Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:ITA:4 – PLR-139124-01
Date:
April 29, 2002

▹

LEGEND:

Company =

m =

Dear

This letter is in response to your request for a ruling concerning the application of §§ 61 and 170(c) of the Internal Revenue Code to the program described below. Specifically, you request rulings that (1) the value of m received as rebates for purchased products or services are not included in your gross income under § 61 but rather are treated as a reduction in basis of the property purchased under § 1016, and (2) the payment of rebates of m by Company to a charitable organization described in § 170(c) will qualify as a charitable contribution by you under § 170(c) to the extent provided by § 170.

FACTS

You are a member in a program administered by Company. Company offers members, such as you, incentives for purchasing products and services at merchants' retail stores, direct from suppliers and on-line using Company's website.

Company administers the member program primarily through its website. Members, such as you, who agree to the terms and conditions contained in the membership agreement, may earn m in two ways. Members may earn m based on the amount of the members' products and services purchased from participating merchants. Secondly, members may earn m as additional bonus incentives for participation in such activities as enrolling in the member program. Members accumulate m, which may be

redeemed by members for merchandise or cash from the participating merchants. Another option available to the member is to elect to donate m to an entity described in §170(c), which may redeem m. Members may make this election on the website by clicking on the “donate” button and designating how many points they wish to donate.

Company administers the merchant component of its program by soliciting merchants to join the m plan and then entering into a plan agreement with them. Pursuant to the plan agreement, Company is obligated to perform certain functions, including the provision of all materials necessary to facilitate the execution of transactions electronically crediting members’ accounts with m. Company retains title to equipment, forms, redemption materials, and other items related to the system through which m are awarded, and Company licenses the necessary items to the merchant for stated fees. In addition, the merchants agree to fund the purchase of m awarded to members, based on the amount of the products and services purchased by members (“rebate m”). Company retains initial title to rebate m. At the time rebate m are issued, title passes from Company to the merchant and then to the member, such as you, to whom they are awarded.

Each member, including you, is able to track the receipt and disbursement of m through a separate account on Company’s website, accessible through a login and password. For contributions to Charity, the account lists the designated recipient and the amount of m contributed. In addition, each member is able to track the amount of his or her rebate m and m awarded as bonus incentives, which are separately accounted for on the website.

You itemize your federal income tax deductions. You plan to donate a certain portion of the rebate m that you have earned to a charity described in §170(c) (“Charity”). Company, acting as your agent, will make such donations directly to Charity. Company will provide Charity with your name and address for purposes of complying with the §170(f)(8) acknowledgment rules. The recipient Charity will provide any required acknowledgment under §170(f)(8).

LAW AND ANALYSIS

Ruling Request #1:

Section 61 of the Code provides that gross income means income from whatever source derived.

Section 1012 provides that the basis of property shall be the cost of such property, except as otherwise provided.

Section 1016 provides that proper adjustment in respect of the basis of property shall be made for expenditures, receipts losses, or other items properly chargeable to capital account.

Rev. Rul. 84-41, 1984-1 C.B. 130, holds that a manufacturer's rebate received by an automobile dealer represents a trade discount and must be treated by the dealer as a reduction in the cost of the automobile and not as gross income. Likewise, Rev. Rul. 76-96, 1976-1 C.B. 23, holds that amounts paid by an automobile manufacturer to retail customers who purchase new automobiles are not includible in the gross income of the customers; the amounts are rebates and represent a reduction in the purchase price of the automobiles.

In the present situation, you have represented that a member may receive m in connection with products or services purchased from the participating merchants. You have also represented that at the time rebate m are issued to a member, title passes from Company, to the merchant, and then to the member to whom the m are awarded. As in the revenue rulings described above, the amount of the rebate is based on solely on the amount of purchases. Thus, rebate m qualify as rebates, which you exclude from gross income under §61. Under §1016, the value of rebate m reduces the basis of merchandise purchased.

Ruling Request #2:

Section 170(a)(1) provides, subject to certain limitations, a deduction for charitable contributions described in §170(c), payment of which is made within the taxable year. Section 170(c)(2) states, in part, that the term "charitable contribution" means a contribution or gift to or for the use of a qualified organization.

Section 170(f)(8)(A) provides that no deduction is allowed under §170 for a contribution of $250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment of the contribution from a charitable organization. Section 170(f)(8)(B) sets forth the information that must be included in the contemporaneous written acknowledgment.

Section 1.170A-1(b) of the Income Tax Regulations provides that a charitable contribution is ordinarily made at the time the delivery is effected.

A charitable contribution must be made voluntarily and with donative intent. United States v. American Bar Endowment, 477 U.S. 105 (1986). In American Bar Endowment, a membership organization maintained a group insurance program for its members. Every year, excess insurance premiums paid by members were refunded to

the organization. This excess was called a “dividend.” As a condition of participating in the insurance program, members were required to assign their rights to a pro rata portion of the dividends to the organization. The organization used the dividends to fund charitable grants. Members participating in the group insurance program claimed charitable deductions under §170 for their pro rata shares of the dividends. The Supreme Court disallowed these deductions, concluding that the assignments were not voluntary. The Court suggested that it would have reached a different result were the ABE to give each member a choice between retaining his pro rata share of dividends or assigning them to charity.

In the present case, you may choose to donate m to Charity. This opportunity to donate is described in the membership agreement that was provided to you when you joined the program administered by Company. You make this election by clicking on the “donate” button on the website, and designating how many points you wish to donate. This element of choice distinguishes Company’s program from the group insurance program in American Bar Endowment, where participants could not choose to retain the dividends assigned them. The opportunity to decide whether payments will be made to Charity renders the payments voluntary.

In the present case, Company is authorized to act on your behalf. Thus, there is no delivery of a charitable contribution when Company receives m as designated by you. Rather, delivery to Charity occurs when Company transfers m to Charity. Therefore, you will be entitled to treat as charitable contributions the m paid within the taxable year to Charity on your behalf.

Section 170(f)(8)(A) provides that no deduction is allowed for a charitable contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution. The requirements for the contemporaneous written acknowledgment are set forth in §170(f)(8)(B). Under §170(f)(8), if Company makes a lump-sum transfer to a charity of $250 or more on your behalf, you must substantiate the contribution with a contemporaneous written acknowledgment that meets the requirements of §170(f)(8)(B). You have represented that for amounts contributed in excess of $250, Company will provide Charity with your name and address. With this information, Charity will be able to provide the substantiation required by §170(f)(8) to be obtained by donors. Accordingly, your contribution of rebate m to Charity may qualify as a charitable contribution by you under section 170(c).

CONCLUSIONS

Based strictly on all of the facts submitted and representations made, we conclude:

1. The value of m received as rebates for products or services purchased from participating merchants is not included in your gross income under §61 but rather is treated as a reduction in basis of the property purchased under §1016.

2. The contribution of rebates of m to a charitable organization described in §170(c) by Company, acting as an your agent, may qualify as a charitable contribution by you under section 170(c).

CAVEATS:

You have not requested a ruling, and we express no opinion, concerning whether you are allowed a charitable contribution deduction for the value of the bonus points contributed to a charity, or whether the bonus points are excludable from your income.

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.

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. This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Michael J. Montemurro
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2)