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Revenue Ruling 76-257

Charitable contributions; payment for county road improvement. The amount paid to a county on a promissory note conditioned on, and payable upon, the county hard-surfacing the roads in the vicinity of the taxpayer's property is not deductible as a charitable contribution; however, the amount paid is a capital expenditure.

Advice has been requested concerning the deductibility under section 170 of the Internal Revenue Code of 1954 of the payment of a promissory note to a county upon the completion of the improvement of public roads in the vicinity of the taxpayer's property.

The taxpayer, an individual, owned farm land, part of which the taxpayer farmed and part of which was leased to other farmers. The county in which the land was located embarked upon a road improvement program, to be financed by county, state, and federal funds, in the vicinity of the taxpayer's property. After grading the graveled roads as a preliminary to hard-surfacing them, the county determined that it did not have sufficient funds available for the hard-surfacing. The taxpayer and other landowners in the area served by the roads pledged an amount of money to the county on the condition that the county hard-surface the roads by the following summer. The county accepted the offer, and the taxpayer then issued a promissory note to the county for the amount of the taxpayer's pledge. The note was held by a local bank and was conditioned on, and payable upon, the completion of the project. When the hard-surfacing was completed, the taxpayer paid to the county the face amount of the note.

Section 170 of the Code provides, subject to certain limitations, a deduction for gifts and contributions to or for the use of organizations described in section 170(c), payment of which is made within the taxable year.

Section 170(c) (1) of the Code provides, in part, that the term "charitable contribution" means a contribution or gift to or for the use of a state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

The term "charitable contribution," as used in section 170 of the Code, requires a contribution or gift. A contribution or gift, for the purposes of section 170, is a voluntary transfer of money or property made by the transferor without receipt or expectation of financial or economic benefit. If the transferor receives, or can reasonably expect to receive, sufficiently substantial financial or economic benefits in excess of those that would inure to the general public, no deduction under section 170 is allowable. *United States v. Transamerica Corp.*, 392 F. 2d 522 (9th Cir. 1968); *Singer Co. v. United States*, 449 F. 2d 413, 196 Ct. Cl. 90 (Ct. Cl. 1971). Also see Rev. Rul. 68-607, 1968-2 C.B. 115, and Rev. Rul. 73-113, 1973-1 C.B. 65.

In the instant case, the taxpayer offered the county a sum of money if the county resurfaced the roads in the vicinity of the taxpayer's property. Since the roads were in the vicinity of the taxpayer's property, the taxpayer could reasonably expect to receive benefits substantially greater than those that would inure to the general public.

Accordingly, in the instant case, the payment made by the taxpayer to the county is not deductible as a charitable contribution under section 170 of the Code.

Further, the amount paid to the county permanently benefited the taxpayer's property and is, therefore, a capital expenditure under section 263 of the Code.