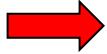


Treas. Reg. Section 1.162-15(a)

Contributions, dues, etc.



(a) Payments and transfers to entities described in section 170(c).

(1) In general. A payment or transfer to or for the use of an entity described in section 170(c) that bears a direct relationship to the taxpayer's trade or business and that is made with a reasonable expectation of financial return commensurate with the amount of the payment or transfer may constitute an allowable deduction as a trade or business expense rather than a charitable contribution deduction under section 170. For payments or transfers in excess of the amount deductible under section 162(a), see §1.170A-1(h).

(2) Examples. The following examples illustrate the rules of paragraph (a)(1) of this section:

(i) Example (1). A, an individual, is a sole proprietor who manufactures musical instruments and sells them through a website. A makes a \$1,000 payment to a local church (which is a charitable organization described in section 170(c)) for a half-page advertisement in the church's program for a concert. In the program, the church thanks its concert supporters, including A. A's advertisement includes the URL for the website through which A sells its instruments. A reasonably expects that the advertisement will attract new customers to A's website and will help A to sell more musical instruments. A may treat the \$1,000 payment as an expense of carrying on a trade or business under section 162.

(ii) Example (2). P, a partnership, operates a chain of supermarkets, some of which are located in State N. P operates a promotional program in which it sets aside the proceeds from one percent of its sales each year, which it pays to one or more charities described in section 170(c). The funds are earmarked for use in projects that improve conditions in State N. P makes the final determination on which charities receive payments. P advertises the program. P reasonably believes the program will generate a significant degree of name recognition and goodwill in the communities where it operates and thereby increase its revenue. As part of the program, P makes a \$1,000 payment to a charity described in section 170(c). P may treat the \$1,000 payment as an expense of carrying on a trade or business under section 162. This result is unchanged if, under State N's tax credit program, P expects to receive a \$1,000 income tax credit on account of P's payment, and under State N law, the credit can be passed through to P's partners.

(3) Safe harbors for C corporations and specified passthrough entities making payments in exchange for State or local tax credits.

(i) Safe harbor for C corporations. If a C corporation makes a payment to or for the use of an entity described in section 170(c) and receives or expects to receive in return a State or local tax credit that reduces a State or local tax imposed on the

C corporation, the C corporation may treat such payment as meeting the requirements of an ordinary and necessary business expense for purposes of section 162(a) to the extent of the amount of the credit received or expected to be received.

(ii) Safe harbor for specified passthrough entities.

(A) Definition of specified passthrough entity. For purposes of this paragraph (a)(3)(ii), an entity is a specified passthrough entity if each of the following requirements is satisfied-

(1) The entity is a business entity other than a C corporation and is regarded for all Federal income tax purposes as separate from its owners under §301.7701-3 of this chapter;

(2) The entity operates a trade or business within the meaning of section 162;

(3) The entity is subject to a State or local tax incurred in carrying on its trade or business that is imposed directly on the entity; and

(4) In return for a payment to an entity described in section 170(c), the entity described in paragraph (a)(3)(ii)(A)(1) of this section receives or expects to receive a State or local tax credit that the entity applies or expects to apply to offset a State or local tax described in paragraph (a)(3)(ii)(A)(3) of this section.

(B) Safe harbor. Except as provided in paragraph (a)(3)(ii)(C) of this section, if a specified passthrough entity makes a payment to or for the use of an entity described in section 170(c), and receives or expects to receive in return a State or local tax credit that reduces a State or local tax described in paragraph (a)(3)(ii)(A)(3) of this section, the specified passthrough entity may treat such payment as an ordinary and necessary business expense for purposes of section 162(a) to the extent of the amount of credit received or expected to be received.

(C) Exception. The safe harbor described in this paragraph (a)(3)(ii) does not apply if the credit received or expected to be received reduces a State or local income tax.

(iii) Definition of payment. For purposes of this paragraph (a)(3), payment is defined as a payment of cash or cash equivalent.

(iv) Examples. The following examples illustrate the rules of paragraph (a)(3) of this section.

(A) Example (1). C corporation that receives or expects to receive dollar-for-dollar State or local tax credit. A, a C corporation engaged in a trade or business, makes a payment of \$1,000 to an entity described in section 170(c). In return for the payment, A expects to receive a dollar-for-dollar State tax credit to be applied to A's State corporate income tax liability.

Under paragraph (a)(3)(i) of this section, A may treat the \$1,000 payment as an expense of carrying on a trade or business under section 162.

(B) Example (2). C corporation that receives or expects to receive percentage-based State or local tax credit. B, a C corporation engaged in a trade or business, makes a payment of \$1,000 to an entity described in section 170(c). In return for the payment, B expects to receive a local tax credit equal to 80 percent of the amount of this payment (\$800) to be applied to B's local real property tax liability. Under paragraph (a)(3)(i) of this section, B may treat \$800 as an expense of carrying on a trade or business under section 162. The treatment of the remaining \$200 will depend upon the facts and circumstances and is not affected by paragraph (a)(3)(i) of this section.

(C) Example (3). Partnership that receives or expects to receive dollar-for-dollar State or local tax credit. P is a limited liability company classified as a partnership for Federal income tax purposes under §301.7701-3 of this chapter. P is engaged in a trade or business and makes a payment of \$1,000 to an entity described in section 170(c). In return for the payment, P expects to receive a dollar-for-dollar State tax credit to be applied to P's State excise tax liability incurred by P in carrying on its trade or business. Under applicable State law, the State's excise tax is imposed at the entity level (not the owner level). Under paragraph (a)(3)(ii) of this section, P may treat the \$1,000 as an expense of carrying on a trade or business under section 162.

(D) Example (4). S corporation that receives or expects to receive percentage-based State or local tax credit. S is an S corporation engaged in a trade or business and is owned by individuals C and D. S makes a payment of \$1,000 to an entity described in section 170(c). In return for the payment, S expects to receive a local tax credit equal to 80 percent of the amount of this payment (\$800) to be applied to S's local real property tax liability incurred by S in carrying on its trade or business. Under applicable local law, the real property tax is imposed at the entity level (not the owner level). Under paragraph (a)(3)(ii) of this section, S may treat \$800 of the payment as an expense of carrying on a trade or business under section 162. The treatment of the remaining \$200 will depend upon the facts and circumstances and is not affected by paragraph (a)(3)(ii) of this section.

(v) Applicability of section 170 to payments in exchange for State or local tax benefits. For rules regarding the availability of a charitable contribution deduction under section 170 where a taxpayer makes a payment or transfers property to or for the use of an entity described in section 170(c) and receives or expects to receive a State or local tax benefit in return for such payment, see §1.170A-1(h)(3).

(4)Applicability dates. Paragraphs (a)(1) and (2) of this section, regarding the application of section 162 to taxpayers making payments or transfers to entities described in section

170(c), apply to payments or transfers made on or after December 17, 2019. Section 1.162-15(a), as it appeared in the April 1, 2020 edition of 26 CFR part 1, generally applies to payments or transfers made prior to December 17, 2019. However, taxpayers may choose to apply paragraphs (a)(1) and (2) of this section to payments and transfers made on or after January 1, 2018. Paragraph (a)(3) of this section, regarding the safe harbors for C corporations and specified passthrough entities making payments to section 170(c) entities in exchange for State or local tax credits, applies to payments made by these entities on or after December 17, 2019. However, taxpayers may choose to apply the safe harbors of paragraph (a)(3) to payments made on or after January 1, 2018.

(b) Other contributions. Donations to organizations other than those described in section 170 which bear a direct relationship to the taxpayer's business and are made with a reasonable expectation of a financial return commensurate with the amount of the donation may constitute allowable deductions as business expenses, provided the donation is not made for a purpose for which a deduction is not allowable by reason of the provisions of paragraph (b)(1)(i) or (c) of § 1.162-20. For example, a transit company may donate a sum of money to an organization (of a class not referred to in section 170) intending to hold a convention in the city in which it operates, with a reasonable expectation that the holding of such convention will augment its income through a greater number of people using its transportation facilities.

(c) Dues. Dues and other payments to an organization, such as a labor union or a trade association, which otherwise meet the requirements of the regulations under section 162, are deductible in full. For limitations on the deductibility of dues and other payments, see paragraph (b) and (c) of § 1.162-20.

(d) Cross reference. For provisions dealing with expenditures for institutional or "good will" advertising, see § 1.162-20(a)(2).