dividends or assigning them" to charity. 477 U.S. at 113.

In the present case, Taxpayer has such a choice; she will have the opportunity to receive her coupon rebates at the point of sale. This element of choice distinguishes

the Company coupon 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 charity renders the payments voluntary.

Rev. Rul. 85-184 indicates that a charitable contribution paid to an agent of a charitable organization is deductible when the payment is made to the agent. In this case, however, Company does not serve as the agent for the donee charity. Rather, Company is authorized to act on Taxpayer's behalf with respect to the rebated funds.

There is no delivery of a charitable contribution when Company receives rebate amounts as designated by Taxpayer. Rather, delivery occurs when Company transfers the rebates to the charity. Taxpayer, therefore, will be entitled to treat as charitable contributions the rebates paid to the charity on her behalf within the taxable year.

Section 170(f)(8)(A) of the Code provides that no deduction will 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., 1st Sess. 565, n. 29 (1993).

Under §170(f)(8), if Company makes a lump-sum transfer to charity of $250 or more on behalf of Taxpayer, she will have to substantiate the contribution by means of a contemporaneous written acknowledgment from the charity that meets the requirements of § 170(f)(8)(B). Taxpayer has represented that Company intends to supply the charity with the amount of her rebates paid to charity, along with her name and address. With this information, the charity will be able to provide the substantiation required by § 170(f)(8).

Accordingly, Taxpayer will be entitled to a charitable contribution deduction for the rebates paid to charity on her behalf, subject to the limitations and requirements of § 170.

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

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