

Internal Revenue Service

Department of the Treasury
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LEGEND:

Taxpayer =
State =

Dear :

This responds to your letter dated January 24, 2008, in which you request on behalf of Taxpayer a ruling with respect to § 170 of the Internal Revenue Code.

RULING REQUESTED

Taxpayer, a regulated investment company (RIC), requests a ruling that its taxable income for purposes of calculating the percentage limitation under § 170(b)(2)(A) is its taxable income not reduced by the dividends paid deduction under § 561.

CONCLUSION

Taxable income for purposes of the percentage limitation on deductions for corporate charitable contributions under § 170(b)(2)(A) means taxable income under § 63 computed without regard to the amounts specified under § 170(b)(2)(C). Taxable income under § 63 is gross income minus certain deductions, including the deductions allowed by § 561. The dividends paid deduction defined in § 561 is not an amount specified under § 170(b)(2)(C). Therefore, the deduction for dividends paid under § 561 must be taken into account in determining the taxable income of a corporation for purposes of § 170(b)(2)(A).

FACTS

Taxpayer is a State business trust that is taxable as a domestic corporation. It is registered under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 *et seq.*, as

amended, as a diversified management investment company. Taxpayer has elected to be taxed as a RIC under § 851(b)(1) of the Code.

LAW AND ANALYSIS

Section 170 provides a deduction for qualified charitable contributions. However, under § 170(b)(2)(A), the deduction for charitable contributions made by a corporation in a taxable year may not exceed 10 percent of the corporation's taxable income for that year.

For purposes of calculating the percentage limitation under § 170(b)(2)(A), a corporation's taxable income is defined under § 170(b)(2)(C) as taxable income computed without regard to—

- (1) the deduction for charitable contributions under § 170;
- (2) the special deductions for corporations allowed under part VIII (except § 248, relating to organizational expenditures), subchapter B, chapter 1 of the Code;
- (3) any net operating loss carryback to the taxable year under § 172;
- (4) section 199; and
- (5) any capital loss carryback to the taxable year under § 1212(a)(1).

Section 63 defines "taxable income" for purposes of subtitle A of the Code as gross income minus the deductions allowed by chapter 1 (other than the standard deduction). The following deductions, among others, are allowed by chapter 1—

- (1) the charitable contribution deduction under § 170;
- (2) the deductions for corporations under part VIII, subchapter B, chapter 1 of the Code;
- (3) the net operating loss deduction under § 172;
- (4) the deduction with respect to income attributable to domestic production activities under § 199;
- (5) the amount allowed as a deduction in the current taxable year with respect to a net capital loss for which the corporation is allowed a capital loss carryback or carryover in the current taxable year under § 1212; and
- (6) the deduction for dividends paid under § 561.

Section 852 relates to the taxation of RICs and their shareholders. Under § 852(b)(2), investment company taxable income (ICTI) is generally the taxable income of the RIC adjusted for the deduction for dividends paid (as defined in section 561), but computed without regard to capital gain dividends and exempt-interest dividends.

Taxpayer asserts that, for purposes of calculating the percentage limitation under § 170(b)(2)(A), a RIC's taxable income is defined as taxable income not reduced by the dividends paid deduction. In support of its position, Taxpayer cites PLR 8626065 (Mar. 28, 1986), which held that for purposes of calculating the percentage limitation under § 170(b)(2)(A) a REIT's "'taxable income' is determined in the manner provided in § 63 before the taxable income of the REIT is reduced by the dividends paid deduction as required in § 857(b)(2)(B)."

PLR 8626065 does not support taxpayer's position because private letter rulings may not be used or cited as precedent under § 6110(k)(3). Moreover, we believe that the conclusion reached in PLR 8626065 is incorrect.

A corporation's taxable income for purposes of calculating the percentage limitation on deductions for qualified charitable contributions is defined in § 170(b)(2)(C). Section 170(b)(2)(C) provides an exclusive list of adjustments that must be made to a corporation's taxable income as defined in § 63 in order to calculate the amount of the corporation's charitable contribution deduction under § 170. The adjustments provided in § 852(b)(2), relating to ICTI, do not affect a corporation's taxable income for purposes of § 170.

The ruling contained in this letter is 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) 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 representatives.

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,

John P. Moriarty
Chief, Branch 1
(Income Tax & Accounting)

cc: