

Internal Revenue Service

**Department of the Treasury**

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**Person to Contact:**

**Telephone Number:**

**Refer Reply To:**

CC:ITA:1 – PLR-119056-02

**Date:** September 9, 2002

In re: Letter Ruling Request Regarding a Charitable Contribution

LEGEND:

Donors =

Organization =

Composer =

Orchestra =

Year 1 =

Dear \_\_\_\_\_ :

This letter is in response to your request for a private letter ruling concerning the application of § 170 of the Internal Revenue Code to a contribution made by Donors to Organization.

FACTS:

Donors are married individuals who file joint income tax returns. For many years Organization has provided support for the composition and performance of musical works and has been recognized as a nonprofit corporation, exempt from federal income tax under § 501(a) as an organization described in § 501(c)(3). Organization is also an organization described in § 170(c)(2).

Organization accomplishes its charitable purpose by hosting composer events, placing composers in residencies with professional arts institutions, funding recordings of new American music, and by entering agreements with professional arts institutions to commission works to be performed by the institutions.

In January of Year 1, Donors expressed interest to Organization in supporting the composition of a work by Composer. In July of Year 1, Donors contributed funds to Organization. At the time of the contribution, Organization did not make any

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commitment to use the funds to commission the work of Composer, and there was no representation that the funds would be used for that purpose. Organization represented to Donors that the funds would be used at the discretion of Organization's officers, in furtherance of Organization's charitable purpose, and Donors represent that they understood this.

In a letter to Donors, Organization thanked them for the contribution to Organization. The letter states that there can be no assurance that the funds contributed will be used to support the work of Composer and that the funds will be used by Organization in carrying out its charitable purpose and will not be returned to Donors.

In November of Year 1, Organization, Composer, and Orchestra entered an agreement that provided that Organization would pay Composer a commissioning fee and copying cost and would also reimburse Composer for reasonable expenses associated with Composer's appearance at the premier of the work. Donors' contribution was sufficient to pay the commissioning fee and copying cost. Composer agreed to complete a work of specified form and duration in a timely manner. Orchestra agreed to make reasonable efforts to perform the work, and was granted the exclusive right to perform the premier and to perform the work for a limited time thereafter.

#### RULING REQUESTED:

The contribution by Donors to Organization was not impermissibly earmarked for Composer under §170 of the Code.

#### LAW:

Section 170(a)(1) provides, in part, that there shall be allowed as a deduction any charitable contribution or gift as defined in § 170(c), payment of which is made during the taxable year. Section 170(c) provides, in pertinent part, that a charitable contribution is a contribution or gift to or for the use of an organization operated exclusively for charitable purposes.

In S.E. Thomason v. Commissioner, 2 T.C. 441 (1943), the taxpayer made payments to a boys' school on behalf of a ward of the Illinois Children's Home and Aid Society. The court held, under the predecessor of § 170, that the payments were not contributions to or for the use of the charitable organization, but were gifts for the benefit of a particular individual.

In Rev. Rul. 61-66, 1961-1 C.B. 19, an individual gave money to a university, requiring that it use the money to fund the research project of a particular professor. The university had no discretion over the use of the funds. The ruling held, in part, that the university was a conduit only, and that the real donee was the professor. As a payment to an individual, the gift was not deductible under § 170.

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In Rev. Rul. 62-113, 1962-2 C.B. 10, the donor made a cash contribution to a missionary fund that was intended to reimburse missionaries for approved expenses not covered by amounts received from the missionaries' parents, friends, relatives or by personal savings. The donor's son was a missionary and was eligible to receive reimbursements from the fund. Most of the son's support was provided by the donor directly to his son, and the donor had previously contributed to the fund. The ruling states that if contributions to the missionary fund are earmarked by the donor for a particular individual, they are treated, in effect, as gifts to the designated individual and are not deductible. However, the ruling allows a deduction where it is established that the donor intended the gift for the organization and not as a gift to an individual. See also Davis v. U.S., 495 U.S. 472 (1990).

Rev. Rul. 62-113 states that the test in each case is whether the organization has full control of the donated funds, and discretion as to their use, so as to ensure that they will be used to carry out its functions and purposes. The ruling also states that, unless the taxpayer's contributions to the fund are distinctly marked by him so that they may be used only for his son or are received by the fund pursuant to a commitment or understanding that they will be so used, they may be deducted by the taxpayer in computing his taxable income in the manner and to the extent provided by § 170.

In Rev. Rul. 68-484, 1968-2 C.B. 105, a corporation established a scholarship program. The corporation selected universities from which the corporation drew a substantial number of its employees. The universities selected the recipients of the scholarships in their own discretion, and there was no employment commitment between the corporation and the scholarship recipients. The ruling states that for purposes of determining that a contribution is made to or for the use of an organization described in § 170 rather than to a particular individual who ultimately benefits from the contribution, the organization must have full control of the use of the donated funds, and the contributor's intent in making the payment must have been to benefit the organization itself and not the individual recipient.

In Rev. Rul. 79-81, 1979-1 C.B. 107, students at a religious educational institution had their tuition paid by "sponsors." In many cases the sponsor was the student's parent. The sponsors signed a commitment form that set the contribution amount, the payment schedule, and indicated the names of the sponsor and the student. There was also a space provided on the payment envelopes for the student's name. The commitment form provided that contributions were nonrefundable and that the use of money was "solely at the discretion" of the organization. The revenue ruling denies a charitable contribution deduction because deductibility requires both full control by the organization and the intent by the donor to benefit the charity itself and not a particular recipient. The commitment form and the envelopes indicated that the payments were designated for the benefit of particular students. The ruling reasons that the control the organization had over the use of the funds is comparable to the control any school has over tuition payments it receives.

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In Tripp v. Commissioner, 337 F.2d 432 (7th Cir. 1964), the taxpayer claimed a charitable deduction for payments to a college. In a letter accompanying a payment the taxpayer stated, "I am aware that a donation to a Scholarship Fund is only deductible if it is unspecified, however, if in your opinion and that of the authorities, it could be applied to the advantage of Mr. Robert F. Roble, I think it would be constructive."

The court stated, "[i]t is clear from the record that the petitioner intended to aid Roble in securing an education and that the payments to the college were earmarked for that purpose." There was no indication that a "scholarship" was ever awarded Mr. Roble by the college; the payments were merely applied to his account. Therefore, the court agreed with the Tax Court's finding that the taxpayer intended to benefit the individual and not the institution and denied the charitable deduction.

Peace v. Commissioner, 43 T.C. 1 (1964), acq. 1965-2 C.B. 6, provides guidance regarding whether the institution has control of donated funds. Despite the listing of the names of specific missionaries on the checks donated to a missionary fund and the apparent sending of funds by the mission to the particular missionaries, the court found that the donor's intention was to donate the funds to the common fund of the mission to be used as the mission saw fit. The court reached this finding based in part on the missionary fund's policy that it have exclusive control of both the administration and distribution of the funds contributed, and the finding that the donor intended that the contributions go into a common pool to be distributed on an equitable basis among all missionaries as described in the fund's publications. The Tax Court, quoting Rev. Rul. 62-113, stated "unless the taxpayer's contributions to the fund are distinctly marked by him so that they may be used only for his son or are received by the fund pursuant to a commitment or understanding that they will be so used, they may be deducted by the taxpayer in computing his taxable income in the manner and to the extent provided by section 170 of the Code." *Id.* at 8.

#### ANALYSIS:

Section 170 allows contributions or gifts to or for the use of qualifying entities to be deducted from taxable income subject to certain limitations and restrictions not at issue here. A charitable contribution deduction is not allowed if a charity is used as a conduit, and a payment to a qualifying charity is "earmarked" or designated for the benefit of a particular individual, even if the individual is member of the class the charity is intended to benefit. S.E. Thomason v. Commissioner, 2 T.C. 441 (1943).

The organization must have control and discretion over the contribution, unfettered by a commitment or understanding that the contribution would benefit a designated individual. Rev. Rul. 62-113. The donor's intent must be to benefit the organization and not the individual recipient. Rev. Rul. 68-484.

In this case Donors made a payment to a recognized charity, and expressed an interest in supporting the work of a particular composer. This expression of interest raises the issue of whether the contribution was impermissibly earmarked for this composer. No

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commitment or understanding existed between Donors and Organization that the contribution would benefit Composer. Donors understood that any funds contributed to Organization would be distributed according to the discretion of Organization, and that Organization's officers select the composers sponsored by Organization.

We believe that the instant case is similar to Rev. Rul. 62-113, and Peace. Although the Donors expressed an interest in the selection of a particular individual to compose a work for Organization, the common understanding was that the contribution would become part of the general funds of Organization, and would be distributed in the manner chosen by Organization's officers.

**RULING:**

The contribution by Donors to Organization was not impermissibly earmarked for Composer, and therefore is a charitable contribution within the meaning of § 170 and the regulations thereunder.

**CAVEAT:**

This ruling is based on the facts and representations supplied by the taxpayers. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter. The charitable contribution is not deductible unless all requirements of § 170 are met, including the requirement of a contemporaneous written acknowledgment under § 170(f)(8). This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code.

Sincerely yours,

KARIN G. GROSS  
Senior Technician Reviewer, Branch 1  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

**Enclosures:**

Copy of letter  
Copy for section 6110 purposes

cc: