

Rev. Rul. 2000-43

ISSUE

May an accrual-basis subchapter S corporation elect under § 170(a)(2) of the Internal Revenue Code to treat a charitable contribution as paid in the year authorized by the S corporation's Board of Directors if the contribution is paid by the S corporation after the close of the taxable year and before the 15th day of the third month following the close of the taxable year?

FACTS

Taxpayer is the sole shareholder of an accrual-basis subchapter S corporation. The S corporation reports on a calendar year period. On December 31, 1999, the S corporation's Board of Directors authorized a charitable contribution to Charity, a qualified donee under § 170(c)(2) and an organization described under § 501(c)(3). The S corporation paid the charitable contribution to Charity on March 1, 2000.

LAW AND ANALYSIS

Section 170(a)(1) allows as a deduction any charitable contribution (as defined in § 170(c)) the payment of which is made within the taxable year. Under § 170(b)(1), the percentage limitation on charitable contributions for an individual is 50 percent, 30 percent, or 20 percent of the taxpayer's contribution base (generally adjusted gross income) for the taxable year, depending generally on the type of property contributed and the type of qualified donee. Under § 170(b)(2), the percentage limitation on charitable contributions by a corporation is 10 percent of the taxpayer's taxable income with certain adjustments.

Under § 170(a)(2), a corporation reporting its taxable income on the accrual basis may elect to deduct a charitable contribution in the year in which the board of directors authorizes the contribution, if the payment is made by the 15th day of the third month following the close of the taxable year. The election may be made only at the time of the filing of the return for the taxable year and is made by reporting the contribution on the

return. See § 1.170A-11(b)(2) of the Income Tax Regulations.

The legislative history to § 170(a)(2) provides that the exception for accrual basis corporations was desirable because corporations intending to make the maximum charitable contribution allowable as a deduction had experienced difficulty in determining before the end of the taxable year what constituted 5 percent of their net income (the § 170(b) gross income limitation for corporations at the time of enactment). S. Rep. No. 831, 81st Cong., 1st Sess. at 1949-2 C.B. 289, 290-1.

Section 1363(b) states that the taxable income of an S corporation is computed in the same manner as in the case of an individual with certain exceptions, among which is an exception that the deductions referred to in § 703(a)(2) are not allowed to the corporation. Section 703(a)(2)(C) specifically refers to the deduction for charitable contributions provided in § 170.

Section 1366(a)(1)(A) provides that in determining the tax of a shareholder, each shareholder takes into account the shareholder's pro rata share of the corporation's items of income (including tax-exempt income), loss, deduction or credit, the separate treatment of which could affect any shareholder's tax liability. Section 1366(a)(1) provides further that the items referred to in § 1366(a)(1)(A) include amounts described in § 702(a)(4). Section 702(a)(4) refers to charitable contributions (as defined in § 170(c)).

Section 1.1366-1(a)(2)(iii) provides that the separately stated items of a subchapter S corporation include charitable contributions, grouped by the percentage limitations of § 170(b), paid by the corporation within the taxable year of the corporation.

The legislative history of § 1366 states that the corporate limitation on charitable contributions will no longer apply. Instead, charitable contributions by S corporations will pass through to the shareholders and be subject to the individual limitations on deductibility. See H.R. Rep. No. 826, 97th Cong., 2d Sess. 14 (1982); S. Rep. No. 640, 97th Cong., 2d Sess. 16 (1982).

Under § 1363(b), a subchapter S corporation computes its taxable income in the same manner as an individual. The election in § 170(a)(2) is not available to an individual. An individual taxpayer may deduct a

charitable contribution only in the year in which payment is actually made to the charitable organization. Furthermore, the rationale behind § 170(a)(2), a corporation's difficulty in determining its charitable contribution limit under § 170(b)(2), does not apply to subchapter S corporations because a subchapter S corporation is not subject to the same § 170(b)(2) limit.

Accordingly, under the facts described above, the S corporation must report the charitable contribution on its tax return for the year in which it actually paid the charitable contribution, the taxable year ending December 31, 2000.

HOLDING

An accrual-basis subchapter S corporation may not elect under § 170(a)(2) to treat a charitable contribution as paid in the year authorized by the S corporation's Board of Directors if the contribution is paid by the S corporation after the close of the taxable year.

DRAFTING INFORMATION

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