



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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P.O. Box 125, Columbia, South Carolina 29214-0575

SC INFORMATION LETTER #19-10

SUBJECT: Proposed Treasury Regulation 1.170A-1- Potential Impact on Charitable Contribution Deduction and State Tax Credits (Income Tax)

EFFECTIVE DATE: Contributions Made After August 27, 2018¹

REFERENCES: S.C. Code Ann. Section 12-6-3515 (2014)
S.C. Code Ann. Section 12-6-3530 (Supp. 2018)
S.C. Code Ann. Section 12-6-3585 (2014)
S.C. Code Ann. Section 12-6-3790 (Supp. 2018)
S.C. Code Ann. Section 49-29-100 (Supp. 2018)
Internal Revenue Code Section 170

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

PURPOSE

The purpose of this Information Letter is to inform taxpayers of Proposed Treasury Regulation 1.170A-1 and its potential impact on South Carolina taxpayers. The application of this proposed regulation is a federal income tax issue that may impact a taxpayer's charitable contribution deduction where the taxpayer receives or expects to receive a corresponding South Carolina income tax credit.

PROPOSED AMENDMENTS TO TREASURY REGULATION 1.170A-1

Internal Revenue Code Section 170 allows a federal tax deduction for charitable contributions, including donations to a state. For charitable contributions made after August 27, 2018, Proposed Treasury Regulation 1.170A-1(h)(3) provides:

if a taxpayer makes a payment or transfers property to or for the use of an entity listed in IRC Section 170(c), the amount of the taxpayer's charitable contribution deduction under IRC Section 170(a) is reduced by the amount of any state or local tax credit that the taxpayer receives or expects to receive in consideration for the taxpayer's payment or transfer.

Further, the proposed regulation provides that no reduction is required if the amount of the state or local tax credit received or expected to be received does not exceed 15% of the taxpayer's payment or 15% of the fair market value of the property transferred by the taxpayer. If the taxpayer receives a state tax deduction rather than a credit, the taxpayer is not required to reduce its federal charitable deduction because of the state tax deduction.²

POTENTIAL IMPACT OF PROPOSED REGULATION ON SOUTH CAROLINA TAXPAYERS

As discussed above, the proposed federal regulation may affect the charitable contribution deduction amount claimed on a taxpayer's federal and South Carolina income tax returns.³ Some South Carolina tax credits may be affected by this proposed regulation, including:

- Conservation Credit - Code Section 12-6-3515
- Community Development Credit - Code Section 12-6-3530⁴
- Industry Partnership Fund Credit - Code Section 12-6-3585⁵
- Exceptional Needs Children's Fund - Code Section 12-6-3790⁶

EXAMPLE

An example best illustrates the possible impact of the proposed regulation on the charitable contribution deduction and South Carolina taxpayers. The South Carolina conservation credit is used in this example. The example assumes:

- (a) the taxpayer is an individual who itemizes deductions on his federal income tax return and makes a \$40,000 charitable contribution after August 27, 2018, and meets the South Carolina conservation credit requirements;
- (b) the taxpayer is eligible for a South Carolina conservation credit of \$10,000 (\$40,000 x 25% of the federal charitable deduction);⁷ and
- (c) the 15% de minimis exception in the proposed regulation does not apply.

	Proposed Reg. 1.170A-1 Not Applied	Proposed Reg. 1.170A-1 Applied
Federal and SC Charitable Contribution Deduction	\$40,000	\$40,000
SC Credit – Applicable Reduction	N/A	(\$10,000)
Federal and SC Charitable Contribution Deduction Allowed for 2018 Tax Year ⁸	\$40,000	\$30,000

Proposed Regulation Not Applied. This example illustrates that if Proposed Regulation 1.170A-1 is not applied, then the full amount of a contribution made when the credit was received is claimed by the taxpayer as a charitable deduction (i.e., no subtraction of the value of the state tax credit is required). The South Carolina conservation credit allowed is \$10,000.

Proposed Regulation Applied. This example illustrates that if Proposed Regulation 1.170A-1 is applied, the taxpayer will reduce the \$40,000 contribution by the \$10,000 state tax credit, leaving an allowable contribution deduction of \$30,000 on the individual taxpayer’s federal and South Carolina income tax returns. The South Carolina conservation credit allowed is \$10,000.

CONCLUSION

Although Proposed Regulation 1.170A-1 does not have full force and legal effect until it is adopted as a final regulation, it does offer guidance on the IRS’s legal position on tax issues. Since the IRS may apply this legal interpretation before the proposed regulation is final, South Carolina taxpayers should consult their tax professional on the application of this proposed regulation to their particular tax situation.

¹ This date is contained in Proposed Treasury Regulation 1.170A-1.

² Prior to the Tax Cuts and Jobs Act of 2017 (Public Law 115-97) limiting the state and local tax deduction to \$10,000 and proposed Treasury Regulation 1.170A-1, the IRS advised in Chief Counsel Advice 201105010 that taxpayers could take a charitable deduction under IRC Section 170 for the full amount of a contribution made when a state tax credit was received without subtracting the value of the state tax credit. The analysis concluded that after the taxpayer applied the state or local tax credit, the taxpayer would receive a smaller state and local tax deduction under IRC Section 164 and as a result, the overall tax deductions were the same whether the amount was treated as a state and local tax deduction or a charitable deduction.

³ See, IRS Rev. Proc. 2019-12 for a discussion of charitable contributions by corporations or pass-through entities treated as business expense deductions under IRC Section 162.

⁴ The total amount of the Community Development Credits cannot exceed in the aggregate five million dollars for all taxpayers in all calendar years and one million dollars for all taxpayers in one calendar year. All credit amounts available under the statute were claimed as of 2017. Unless more funds are authorized by the General Assembly, this credit is no longer available.

⁵ For South Carolina income tax purposes, a taxpayer who claims the Industry Partnership Fund credit cannot deduct the contributions that give rise to the credit. Code Section 12-6-3585(I). See also, footnote 8.

⁶ For South Carolina income tax purposes, a taxpayer who claims the Exceptional Needs Children's Fund (Fund) credit under Code Section 12-6-3790(H)(1) or (I) cannot deduct the contribution that gives rise to the South Carolina income tax credit. Code Section 12-6-3790(D)(2)(c). The credit under Code Section 12-6-3790(H)(2) is not a charitable contribution. Unless increased by the South Carolina General Assembly, this credit is limited annually to \$12 million for contributions to the Fund. For 2018 the entire amount allocated to the \$12 million credit was contributed prior to August 27, 2018. Pursuant to the Proposed Treasury Regulation 1.170A-1, contributions made prior to August 27, 2018, do not reduce the federal charitable contribution amount. See also, footnote 8.

⁷ South Carolina's conservation credit amount allowed is 25% of the federal charitable deduction before any reduction of the deduction for the credit amount under the proposed regulation. In other words, the credit calculation continues to be a single iteration math computation (i.e., the computation does not continue to reduce the South Carolina conservation credit to \$0).

⁸ If a South Carolina credit provides that a taxpayer cannot deduct contributions that give rise to a South Carolina deduction (e.g., Industry Partnership Fund credit and Exceptional Needs Children's Fund credit), the amount of the charitable contribution that must be added back to the taxpayer's South Carolina income is the amount of the charitable contribution less the credit reduction amount.