

Section 170.—Charitable, etc., Contributions and Gifts

Is a charitable deduction under section 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income prohibited because the trust's governing instrument does not authorize the trustee to make charitable contributions? See Rev. Rul. 2004-5, page 295.

Section 642.—Special Rules for Credits and Deductions

26 CFR 1.642(c)-1: *Unlimited deduction for amounts paid for a charitable purpose.* (Also §§ 170, 651, 652, 681, 702; 1.651(a)-1, 1.651(a)-4, 1.702-1.)

Charitable deductions. This ruling concludes that a trust is not prohibited

from taking a charitable deduction under section 642(c) of the Code for the trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income even though the trust's governing instrument does not authorize the trustee to make charitable contributions.

Rev. Rul. 2004-5

ISSUE

Is a charitable deduction under § 642(c) of the Internal Revenue Code for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income prohibited because the trust's governing instrument does not authorize the trustee to make charitable contributions?

FACTS

The governing instrument of trust *TR* provides that all the income is to be distributed annually to *A* for life and upon *A*'s death, *TR* will terminate and all the assets will pass to *B*. *TR*'s governing instrument does not authorize the trustee to make charitable contributions.

One of *TR*'s assets is an interest in partnership *PRS*. During the taxable year, *PRS* contributes cash from its gross income to a charitable organization for a purpose specified in § 170(c). None of *TR*'s income for the taxable year is "unrelated business income" within the meaning of § 681(a). In computing its income tax for the taxable year, *TR* takes into account its distributive share of *PRS*'s income, gain, loss, deductions (including charitable contributions), and credits.

LAW AND ANALYSIS

Section 642(c)(1) provides that a trust (other than a trust subject to §§ 651 and 652) is allowed a deduction in computing its taxable income for any amount of the gross income, without limitation, that pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in § 170(c) (determined

without regard to § 170(c)(2)(A)). The deduction is in lieu of the charitable deduction allowed by § 170(a).

A trust subject to §§ 651 and 652 is known as a simple trust. A trust that is not a simple trust is known as a complex trust and is subject to the provisions of §§ 661-663. Section 1.651(a)-1 of the Income Tax Regulations provides that a trust may be a simple trust for one year and a complex trust for another year.

Under § 651(a), the terms of a simple trust (1) provide that all of the trust's income is to be distributed currently and (2) do not provide that any amounts are to be paid, permanently set aside, or used for the charitable purposes specified in § 642(c). Under § 1.651(a)-4, a trust is not considered to be a trust that may pay, permanently set aside, or use any amount for charitable purposes for any taxable year in which the trust is not allowed a charitable deduction under § 642(c).

Section 702(a)(4) provides that in determining a partner's income tax, each partner shall take into account separately the partner's distributive share of the partnership's charitable contributions (as defined in § 170(c)).

Section 1.702-1(a)(4) provides that each partner shall take into account, as part of the charitable contributions paid by the partner, the partner's distributive share of each class of charitable contributions paid by the partnership within the partnership's taxable year. Section 170 determines the extent to which the amount may be allowed as a deduction to the partner.

Section 1.702-1(b) provides that the character in the hands of a partner of any item of income, gain, loss, deduction, or credit described in § 702(a)(1) through (8) shall be determined as if that item were realized directly from the source from which realized by the partnership or incurred in the same manner as incurred by the partnership.

Section 1.702-1(c)(1) provides that if it is necessary to determine the amount or character of the gross income of a partner, the partner's gross income shall include the partner's distributive share of the

gross income of the partnership, that is, the amount of gross income of the partnership from which was derived the partner's distributive share of partnership taxable income or loss (including items described in § 702(a)(1) through (8)).

For a trust to claim a charitable deduction under § 642(c) for amounts of gross income that it contributes for charitable purposes, the governing instrument of the trust must give the trustee the authority to make charitable contributions. This requirement is an essential element to qualify the trust to claim a deduction for a charitable contribution made directly by the trust. In the case of a trust's investment in a partnership, the partnership may make a charitable contribution from the partnership's gross income, and that income is never available to the trust. For federal tax purposes, however, the trust must take into account its distributive share of the partnership's income, gain, loss, deductions (including charitable contributions), and credits. Under these circumstances, a trust's deduction for its distributive share of a charitable contribution made by a partnership will not be disallowed under § 642(c) merely because the trust's governing instrument does not authorize the trustee to make charitable contributions. See *Estate of Bluestein v. Commissioner*, 15 T.C. 770 (1950), *acq.*, 1951-1 C.B. 1, and *Estate of Lowenstein v. Commissioner* 12 T.C. 694 (1949), *acq.* 1949-2 C.B. 2, *aff'd sub nom, First National Bank of Mobile v. Commissioner*, 183 F.2d 172 (5th Cir. 1950), reaching similar conclusions under the statutory predecessor to § 642(c).

In the present situation, *PRS*'s charitable contribution is made from *PRS*'s gross income. *TR* is allowed a charitable deduction for its distributive share of this contribution, even though *TR*'s governing instrument does not authorize the trustee to make charitable contributions. Because none of *TR*'s income for the taxable year would be considered "unrelated business income" for purposes of § 681(a), the amount of the charitable deduction is not limited under § 681. *TR* is a complex trust for the taxable year because it is allowed a charitable deduction under § 642(c) for that year.

The same result would apply if *TR* were always a complex trust because it was not required to distribute all its income currently.

HOLDING

A charitable deduction under § 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income is not prohibited even though the trust's governing instrument does not authorize the trustee to make charitable contributions.

DRAFTING INFORMATION

The principal author of this revenue ruling is Charlotte Chyr of the Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue ruling, contact Charlotte Chyr at (202) 622-3080 (not a toll-free call).

Section 651.—Deduction for Trusts Distributing Current Income Only

26 CFR 1.651(a)-1: Simple trusts; deductions for distributions; in general.

26 CFR 1.651(a)-4: Charitable purposes.

Is a charitable deduction under section 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income prohibited because the trust's governing instrument does not authorize the trustee to make charitable contributions? See Rev. Rul. 2004-5, page 295.

Section 652.—Inclusion of Amounts in Gross Income of Beneficiaries of Trusts Distributing Current Income Only

Is a charitable deduction under section 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income prohibited because the trust's governing instrument does not authorize the trustee to make charitable contributions? See Rev. Rul. 2004-5, page 295.

Section 681.—Limitation on Charitable Deduction

Is a charitable deduction under section 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income prohibited because the trust's governing instrument does not authorize the trustee to make charitable contributions? See Rev. Rul. 2004-5, page 295.

Section 702.—Income and Credits of Partner

26 CFR 1.702-1: Income and credits of partner.

Is a charitable deduction under section 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income prohibited because the trust's governing instrument does not authorize the trustee to make charitable contributions? See Rev. Rul. 2004-5, page 295.