

IRS Rules Against Deductibility of Charitable Donations Made as Part of PAC Matching Program

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On April 15, the Internal Revenue Service issued a private letter ruling (PLR 201616002) concluding that charitable donations made by a corporation as part of a matching program designed to incentivize employee contributions to the corporation's PAC may not be deducted by the corporation as business expenses under Internal Revenue Code Section 162(a).

Internal Revenue Code Section 162(a) (26 U.S.C. § 162(a)) provides a deduction for "ordinary and necessary" expenses paid or incurred in carrying on a trade or business. Section 162(e), however, denies a deduction for any such expenses "paid or incurred in connection with . . . participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office." In reaching its conclusion, the IRS reasoned that charitable donations made as part of a PAC matching program are "inextricably linked" to, and therefore made "in connection with," the PAC contributions made by participating employees. Private letter rulings are not precedential authority, but they provide important guidance as to how the IRS is likely to approach an issue.

Charitable donation matching programs are used by many corporations to motivate PAC contributions, and have been approved by the Federal Election Commission on various occasions, including the Commission's recent approval of Wal-Mart's 2-1 matching program.

The deductibility of such matching donations as business expenses, however, has been less clear until now. The IRS's Chief Counsel's office concluded long ago that such donations are not deductible under Internal Revenue Code Section 170, which provides a deduction for certain charitable contributions (IRS General Counsel Memorandum 39877, Aug. 27, 1992), but that conclusion did not directly affect their deductibility as ordinary and necessary business expenses under Section 162(a). And in 1962 (Revenue Ruling 62-156), the IRS determined that expenses for politically impartial advertising to encourage the public to vote and contribute to candidates and political parties of their choice would be deductible under 162(a), suggesting that corporate donations made in connection with a PAC matching program might similarly be deductible. With the issuance of this ruling, however, it appears the IRS is likely to disagree with taxpayers taking the position that they are deductible as business expenses.

Caplin & Drysdale's Political Law Group counsels for-profit corporations, nonprofit entities, and their principals on these and other matters relating to political law compliance. We work collaboratively with in-house personnel to craft tailored political activity policies and programs. If you have questions concerning this alert or for more information, please contact:

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