



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

June 2, 2016

Number: **2016-0063**
Release Date: 9/30/2016

GENIN-102382-16

UIL: 170.12-07

Dear _____ :

This letter responds to your inquiry dated January 21, 2016, in which you request general information about whether a payment made by a nonstock benefit corporation to an organization described in § 501(c)(3) of the Internal Revenue Code and exempt from tax under § 501(a) may be deductible under § 162 rather than § 170. This letter is not a ruling, but rather provides information in response to your general question.

Under § 170(a), a taxpayer may deduct a charitable contribution made during the taxable year. A charitable contribution is a contribution or gift to or for the use of an organization described in § 170(c). A contribution or gift is a voluntary transfer of money or property that is made with no expectation of procuring a financial benefit commensurate with the amount of the transfer. *United States v. American Bar Endowment*, 477 U.S. 105, 118 (1986). A charitable contribution generally does not include any part of a payment that a taxpayer makes to a charitable organization in consideration for goods or services. See Rev. Rul. 67-246, 1967-2 C.B. 104.

Under § 162(a), taxpayers may deduct ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Section 1.162-20(a)(2) of the Income Tax Regulations provides, in part, that expenditures for institutional or goodwill advertising which keeps the taxpayer's name before the public are generally deductible as ordinary and necessary business expenses provided the expenditures are related to the patronage the taxpayer might reasonably expect in the future.

Section 1.170A-2(c)(5) states that transfers of property to an organization described in § 170(c) which bear a direct relationship to the taxpayer's business and are made with a reasonable expectation of a commensurate financial return may constitute valid

expenses of a trade or business, deductible under § 162(a) rather than as charitable contribution or gift under § 170. See *Marquis v. Commissioner*, 49 T.C. 695 (1968).

Accordingly, a nonstock benefit corporation making an expenditure for institutional or goodwill advertising to keep the corporation's name before the public is generally treated as an expense under § 162(a). This rule applies even if the payment is made to a § 501(c)(3) organization.

I hope this information is helpful. If you have any questions, please call _____ or
at _____.

Sincerely,

Karin G. Gross
Senior Technical Reviewer, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)