

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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Refer Reply To:
CC:ITA:B01
PLR-141607-09

Date:
April 05, 2010

Legend

Taxpayers =

Company =

Dear _____ :

This responds to your letter dated September 11, 2009, in which you request rulings related to §§ 61 and 170 of the Internal Revenue Code.

RULINGS REQUESTED

The following rulings are requested:

- (1) The portion of the credit card purchases that Taxpayers can either receive back in cash or request Company to pay to a charity does not constitute gross income under § 61;
- (2) The amount that Taxpayers elect not to receive in cash but, pursuant to their request, is paid by Company to a charity is a charitable contribution under § 170; and
- (3) The sample written acknowledgment submitted with Taxpayers' ruling request may satisfy the recordkeeping and substantiation requirements of § 170(f).

FACTS

Taxpayers are individuals who will acquire credit cards issued by a bank through an arrangement promoted by Company. Taxpayers will make purchases with the credit cards and, as a result of those purchases, will be entitled to receive rebates. The rebates are based on a percentage of Taxpayers' credit card purchases (usually 1%) and reduced by fees charged by Company (e.g., administrative and marketing). The percentage of Taxpayers' credit card purchases, less fees, equals the amount of the rebate to which Taxpayers are entitled (\$X). Taxpayers will have the option of receiving cash in the amount of \$X or, in the alternative, will have the option of allowing Company to pay the \$X to a charity that Taxpayers choose from a list of participating charities, all of which are organizations described in § 170(c) ("charity"). The option to receive rebates in cash or have the rebates paid to a charity is made at the time Taxpayers open the credit card account. However, Taxpayers may change their option at any time by contacting Company.

The sample written acknowledgment provided in Taxpayers' submission is in the form of a letter, with the charity's name and address along with the date of the letter in the letterhead, and states:

Dear Contributor:

This letter is to acknowledge your contribution made to the _____, an organization described in section 501(c)(3) of the Internal Revenue Code and qualified to receive contributions deductible for federal income tax purposes, provided the contribution is made exclusively for charitable purposes.

We appreciate your contribution of \$_____ made in calendar year _____ and wish to confirm for you that no goods or services were provided to you in consideration, in whole or in part, for your contribution.

Sincerely,

Taxpayers' proposed transaction:

Taxpayers plan to make purchases with credit cards issued by Company. Taxpayers will elect not to receive \$X in cash in favor of allowing Company to pay the \$X to a charity chosen by Taxpayers. Taxpayers' contribution of \$X will be acknowledged by the charity with a written acknowledgment that contains the information in the sample written acknowledgment.

LAW AND ANALYSIS

Section 61 provides that gross income means all income from whatever source derived. A rebate received by a buyer from the party to whom the buyer directly or indirectly paid the purchase price for an item is an adjustment in purchase price, 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, as modified by Rev. Rul. 2005-28, 2005-1 C.B. 997.

A deduction for contributions and gifts to or for the use of organizations described in § 170(c) will be allowed to the extent payment of the charitable contribution is made within the taxable year. Sec. 170(a). A charitable contribution must be made voluntarily and with donative intent. U.S. v. American Bar Endowment, 477 U.S. 105 (1986).

Deductions for charitable contributions are limited to a percentage of the taxpayer's contribution base for the taxable year. See § 170(b). No deduction is allowed under § 170(a) unless the donor properly substantiates the contribution as required under § 170(f)(8) (relating to contributions of \$250 or more) and (17) (relating to all contributions of a cash, check, or other monetary gift, regardless of amount), as applicable.

Pursuant to section 170(f)(8), no deduction is allowed for any contribution of \$250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization. Sec. 170(f)(8)(A). In the case of a cash contribution, the acknowledgment must: (1) include the amount of cash contributed, (2) state whether the donee organization provided any goods or services in consideration, in whole or in part, for the contribution, and (3) be obtained by the taxpayer on or before the earlier of: (a) the date on which the taxpayer files a return for the year in which the contribution was made or (b) the due date including extensions for filing such return.

In addition to meeting the requirement for obtaining a contemporaneous written acknowledgment for any contribution of \$250 or more, a taxpayer that makes any cash, check, or other monetary contribution must maintain as a record of the contribution a bank record (e.g., a canceled check) or a written communication from the donee showing: (1) the name of the donee organization, (2) the date of the contribution, and (3) the amount of the contribution. Sec. 170(f)(17). The substantiation and recordkeeping requirements of § 170(f)(8) and (17) may be satisfied by a single document if the document contains all information required by both sections within the time period as may be required.

Ruling request (1)—Rebate from Company:

Taxpayer first asks us to rule that, if Company gives Taxpayers the option to receive a cash rebate of \$X but Taxpayers request that Company pay the \$X to a charity, Taxpayers will not be in receipt of gross income under § 61.

A rebate received from the party to whom the buyer directly or indirectly paid the purchase price for an item is an adjustment to the purchase price paid for 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, as modified by Rev. Rul. 2005-28, 2005-1 C.B. 997.

In this case, Taxpayers make purchases using their credit cards and have the option to receive a cash rebate of \$X. In lieu of receiving cash, Taxpayers may allow Company to pay the \$X rebate to a charity. In either case, this rebate constitutes an adjustment to the purchase price of the items purchased with Taxpayers' credit cards and, consequently, is not includible in Taxpayer's gross income.

Ruling request (2)—Contribution:

Taxpayer also asks us to rule that, if Taxpayer elects to allow Company to pay to a charity the \$X Taxpayer could have received in cash, \$X will be a charitable contribution under § 170.

Taxpayer in this case may elect to receive a rebate in cash or to allow Company to pay the amount of the rebate to a charity. This arrangement, therefore, is distinguishable from the program in American Bar Endowment. The opportunity for Taxpayer to elect whether rebates will be paid to a charity or received in cash by Taxpayer renders the payments in this situation voluntary.

Accordingly, if Taxpayer chooses the option of allowing Company to pay to a charity the \$X and complies with all other requirements under § 170, then Taxpayer is treated as making a charitable contribution in the amount of \$X on the date Company remits payment to the charity.

Ruling request (3)—Written acknowledgment

Finally, Taxpayers ask us to rule that the sample written acknowledgment submitted with Taxpayers' ruling request satisfies the recordkeeping and substantiation requirements of § 170(f).

Provided the written acknowledgment in this case is accurate and is contemporaneously obtained by Taxpayers, such acknowledgment may satisfy the substantiation requirements of § 170(f)(8). The sample written acknowledgment: (1) is from the

donee organization, (2) includes the amount of cash contributed, and (3) states that no goods or services were provided in exchange for the contribution. However, the recordkeeping requirements of § 170(f)(17) require: (1) the name of the donee organization, (2) the amount of the contribution, and (3) the date of the contribution, not merely the calendar year of such contribution.

Therefore, to the extent the written acknowledgment in this case does not include the date Company remits the contribution amount to the charity, such acknowledgment will not satisfy the recordkeeping requirements of § 170(f)(17).

CONCLUSIONS

(1) The portion of the credit card purchases that Taxpayers can either receive back in cash or request Company to pay to a charity does not constitute gross income to Taxpayers under § 61.

(2) The amount that Taxpayers can receive in cash from Company but instead direct Company to pay to a charity constitutes a charitable contribution on the date the amount is received by the charity.

(3) For the reason stated above, the sample written acknowledgment provided in Taxpayers' submission does not satisfy the recordkeeping requirement of § 170(f)(17).

The charitable contributions that are the subject of this ruling request will be deductible only if all requirements under § 170 (including substantiation requirements under § 170(f)(8) and (17)) are met, subject to the percentage limitations of § 170(b).

The rulings contained in this letter are based upon information and representations submitted by Taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. The facts are subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no inference should be made concerning the tax consequences to Company.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Karin Goldsmith Gross
Senior Technical Reviewer, Branch 1
(Income Tax & Accounting)