Rev. Rul. **63-252**

Deductibility of contributions by individuals to a charity organized in the United States which thereafter transmits some or all of its funds to a foreign charitable organization.

Advice has been requested as to the deductibility, under section 170 of the Internal Revenue Code of 1954, of contributions by individuals to a charity organized in the United States which thereafter transmits some or all of its funds to a foreign charitable organization.

Section 170 of the Code provides, in material part, as follows:

(a) ALLOWANCE OF DEDUCTION.-

(1) GENERAL RULE.-There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

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(c) CHARITABLE CONTRIBUTION DEFINED.-For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of-

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(2) A corporation, trust, or community chest, fund, or foundation-

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State or Territory, the District of Columbia, or any possession of the United states;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B).

In determining whether contributions to or for the use of a particular corporation, trust, community chest, fund, or foundation are deductible, it must first be determined that the recipient organization was validly created or organized in the United States, a state or territory, the District of Columbia or a possession of the United States, as required by section 170(c)(2)(A) of the Code. If the organization does not qualify under section 170(c)(2)(A) of the Code-that is, it was not created or organized in the United States, etc.-a contribution thereto is not deductible under section 170 of the Code. *Dora F. Welti v. Commissioner,* 1 T. C. 905 (1943) *; Muzaffer ErSelcuk et al. v. Commissioner,* 30 T.C. 962 (1958) . It must further be found that the recipient was organized and operated exclusively for one of the purposes stated in section 170(c)(2)(B) of the Code, namely, religious, charitable, scientific, literary, or educational purposes or for the

prevention of cruelty to children or animals, and that it meets the remaining requirements of section 170(c)(2) of the Code.

Assuming that an organization otherwise meets the requirements set forth in section 170(c)(2) of the Code, a further problem arises where that organization is required to turn all or part of its funds over to a foreign charitable organization. As noted above, contributions directly to the foreign organization would not be deductible. The question presented here is whether the result should differ when funds are contributed to a domestic charity which then transmits those funds to a foreign charitable organization.

Prior to the passage of the Revenue Act of 1938 there were no restrictions as to the place of creation of charitable organizations to which individuals might make deductible contributions. (Section 102(c) of the Revenue Act of 1935, which first permitted a deduction for *corporate* charitable contributions, limited that deduction to contributions to "domestic" organizations which used such contributions within the United States.) The rule as to individual contributions was changed with the passage of the Revenue Act of 1938. Section 23(o) of that Act provided that contributions by individuals were deductible only if the recipient was a "domestic" organization. See discussion of that section in Ways and Means Committee Report, H.R. Report No. 1860, Seventy-fifth Congress, Third Session, C.B. 1939-1 (Part 2), 728, at 742. Section 224 of the Revenue Act of 1939 sub stituted for the requirement that a qualifying organization be "domestic," the requirement that it have been "created or organized in the United States or in any possession thereof," etc. In substantially the same form, this requirement was re-enacted as section 170(c)(2)(A) of the 1954 Code.

At the outset, it should be noted that section 170(c)(2)(A) of the Code relates only to the place of creation of the charitable organization to which deductible contributions may be made and does not restrict the area in which deductible contributions may be used. Compare the last sentence in section 170(c)(2) of the Code, which requires that certain *corporate* contributions be used within the United States. Accordingly, the following discussion should not be construed as limiting in any way the geographical areas in which deductible contributions by individuals may be used.

The deductibility of the contributions here at issue will be discussed in connection with five illustrative examples set out below. The "foreign organization" referred to in each of the examples is an organization which is chartered in a foreign country and is so organized and operated that it meets all the requirements of section 170(c)(2) of the Code excepting the requirement set forth in section 170(c)(2)(A) of the Code. The "domestic organization" in each example is assumed to meet all the requirements in section 170(c)(2) of the Code. In each case, the question to be decided is whether the amounts paid to the domestic organization are deductible under section 170(a) of the Code.

(1) In pursuance of a plan to solicit funds in this country, a foreign organization caused a domestic organization to be formed. At the time of formation, it was proposed that the domestic organization would conduct a fund-raising campaign, pay the administrative expenses from the collected fund and remit any balance to the foreign organization.

(2) Certain persons in this country, desirous of furthering a foreign organization's work, formed a charitable organization within the United States. The charter of the domestic organization provides that it will receive contributions and send them, at convenient intervals, to the foreign organization.

(3) A foreign organization entered into an agreement with a domestic organization which provides that the domestic organization will conduct a fund-raising campaign on behalf of the foreign organization. The domestic organization has previously received a ruling that contributions to it are deductible under section 170 of the Code. In conducting the campaign, the domestic organization represents to prospective contributors that the raised funds will go to the foreign organization.

(4) A domestic organization conducts a variety of charitable activities in a foreign country. Where its purposes can be furthered by granting funds to charitable groups organized in the foreign country, the domestic organization makes such grants for purposes which it has reviewed and approved. The grants are paid from its general funds and although the organization solicits from the public, no special fund is raised by a solicitation on behalf of particular foreign organizations.

(5) A domestic organization, which does charitable work in a foreign country, formed a subsidiary in that country to facilitate its operations there. The foreign organization was formed for purposes of administrative convenience and the domestic organization controls every facet of its operations. In the past the domestic organization solicited contributions for the specific purpose of carrying out its charitable activities in the foreign country and it will continue to do so in the future. However, following the formation of the foreign subsidiary, the domestic organization will transmit funds it receives for its foreign charitable activities directly to that organization.

It is recognized that special earmarking of the use or destination of funds paid to a qualifying charitable organization may deprive the donor of a deduction. In *S. E. T homason v. Commissioner*, 2 T.C. 441 (1943), the c ourt held that amounts paid to a charitable organization were not deductible where the contributions were earmarked for the benefit of a particular ward of the organization. Similarly, see Revenue Puling 54-580, C.B. 1954-2, 97. These cases indicate that an inquiry as to the deductibility of a contribution need not stop once it is determined that an amount has been paid to a qualifying organization; if the amount is earmarked, then it is appropriate to look beyond the fact that the immediate recipient is a qualifying organization to determine whether the payment constitutes a deductible contribution.

Similarly, if an organization is required for other reasons, such as a specific provision in its charter, to turn contributions, or any particular contribution it receives, over to another organization, then in determining whether such contributions are deductible it is appropriate to determine whether the ultimate recipient of the contribution is a qualifying organization. It is well established in the law of taxation that "A given result at the end of a straight path is not made a different result because reached by following a devious path." *Minnesota Tea Co. v. Helvering*, 302 U.S. 609, at 613, Ct. D. 1305, C.B. 1938-1, 288 ;*George W. Griffiths v. Helvering*, 308 U.S. 355, at 358, Ct. D. 1431, C.B. 1940-1, 136. Moreover, it seems clear that the

requirements of section 170(c)(2)(A) of the Code would be nullified if contributions inevitably committed to go to a foreign organization were held to be deductible solely because, in the course of transmittal to the foreign organization, they came to rest momentarily in a qualifying domestic organization. In such cases the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient.

Accordingly, the Service holds that contributions to the domestic organizations described in the first and second examples set forth above are not deductible. Similarly, those contributions to the domestic organization described in the third example which are given for the specific purpose of being turned over to the foreign organization are held to be nondeductible.

On the other hand, contributions received by the domestic organization described in the fourth example will not be earmarked in any manner, and use of such contributions will be subject to control by the domestic organization. Consequently, the domestic organization is considered to be the recipient of such contributions for purposes of applying section 170(c) of the Code. Similarly, the domestic organization described in the fifth example is considered to be the real beneficiary of contributions it receives for transmission to the foreign organization. Since the foreign organization is merely an administrative arm of the domestic organization, the fact that contributions are ultimately paid over to the foreign organization does not require a conclusion that the domestic organization is not the real recipient of those contributions. Accordingly, contributions by individuals to the domestic organizations described in the fourth and fifth examples are considered to be deductible.

Pursuant to the authority contained in section 7805(b) of the Code, the principles stated herein will not be applied to disallow deductions for contributions made to a charitable organization prior to December 9, 1963, the date of publication of this Revenue Ruling, if those contributions otherwise would have been deductible under an outstanding ruling or determination letter.