

### Revenue Ruling 77-124

Race track corporation; distributions of charity day profits. A parimutuel race track corporation that agrees to promote, and absorb any losses from, extra racing days each year for the benefit of local charities to obtain and ensure retention of its license must include revenues from the extra days in its gross income and may deduct as a business expense under section 162 of the Code the profits turned over to the charities.

Advice has been requested whether, under the circumstances described below, amounts paid to charitable institutions are deductible under section 162 (a) of the Internal Revenue Code of 1954 as ordinary and necessary business expenses.

The taxpayer is a corporation that operates pari-mutuel race tracks. The taxpayer has been licensed by an agency of State S to operate each track for a predetermined number of days. In addition, the statutes of State S provide that the taxpayer may operate the race track for additional days for charitable purposes if it so elects, but require that all profits from these charity days be paid to recognized and established charitable institutions. The regulations of the racing commission define the term "profits" as all receipts, including those from parking, concessions and general admission fees, less operating costs. Operating costs are the actual expenses of this particular day of racing.

The taxpayer must receive a favorable vote from the citizens in the county where each track is located to obtain a permit to operate the track. In order to facilitate a favorable vote the taxpayer committed itself to hold a specific number of extra race days each year to support local charities. The taxpayer has conducted several charity days.

In order to apply for racing days the taxpayer must annually certify to the State that the citizens of the county where the track is located have not elected to recall its license. If the taxpayer failed to conduct charity day programs, the state agency might select less favorable racing days or the local citizens might recall the taxpayer's license.

The taxpayer is responsible for advertising and publicizing the charity days and for absorbing any losses arising therefrom.

Section 61 (a) of the Code defines gross income as all income from whatever source derived, except income that is specifically excluded in subtitle A of the Code.

Section 162 (a) of the Code allows as a deduction in computing taxable income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

Section 170 (a) of the Code allows as a deduction any charitable contribution paid within the taxable year.

Section 162 (b) of the Code and section 1.162-15 (a) (1) of the Income Tax Regulations provide, in part, that no deduction is allowable under section 162 (a) for a contribution or gift by an individual or a corporation if any part thereof is deductible under section 170.

Rev. Rul. 72-314, 1972-1 C.B. 44, provides that whether payments to charity are deductible pursuant to section 170 of the Code or pursuant to section 162 depends upon whether the payments are completely gratuitous or whether they bear a direct relationship to the taxpayer's business and are made with a reasonable expectation of a financial return commensurate with the amount of the payment.

In Rev. Rul. 72-542, 1972-2 C.B. 37, the taxpayer operated a pari-mutuel race track and was the promoter of charity days. Rev. Rul. 72-542, 1972-2 C.B. 37 holds that charity day proceeds distributed to a charitable foundation by the taxpayer are includible in the taxpayer's gross income pursuant to section 61 of the Code. The Revenue Ruling further holds that since the taxpayer made the transfer of proceeds without expectation of an economic return commensurate with the amount of the transfer, the amount is not deductible pursuant to section 162 (a). The amount, however, is deductible under section 170 subject to the conditions and limitations contained therein.

Proceeds from a charity day are not includible in the race track corporation's gross income if the charitable recipient of the proceeds is the promoter of the charity day. See Rev. Rul. 77-121, 1977-1 C.B. 17, page 17, this Bulletin,

In the instant case the taxpayer is the promoter of the charity days since it is responsible for advertising and publicizing the charity days and must absorb any losses arising there from. Therefore, the revenues generated from the charity days are properly includible in its gross income under section 61 of the Code.

Whether a particular transfer was made with a reasonable expectation of an economic return commensurate with the amount of the transfer is a question of fact. In the instant case the taxpayer committed itself to hold a specific number of charity days to obtain and ensure retention of its license. Therefore the payments to the benefited charities bear a direct relationship to the taxpayer's business and are made with a reasonable expectation of a financial return commensurate with the amount of the payments.

Accordingly, it is held that such payments are deductible as ordinary and necessary business expenses under section 162 (a) of the Code.