

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Michael B. Blumenfeld
Senior Technician Reviewer, Exempt Organizations Branch 1 (Exempt
Organizations/Employment Tax/Government Entities)
(Tax Exempt & Government Entities)

from: Thomas D. Moffitt
Branch Chief, Branch 2
(Income Tax & Accounting)

subject: Booster Club Fundraising

This is in response to your memorandum dated May 11, 2010. All section references are to the Internal Revenue Code of 1986, unless otherwise noted.

ISSUE

When participants in a booster club are required by the club to pay dues by either contributing money or by fundraising, and the participants receive benefits in return for the dues, are the participants eligible to deduct the money contributed as a charitable contribution under section 170?

CONCLUSION

Participants may be eligible to deduct the amount contributed under section 170 to the extent that the contribution exceeds the value of the return benefits received, if the participants intended to make a charitable contribution in the amount of the excess of the contribution over the value of the benefits received.

FACTS

Traditionally, the Service has recognized booster clubs as tax-exempt under either sections 501(c)(3) or 501(j) on the grounds that they promote amateur athletics and instruct youth in sports. From anecdotal evidence, many booster clubs charge dues for participation and related reasons. For example, a booster club may charge each participant \$1,000 for registration, to cover the provision of facilities, training equipment, and travel. The booster club may reduce the fee by the amount that the participant and/or the parents bring in through fundraising. Other clubs have allowed parents to make contributions to the club to offset the dues and have stated or implied that such

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contributions were deductible as charitable contributions under section 170.

For example, you provided the membership package for the [REDACTED], a [REDACTED] team that is exempt from income tax under section 501(c)(3), which you stated is representative of how booster clubs operate generally. Participants in this club practice and participate in [REDACTED] competitions against other clubs.

In exchange for the required dues, this club provides instruction and practice in competitive [REDACTED] for youths of various age groups. According to the membership materials, the club retains full-time and part-time coaches on staff to provide year-round instruction. The club provides all competition entry fees, team clothing and accessories to wear during competitions, and registration fees with USA [REDACTED], the national governing body of competitive [REDACTED] in the United States. The club also provides participants access to its [REDACTED] facilities throughout the year.

The membership package lists the required dues and amount of fundraising for each participant. The participant has the option to pay the "fundraising" amount outright or to participate in various fundraising activities to achieve the required amount (such as acquiring corporate sponsorships or selling advertisements). The participant must pay both the dues and the fundraising amount in full, or the club may deny participation in championship competition or may curtail a participant's [REDACTED] privileges. The club also assesses a \$15 late fee each month on delinquent accounts, for both dues and fundraising accounts.

The membership package also contains the following statement:

[REDACTED]

You asked whether this statement regarding the tax deduction is accurate.

LAW AND ANALYSIS

Section 170(a)(1) provides the general rule that, subject to certain limitations, there shall be allowed as a deduction any charitable contribution (as defined in section 170(c)), payment of which is made within the taxable year. See also Treasury Regulations § 1.170A-1.

Generally, to be deductible as a charitable contribution under section 170, a transfer to a charitable organization must be a gift. A gift for this purpose is a transfer of money or property without receipt of adequate consideration, made with charitable intent. *United States v. American Bar Endowment*, 477 U.S. 105, 116-118 (1986).

Treas. Reg. § 1.170A-1(h)(1) states that no part of a payment that a taxpayer makes to

a charitable organization that is in consideration for goods or services is a gift unless the taxpayer intends to make a payment in an amount that exceeds the fair market value of the goods or services, and makes a payment of the excess. A charitable organization provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes the payment to the charitable organization, the taxpayer receives or expects to receive goods or services in exchange for that payment. Treas. Reg. § 1.170A-13(f)(6). For these purposes, the term "goods or services" means cash, property, services, benefits, and privileges. Treas. Reg. § 1.170A-13(f)(5).

Generally a transfer is not made with charitable intent if the transferor expects a return benefit commensurate with the amount of the transfer. *American Bar Endowment*, 477 U.S. at 116. The external features of a transaction should be examined to determine whether a taxpayer transferred money to a charity with the expectation of a *quid pro quo*. *Hernandez v. Commissioner*, 490 U.S. 680, 690-691 (1989).

In the example of the [REDACTED] club described above, the club requires participants to pay the full amount of dues and fundraising amounts. Participants that do not pay in full are subject to penalties and/or curtailment of privileges. In exchange for the required payments, the club provides substantial goods and services to the participants in the form of, for example, [REDACTED] and competition privileges, [REDACTED] instruction, and team clothing.

The membership package clearly lists out the full amount required to be paid and the benefits received in return. The package does not, however, list the estimated value of the return benefits. If the benefits received are less than the contributions paid to the club, the participant may be eligible for a charitable contribution deduction under section 170 in the amount of the excess of the contributions over the fair market value of the benefits received. See Treas. Reg. 1.170A-1(h)(2).

Given the facts provided we are unable to determine whether the statement in the membership package that you identified is accurate, since we do not know the value of the benefits provided by the club and the amount of the contributions paid by each participant. However, considering the substantial return benefits provided by the organization, it is unlikely in this example that the participants would qualify for a charitable contribution deduction. This issue may be resolved in any particular case by applying the law stated above to the facts of that particular case.

In addition to the analysis above, we note that any charitable contribution deduction of \$250 or more must be properly substantiated by a contemporaneous written acknowledgement of the contribution by the charitable organization. See Section 170(f)(8), Treas. Reg. § 1.170A-13(f). The written acknowledgement must state the amount of cash contributed, whether the charitable organization provided any goods or services in consideration for the contribution, and a good faith estimate of the value of those goods or services. Section 170(f)(8)(B). The Tax Court, affirmed by the 9th Circuit Court of Appeals, disallowed charitable contributions exceeding \$250 when the contemporaneous written acknowledgement provided by the charity did not state that

the donor received goods or services in exchange for the amount transferred. See, for example, *Addis v. Commissioner*, 118 T.C. 528 (2002), *aff'd*, 374 F.3d 881 (9th Cir. 2004), *cert. denied*, 543 U.S. 1151 (2005).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views. Please contact me or Selvan Boominathan at (202) 622-7900 if you have any further questions.

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