

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **200817018**

Release Date: 4/25/2008

Index Number: 170.00-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
 , ID No.

Telephone Number:

In re:

Refer Reply To:  
CC:ITA:B01  
PLR-136653-07  
Date:  
January 24, 2008

### LEGEND:

Taxpayer =  
Cooperative =  
State =  
Charity =  
Bank =

Dear :

This responds to your letter dated August 10, 2007, in which you request rulings related to § 170 of the Internal Revenue Code.

### RULINGS REQUESTED

The following rulings are requested:

- (1) If Taxpayer purchases merchandise from Cooperative, earns patronage dividends from Cooperative as the result of those purchases and of being a member of Cooperative, and directs Cooperative to transfer to Charity the amount of the patronage dividends redeemable by Taxpayer in cash, the amount so transferred is a charitable contribution deductible under § 170 of the Code;
- (2) If Taxpayer qualifies for and receives a Cooperative credit card, earns rebates as the result of making purchases with the Cooperative credit card, and directs Cooperative to transfer to Charity the amount of the credit card rebates redeemable by Taxpayer in cash, the amount so transferred is a charitable contribution deductible under § 170.

### FACTS

Taxpayer is an individual and a member of Cooperative, a for-profit company operating as a cooperative under the laws of State. For Federal tax purposes, Cooperative is a

nonexempt consumer cooperative to which Part I of Subchapter T (§§ 1381-1388 of the Code) applies. Cooperative is in the business of selling consumer products to customers, including Cooperative members and the general public. Membership in Cooperative is open to the general public and may be acquired by filling out an application and paying a one-time membership fee.

Pursuant to its bylaws, Cooperative distributes earnings annually to members as patronage dividends. The amount distributed to members as patronage dividends typically equals a percentage of their purchases from Cooperative. Members may elect to redeem patronage dividends either in cash or merchandise from Cooperative. Cooperative plans to institute a third option, allowing members to direct Cooperative to transfer to Charity, an organization described in §§ 170(b)(1)(B) and 170(c), the amount of the patronage dividends redeemable by Taxpayer in cash.

Cooperative also sponsors a credit card program administered by Bank, which processes credit card applications, approves credit, sets up accounts, issues credit cards, and handles all other aspects of the credit card program. The credit cards issued under the credit card program bear Cooperative's trademark. Only Cooperative members are eligible to participate in the credit card program. Members who are credit card holders earn rebates based on a percentage of their purchases with the credit card. Members may use their credit card rebates to purchase merchandise from Cooperative or have the rebates paid to them in cash or by check. As with patronage dividends, Cooperative also plans to institute a third option, allowing card holders to direct Cooperative to transfer to Charity the amount of the credit card rebates redeemable by Taxpayer in cash.

Cooperative notifies members of the amount of their patronage dividends and rebates (if applicable) for a given calendar year in late \_\_\_\_\_ of the following year. A member may apply patronage dividends and rebates to the purchase of Cooperative's merchandise immediately upon receipt of the notification. Alternatively, the amount of the patronage dividend or rebate is redeemable in cash in the year of notification or in the subsequent year but only from \_\_\_\_\_ through \_\_\_\_\_.

Taxpayer's proposed transactions:

Taxpayer plans to purchase personal, living, or family items from Cooperative and also plans to purchase goods and services using his Cooperative credit card. As a result of being a member of Cooperative and of using the credit card, Taxpayer expects to earn patronage dividends and rebates. Taxpayer plans to direct Cooperative to transfer some or all of his patronage dividends and/or rebates to Charity, which amounts will be paid to Charity from \_\_\_\_\_ through \_\_\_\_\_ of the same year. Taxpayer represents that Cooperative has informed Taxpayer that Cooperative will provide Charity with the amount and date of the contribution, and Taxpayer's name and address. Taxpayer further represents that it is expected that Charity will provide Taxpayer with any written acknowledgments required under §§ 170(f)(8) and 170(f)(17).

## LAW AND ANALYSIS

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

Under § 1385(b)(2), the amount of any patronage dividend that is attributable to personal, living, or family items is not included in gross income.

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). In American Bar Endowment, a membership organization maintained a group insurance program for its members. As a condition of participating in the insurance program, members were required to assign refunds from their premiums to the organization. Every year, a portion of the insurance premiums paid by members was refunded to the organization. The organization used these refunds to fund charitable grants. Members participating in the group insurance program claimed charitable contribution deductions under section 170 for their pro rata shares of the refund amounts that funded charitable activities. The Supreme Court concluded that there was no voluntary payment of money or property. 477 U.S. at 116-118. 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.

Deductions for charitable contributions to organizations described in § 170(b)(1)(B) are limited to a maximum of 30 percent of the taxpayer's contribution base for the taxable year.

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 (f)(17) (relating to all contributions of a cash, check, or other monetary gift, regardless of amount), as applicable.

Ruling request (1)—Contribution of patronage dividends:

Taxpayer first asks us to rule that, if Taxpayer elects to direct Cooperative to transfer the amount redeemable by him as patronage dividends to Charity, the contribution will be deductible under § 170.

Taxpayer in this case may elect to redeem his patronage dividends for cash or merchandise from Cooperative, or he may elect to direct Cooperative to pay them to

Charity. Cooperative's program, therefore, is distinguishable from the program in American Bar Endowment. The opportunity to elect whether payments will be made to Charity or received in cash or merchandise renders the payments in this situation voluntary.

Accordingly, if Taxpayer directs Cooperative to transfer to Charity the amount of the patronage dividends redeemable by Taxpayer in cash and complies with the substantiation requirements under §§ 170(f)(8) and (f)(17) and all other requirements under § 170, Taxpayer will be allowed a charitable contribution deduction in the year the funds are transferred to Charity.

Ruling request (2)—Contribution of rebates:

Taxpayer also asks us to rule that, if Taxpayer elects to contribute the amount redeemable by him as rebates earned on his Cooperative credit card purchases, this amount will be a charitable contribution deductible under § 170.

Similar to the discussion above, Taxpayer's ability to elect to receive the credit card rebates in cash or merchandise from Cooperative or to donate the rebates to Charity renders the payments voluntary.

Accordingly, if Taxpayer directs Cooperative to transfer to Charity the amount of the credit card rebates redeemable by Taxpayer in cash and complies with the substantiation requirements under §§ 170(f)(8) and (f)(17) and all other requirements under § 170, Taxpayer will be allowed a charitable contribution deduction in the year the funds are transferred to Charity.

## CONCLUSIONS

(1) When Cooperative transfers to Charity the amount of the patronage dividends redeemable by Taxpayer in cash, the amount so transferred will constitute a charitable contribution, deductible by Taxpayer to the extent provided in § 170 of the Code.

(2) When Cooperative transfers to Charity the amount of the credit card rebates redeemable by Taxpayer in cash, the amount so transferred will constitute a charitable contribution, deductible by Taxpayer to the extent provided in § 170.

Taxpayer represents that Cooperative is not the agent of Charity. Therefore, the charitable contributions that are the subject of this ruling request will be treated as made when Cooperative transfers the payments to Charity, not when Taxpayer directs Cooperative to remit them. See Rev. Rul. 55-192, 1955-1 C.B. 294 (where taxpayer directs third party to pay charity, charitable contribution is made when payment is transferred to charity unless third party is charity's agent).

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is 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.

This ruling is directed only to the taxpayer 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,

Susan J. Kassell  
Senior Counsel, Branch 1  
Office of Chief Counsel  
(Income Tax & Accounting)

cc: