

Section 170. Charitable, Etc. Contributions and Gifts 26 CFR 1.170A-1, Charitable, etc., contributions and gifts; allowance of deduction.

Charitable contributions; utility bills; emergency energy program. Utility customers, who pay additional amounts on their utility bills to a utility company acting as agent for a charitable organization that assists individuals with emergency energy needs, are entitled to a charitable deduction for the additional amount in the year paid.

ISSUE

Whether customers who pay additional amounts on their utility bills to a utility company acting as an agent for a charitable organization that assists individuals with emergency energy needs, are allowed a charitable contribution deduction for such added amounts under section 170(a) of the Internal Revenue Code.

FACTS

O, a local chapter of a national charitable organization described in section 170(c) of the Internal Revenue Code, established a program designed to provide financial assistance to elderly and handicapped individuals in meeting their emergency energy related needs. O entered into an agreement with X, a local utility company, to facilitate the collection of charitable contributions made by customers of X and others. Under the agreement, O designated X as its authorized agent to collect contributions to the program on O's behalf. Customers of X are given the opportunity of making contributions to O's financial assistance program for the elderly and handicapped when making payments for utility services. Provided a customer pays his monthly bill in full, an additional amount may be paid to X and designated, in a space provided on the bill, as being earmarked for O's financial assistance program. Such earmarked amounts collected by X are transferred to O on a weekly basis. During the period between receipt of such amounts and their subsequent transfer to O, they are segregated from X's own funds. Further, X does not exercise any dominion or control over the earmarked funds and does not draw upon them to cover expenses incurred by X in connection with the program.

All determinations with respect to a person's eligibility to receive assistance under the program including the existence of an individual's emergency energy related needs are solely within the discretion of O.

LAW AND ANALYSIS

Section 170(a) of the Code provides, subject to certain limitations, a deduction for charitable contributions and gifts to

or for the use of organizations described in section 170(c), payment of which is made within the taxable year.

Section 1.170A-1(b) of the Income Tax Regulations provides that, ordinarily, a contribution is made at the time delivery is effected.

Rev. Rul. 55-192, 1955-1 C.B. 294, holds that the portion of the membership dues earmarked for distribution to qualified charities and paid by individual members to the treasurer of a social club, acting also as a collecting agent for certain charitable organizations, is deductible under section 170 of the Code for the year in which the contributions are paid to the treasurer.

In the instant case, X is acting as O's collection agent in receiving certain amounts in excess of monthly fees billed to X's customers that are earmarked for use by O. Further, X exercises no dominion and control over such amounts. Therefore, delivery of such amounts to X constitutes delivery to O for purposes of section 1170 of the Code.

HOLDING

A customer of X who makes a contribution under the program by adding an amount to the customer's utility bill will be entitled to a deduction for such amount in the manner and to the extent provided by section 170 of the Code in the taxable year the contribution is paid to X. A customer who pays no more than the amount of the utility bill, but nevertheless designates a portion of the payment as being earmarked for O's financial assistance program, will not be entitled to a deduction because X does not segregate such amounts and pay them to O, but retains the amounts as payment of the customer's utility bill.