

Rev. Rul. 67-246; 1967-2 C.B. 104

Advice has been requested concerning certain fund-raising practices which are frequently employed by or on behalf of charitable organizations and which involve the deductibility, as charitable contributions under section 170 of the Internal Revenue Code of 1954, of payments in connection with admission to or other participation in fund-raising activities for charity such as charity balls, bazaars, banquets, shows, and athletic events.

Affairs of the type in question are commonly employed to raise funds for charity in two ways. One is from profit derived from sale of admissions or other privileges or benefits connected with the event at such prices as their value warrants. Another is through the use of the affair as an occasion for solicitation of gifts in combination with the sale of the admissions or other privileges or benefits involved. In cases of the latter type the sale of the privilege or benefit is combined with solicitation of a gift or donation of some amount in addition to the sale value of the admission or privilege.

The need for guidelines on the subject is indicated by the frequency of misunderstanding of the requirements for deductibility of such payments and increasing incidence of their erroneous treatment for income tax purposes.

In particular, an increasing number of instances are being reported in which the public has been erroneously advised in advertisements or solicitations by sponsors that the entire amounts paid for tickets or other privileges in connection with fund-raising affairs for charity are deductible. Audits of returns are revealing other instances of erroneous advice and misunderstanding as to what, if any, portion of such payments is deductible in various circumstances. There is evidence also of instances in which taxpayers are being misled by questionable solicitation practices which make it appear from the wording of the solicitation that taxpayer's payment is a "contribution," whereas the payment solicited is simply the purchase price of an item offered for sale by the organization.

Section 170 of the Code provides for allowance of deductions for charitable contributions, subject to certain requirements and limitations. To the extent here relevant a charitable contribution is defined by that section as "a contribution or gift to or for the use of" certain specified types of organizations.

To be deductible as a charitable contribution for Federal income tax purposes under section 170 of the Code, a payment to or for the use of a qualified charitable organization must be a gift. To be a gift for such purposes in the present context there must be, among other requirements, a payment of money or transfer of property without adequate consideration.

As a general rule, where a transaction involving a payment is in the form of a purchase of an item of value, the presumption arises that no gift has been made for charitable contribution purposes, the presumption being that the payment in such case is the purchase price.

Thus, where consideration in the form of admissions or other privileges or benefits is received in connection with payments by patrons of fund-raising affairs of the type in question, the presumption is that the payments are not gifts. In such case, therefore, if a charitable contribution deduction is claimed with respect to the payment, the burden is on the taxpayer to establish that the amount paid is not the purchase price of the privileges or benefits and that part of the payment, in fact, does qualify as a gift.

In showing that a gift has been made, an essential element is proof that the portion of the payment claimed as a gift represents the excess of the total amount paid over the value of the consideration received therefor. This may be established by evidence that the payment exceeds the fair market value of the privileges or other benefits received by the amount claimed to have been paid as a gift.

Another element which is important in establishing that a gift was made in such circumstances, is evidence that the payment in excess of the value received was made with the intention of making a gift. While proof of such intention may not be an essential requirement under all circumstances and may sometimes be inferred from surrounding circumstances, the intention to make a gift is, nevertheless, highly relevant in overcoming doubt in those cases in which there is a question whether an amount was in fact paid as a purchase price or as a gift.

Regardless of the intention of the parties, however, a payment of the type in question can in any event qualify as a deductible gift only to the extent that it is shown to exceed the fair market value of any consideration received in the form of privileges or other benefits.

In those cases in which a fund-raising activity is designed to solicit payments which are intended to be in part a gift and in part the purchase price of admission to or other participation in an event of the type in question, the organization conducting the activity should employ procedures which make clear not only that a gift is being solicited in connection with the sale of the admissions or other privileges related to the fund-raising event, but also, the amount of the gift being solicited. To do this, the amount properly attributable to the purchase of admissions or other privileges and the amount solicited as a gift should be determined in advance of solicitation. The respective amounts should be stated in making the solicitation and clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment.

In making such a determination, the full fair market value of the admission and other benefits or privileges must be taken into account. Where the affair is reasonably comparable to events for which there are established charges for admission, such as theatrical or athletic performances, the established charges should be treated as fixing the fair market value of the admission or privilege. Where the amount paid is the same as the standard admission charge there is, of course, no deductible contribution, regardless of the intention of the parties. Where the event has no such counterpart, only that portion of the payment which exceeds a reasonable estimate of the fair market value of the admission or other privileges may be designated as a charitable contribution.

The fact that the full amount or a portion of the payment made by the taxpayer is used by the organization exclusively for charitable purposes has no bearing upon the determination to be made as to the value of the admission or other privileges and the amount qualifying as a contribution.

Also, the mere fact that tickets or other privileges are not utilized does not entitle the patron to any greater charitable contribution deduction than would otherwise be allowable. The test of deductibility is not whether the right to admission or privileges is exercised but whether the right was accepted or rejected by the taxpayer. If a patron desires to support an affair, but does not intend to use the tickets or exercise the other privileges being offered with the event, he can make an outright gift of the amount he wishes to contribute, in which event he would not accept or keep any ticket or other evidence of any of the privileges related to the event connected with the solicitation.

The foregoing summary is not intended to be all inclusive of the legal requirements relating to deductibility of payments as charitable contributions for Federal income tax purposes. Neither does it attempt to deal with many of the refinements and distinctions which sometimes arise in connection with questions of whether a gift for such purposes has been made in particular circumstances.

The principles stated are intended instead to summarize with as little complexity as possible, those basic rules which govern deductibility of payments in the majority of the circumstances involved. They have their basis in section 170 of the Code, the regulations thereunder, and in court decisions. The observance of these provisions will provide greater assurance to taxpayer contributors that their claimed deductions in such cases are allowable.

Where it is disclosed that the public or the patrons of a fundraising affair for charity have been erroneously informed concerning the extent of the deductibility of their payments in connection with the affair, it necessarily follows that all charitable contribution deductions claimed with respect to payments made in connection with the particular event or affair will be subject to special scrutiny and may be questioned in audit of returns.

In the following examples application of the principles discussed above is illustrated in connection with various types of fund-raising activities for charity. Again, the examples are drawn to illustrate the general rules involved without attempting to deal with distinctions that sometimes arise in special situations. In each instance, the charitable organization involved is assumed to be an organization previously determined to be qualified to receive deductible charitable contributions under section 170 of the Code, and the references to deductibility are to deductibility as charitable contributions for Federal income tax purposes.

Example 1:

The *M* Charity sponsors a symphony concert for the purpose of raising funds for *M*'s charitable programs. *M* agrees to pay a fee which is calculated to reimburse the symphony for hall rental, musicians' salaries, advertising costs, and printing of tickets. Under the agreement, *M* is entitled to all receipts from ticket sales. *M* sells tickets to the concert charging \$5 for balcony seats and \$10 for orchestra circle seats. These prices approximate the established admission charges for concert performances by the symphony orchestra. The tickets to the concert and the advertising material promoting ticket sales emphasize that the concert is sponsored by, and is for the benefit of *M* Charity.

Notwithstanding the fact that taxpayers who acquire tickets to the concert may think they are making a charitable contribution to or for the benefit of *M* Charity, no part of the payments made is deductible as a charitable contribution for Federal income tax purposes. Since the payments approximate the established admission charge for similar events, there is no gift. The result would be the same even if the advertising materials promoting ticket sales stated that amounts paid for tickets are "tax deductible" and tickets to the concert were purchased in reliance upon such statements. Acquisition of tickets or other privileges by a taxpayer in reliance upon statements made by a charitable organization that the amounts paid are deductible does not convert an otherwise nondeductible payment into a deductible charitable contribution.

Example 2:

The facts are the same as in *Example 1*, except that the *M* Charity desires to use the concert as an occasion for the solicitation of gifts. It indicates that fact in its advertising material promoting the event, and fixes the payments solicited in connection with each class of admission at \$30 for orchestra circle seats and \$15 for balcony seats. The advertising and the tickets clearly reflect the fact that the established admission charges for comparable performances by the symphony orchestra are \$10 for orchestra circle seats and \$5 for balcony seats, and that only the excess of the solicited amounts paid in connection with admission to the concert over the established prices is a contribution to *M*.

Under these circumstances a taxpayer who makes a payment of \$60 and receives two orchestra circle seat tickets can show that his payment exceeds the established admission charge for similar tickets to comparable performances of the symphony orchestra by \$40. The circumstances also confirm that amount of the payment was solicited as, and intended to be, a gift to *M* Charity. The \$40, therefore, is deductible as a charitable contribution.

Example 3:

A taxpayer pays \$5 for a balcony ticket to the concert described in *Example 1*. This taxpayer had no intention of using the ticket when he acquired it and he did not, in fact, attend the concert.

No part of the taxpayer's \$5 payment to the *M* Charity is deductible as a charitable contribution. The mere fact that the ticket to the concert was not used does not entitle the taxpayer to any greater right to a deduction than if he did use it. The same result would follow if the taxpayer had made a gift of the ticket to another individual. If the taxpayer desired to support *M*, but did not intend to use the ticket to the concert, he could have made a qualify-

ing charitable contribution by making a \$5 payment to *M* and refusing to accept the ticket to the concert.

Example 4:

A receives a brochure soliciting contributions for the support of the *M* Charity. The brochure states: "As a grateful token of appreciation for your help, the *M* Charity will send to you your choice of one of the several articles listed below, depending upon the amount of your donation." The remainder of the brochure is devoted to a catalog-type listing of articles of merchandise with the suggested amount of donation necessary to receive each particular article. There is no evidence of any significant difference between the suggested donation and the fair market value of any such article. The brochure contains the further notation that all donations to *M* Charity are tax deductible.

Payments of the suggested amounts solicited by *M* Charity are not deductible as a charitable contribution. Under the circumstances, the amounts solicited as "donations" are simply the purchase prices of the articles listed in the brochure.

Example 5:

A taxpayer paid \$5 for a ticket which entitled him to a chance to win a new automobile. The raffle was conducted to raise funds for the *X* Charity. Although the payment for the ticket was solicited as a "contribution" to the *X* Charity and designated as such on the face of the ticket, no part of the payment is deductible as a charitable contribution. Amounts paid for chances to participate in raffles, lotteries, or similar drawings or to participate in puzzle or other contests for valuable prizes are not gifts in such circumstances, and therefore, do not qualify as deductible charitable contributions.

Example 6:

A women's club, which serves principally as an auxiliary of the *X* Charity, holds monthly membership luncheon meetings. Following the luncheon and any entertainment that may have been arranged, the members transact any membership business which may be required. Attendance of the luncheon meetings is promoted through the advance sale of tickets. Typical of the form of the tickets is the following:

While the ticket does not specifically state that the amount is tax deductible, the characterization of the \$5.50 price of the ticket as a "donation" is highly misleading in that it is done in a context which suggests that the price of the ticket is a charitable contribution and, therefore, tax deductible. On the facts recited, no part of the payment is deductible, since there is no showing that any part of the price of the ticket is in fact a gift of an amount in excess of the fair market value of the luncheon and entertainment.

Example 7:

In support of its summer festival program of 10 free public concerts, the *M* Symphony, a charitable organization, mails out brochures soliciting contributions from its patrons. The brochure recites the purposes and activities of the organization, and as an inducement to contributors states that:

"A contribution of \$20 entitles the donor to festival membership for the season and free admission to the premiere showing of the motion picture * * * starring * * * and * * * .

Cocktails - 7:00 P.M. Curtain - 8:15 P.M.

This special premiere performance is not open to the public.

* * *

"Your contribution will benefit an important community function; it also entitles you to choice reserved seats for all summer festival concerts and events." 110

The envelope furnished for mailing in payments contains the following:

"Enclosed is my tax-deductible membership contribution to the *M* Symphony summer concert program in the amount of \$ - . " Send me - tickets to the May 1 premiere performance. "I do not desire to attend the special premiere performance for festival members, but I am enclosing my contribution."

A taxpayer mails in a payment of \$20, indicating on the envelope form that he desires a ticket to the premiere showing of the film.

No part of the payment is deductible as a charitable contribution. Payment of the \$20 entitles an individual not only to the privilege of attending the cocktail party and the premiere showing of the film, but also the privilege of choice reserved seats for the summer festival concerts. Under the circumstances, no part of the payment qualifies as a gift, since there is no showing that the payment exceeds the fair market value of the privileges involved. Even if a "contributor" indicates he does not desire to attend the cocktail party and premiere showing of the film, it would still be incorrect for the organization to characterize the \$20 payment as a deductible charitable contribution, since under these circumstances the fair market value of the privilege of having choice reserved seats for attending the concerts would, in all likelihood, exceed the amount of the payment. However, if the taxpayer wishes to support the *M* Symphony, and advises the organization that he does not desire the ticket to the premiere and does not want seats reserved for him, the amount contributed to *M* is deductible as a charitable contribution.

Example 8:

In order to raise funds, *W* Charity plans a theater party consisting of admission to a premiere showing of a motion picture and an after-theater buffet. The advertising material and tickets to the theater party designate \$5 as an admission charge and \$10 as a gift to *W* Charity. The established admission charge for premiere showings of motion pictures in the locality is \$5.

Notwithstanding *W*'s representations respecting the amount designated as a gift, the specified \$10 does not qualify as a deductible charitable contribution because *W*'s allocation fails to take into account the value of admission to the buffet dinner.

Example 9:

The *X* Charity sponsors a fund-raising bazaar, the articles offered for sale at the bazaar having been contributed to *X* by persons desiring to support *X*'s charitable programs. The prices for the articles sold at the bazaar are set by a committee of *X* with a view to charging the full fair market value of the articles.

A taxpayer who purchases articles at the bazaar is not entitled to a charitable contribution deduction for any portion of the amount paid to X for such articles. This is true even though the articles sold at the bazaar are acquired and sold without cost to X and the total proceeds of the sale of the articles are used by X exclusively for charitable purposes.

Example 10:

The members of the M Charity undertake a program of selling Christmas cards to raise funds for the organization's activities. The cards are purchased at wholesale prices and are resold at prices comparable to the prices at which similar cards are sold by regular retail outlets. On the receipts furnished to its customers, the difference between the amount received from the customer and the wholesale cost of the cards to the organization is designated by the organization as a tax-deductible charitable contribution.

The organization is in error in designating this difference as a tax-deductible charitable contribution. The amount paid by customers in excess of the wholesale cost of the cards to the organization is not a gift to the organization, but instead is part of the purchase price or the fair market value of the cards at the retail level.

Example 11:

In support of the annual fund-raising drive of the X Charity, a local department store agrees to award a transistor radio to each person who contributes \$50 or more to the charity. The retail value of the radio is \$15. B receives one of the transistor radios as a result of his contribution of \$100 to X. Only \$85 of B's payment to X qualifies as a deductible charitable contribution. In determining the portion of the payment to a charitable organization which is deductible as a charitable contribution in these circumstances, the fair market value of any consideration received for the payment from any source must be subtracted from the total payment.

Example 12:

To assist the Y Charity in the promotion of a Halloween Ball to raise funds for Y's activities, several individuals in the community agree to pay the entire costs of the event, including the costs of the orchestra, publicity, rental of the ballroom, refreshments, and any other necessary expenses. Various civic organizations and clubs agree to undertake the sale of tickets for the dance. The publicity and solicitations for the sale of the tickets emphasize the fact that the entire cost of the ball is being borne by anonymous patrons of Y and by the other community groups, and that the entire gross receipts from the sale of the tickets, therefore, will go to Y Charity. The price of the tickets, however, is set at the fair market value of admission to the event.

No part of the amount paid for admission to the dance is a gift. Therefore, no part is deductible as a charitable contribution. The fact that the event is conducted entirely without cost to Y Charity and that the full amount of the admission charge goes directly to Y for its uses has no bearing on the deductibility of the amounts paid for admission, but does have a bearing on the deductibility of the amounts paid by the anonymous patrons of the event. The test is not the cost of the event to Y, but the fair market value of the consideration received by the purchaser of the ticket or other privileges for his payment.