

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:3 PLR-139125-01

Date:
September 4, 2001

Company =
Foundation =
Date A =
Date B =
Date C =

Dear

This is in response to your letter dated April 9, 2001, submitted on your behalf by your authorized representatives requesting certain rulings. We are responding to requested ruling number 3, concerning whether Company is entitled to a charitable contribution deduction under § 170 of the Internal Revenue Code upon the exercise by an unrelated charity of an option to purchase Company common stock (the "Option") that the charity acquired from Foundation. The other requested rulings were issued by the Exempt Organizations Division.

FACTS

Company is a for-profit organization under state law. Company's common stock is publicly held and listed on an established securities market. Foundation is a non-profit corporation incorporated under state law. Foundation is exempt from federal income tax under § 501(a) of the Code as an organization described under § 501(c)(3). Foundation has been recognized by the Internal Revenue Service (the "Service") as a private foundation as defined in § 509(a) of the Code.

Company pledged the Option to Foundation which when exercised gives Foundation an option to purchase a specified number of shares of Company's common stock (the "Company Stock") at the closing price of the stock on Date A, which is the date of the pledge agreement (the "Pledge").

Under the terms of the Pledge, the Option becomes exercisable only if on or before Date B, Company receives certain rulings from the Service, including the ruling that is the subject of this request. If Company receives the rulings by Date B, the Option will be exercisable, in whole or in part, at any time during the period

commencing on the date Company receives this ruling and ending on Date C.

Foundation may transfer or assign the Option or any portion thereof, but only to one or more unrelated charitable organizations described in §§ 170(c)(2) and 501(c)(3) of the Code (collectively, the “Charitable Organization”).

It is expected that the Charitable Organization will purchase the Option from Foundation for a price equal to the difference between the fair market value of Company Stock subject to the Option as of the date of the purchase and the exercise price of the Option, less an agreed upon discount.

ANALYSIS

Section 170(a) of the Code provides, subject to certain limitations, a deduction for contributions and gifts to or for the use of organizations described in § 170(c), payment of which is made within the taxable year.

Section 170(b)(2) of the Code provides that the total deduction allowed a corporation under § 170(a) is limited to 10 percent of the corporation’s taxable income, computed without regard to certain deductions. Under § 1.170A-1(a) of the Income Tax Regulations, a deduction is allowed to a corporation (with one exception not applicable here) for any charitable contribution actually paid during the taxable year, irrespective of the date on which the contribution is “pledged.”

Rev. Rul. 75-348, 1975-2 C.B. 75, holds that a corporation that pledges to sell shares of its common stock at a specified price to an educational organization is entitled to a charitable contribution deduction, in the taxable year the pledge is exercised, for the excess of the fair market value of the shares on the date the pledge is exercised over the exercise price. See also Rev. Rul. 82-197, 1982-2 C.B. 72, which holds that an individual who grants an option to purchase real property to a charitable organization described in § 501(c) of the Code is allowed a charitable deduction for the year in which the organization exercises the option, in the manner and to the extent provided by § 170, for the excess of the property’s fair market value on the date of exercise over the option’s exercise price.

Where a charitable contribution is made in property other than money, § 1.170A-1(c) of the Regulations provides, in part, that the amount of the deduction is the fair market value of the contributed property at the time of the contribution. A property’s fair market value is the price at which it would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having a reasonable knowledge of the relevant facts. Where a property is sold to a charity for less than its fair market value, § 1011(b) of the Code provides for the adjustment of the donor’s basis for purposes of computing its gain from the portion of the property sold in the bargain sale. See also §§ 1.170A-4(c)(2) and 1.1011-2 of the regulations. In addition, § 170(e) of the Code provides in certain circumstances for a reduction in the amount of the charitable contribution if at the time of the contribution a sale of the

property at its fair market value would have resulted in gain. Section 1032 of the Code provides that no gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation.

In this case, the bargain sale provisions of § 1011(b) of the Code and §§ 1.170A-4(c)(2) and 1.1011-2 of the Regulations and the contribution reduction provisions of § 170(e) do not apply. This is because under § 1032 of the Code no gain is recognized by Company on the bargain sale of its stock to the unrelated charity and no gain would be recognized by Company even if it sold its stock to the unrelated charity for its full fair market value.

CONCLUSION

Under the reasoning set forth in Rev. Rul. 75-348 and Rev. Rul. 82-197, we conclude that Company is treated as making a charitable contribution described in § 170 of the Code in the year the option is exercised by Charitable Organization, and the amount of Company's charitable contribution equals the excess of the fair market value of the shares on the date of exercise over the exercise price. In addition, under the reasoning set forth in Rev. Rul. 75-348 and Rev. Rul. 82-197, we conclude that Company will be entitled to a charitable contribution deduction under § 170 with respect to the charitable contribution in the manner and to the extent provided by § 170.

This ruling is based upon information and representations submitted by Company and accompanied by a penalty of perjury statement. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter under any provision of the Code other than § 170.

Under the powers of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

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

Sincerely yours,
DOUGLAS FAHEY
Assistant to the Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Income Tax and Accounting)