



Revenue Ruling 73-597n1

Rev. Rul. 73-597; 1973-2 C.B. 69; 1973 IRB LEXIS 102

July 1973

[*1]

SUBJECT MATTER: Section 170.-Charitable, Etc., Contributions and Gifts

APPLICABLE SECTIONS:

26 CFR 1.170A-1: Charitable, etc., contributions and gifts; allowance of deduction. (Also *Sections 214, 262; 1.262-1.*)

TEXT:

Child care expenses while performing charitable services. Amounts paid by a taxpayer for the care of her children while she performed gratuitous services for a charitable organization are personal expenses not deductible as charitable contributions under *section 170 of the Code*.

Advice has been requested whether, under the circumstances described below, a charitable deduction is allowable to a taxpayer for amounts she pays for the care of her children while she performs gratuitous services for a charitable organization.

The taxpayer, a parent of two children, ages five and nine, is not gainfully employed. She files a Federal individual income tax return jointly with her husband. As a member of the local hospital aid society, she renders gratuitous services at the hospital for a three-hour period one day each week. To do so, she must hire a baby sitter to care for her children while she performs the gratuitous services. The hospital aid society has been recognized as exempt from Federal income tax under *section 501 (a) of the Internal Revenue Code of 1954*, [*2] as an organization described in *section 501 (c) (3)*. Contributions to the society have been held to be deductible under *section 170 (a)*.

Section 170 (a) of the Code provides, in general, that there shall be allowed as a deduction any charitable contributions, as defined in *section 170 (c)*, payment of which is made within the taxable year. *Section 1.170A-1 (g) of the Income Tax Regulations* provides that, although no deduction is allowable under *section 170 of the Code* for a contribution of services, unreimbursed out-of-pocket expenditures made incident to the rendition of gratuitous services to a charitable organization may be deductible. Such expenditures may include expenses for uniforms, transportation, or travel away from home necessary to the rendition of the gratuitous services.

Section 262 of the Code provides that, except as otherwise expressly provided, no deduction shall be allowed for personal, living, or family expenses.

In order for out-of-pocket expenses incident to the rendition of charitable services to be deductible under *section 170 of the Code*, they must be *nonpersonal* and *directly connected with* and solely attributable to the rendition of such

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services. *Rev. Rul. 69-473, 1969-2 C.B. 37*; [*3] *Rev. Rul. 66-10, 1966-1 C.B. 47*; *Rev. Rul. 59-160, 1959-1 C.B. 59*; and *Rev. Rul. 56-508, 1956-2 C.B. 126*.

Prior to the 1954 enactment of *section 214 of the Code*, which now provides a deduction for expenses for household and dependent care (including child care) services necessary for gainful employment, expenses for child care and household services were held to be nondeductible personal expenses. See *Henry C. Smith, 40 B.T.A. 1038 (1939)*, *aff'd per curiam 113 F. 2d 114 (1940)*. In *Smith*, the Board of Tax Appeals considered whether child care and household services expenses incurred in order to permit both parents to work were deductible business expenses. In holding such expenses to be nondeductible personal expenses, the Board in *Smith, at 1039* said that

* * * certain disbursements normally personal may become deductible by reason of their intimate connection with an occupation carried on for profit. * * * The line is not always an easy one to draw nor the test simple to apply. But we think its principle is clear. It may for practical purposes be said to constitute a distinction between those activities which, as a matter of common acceptance and universal experience, are "ordinary" or usual [*4] as the *direct* accompaniment of business pursuits, on the one hand; and those which, though they may in some *indirect and tenuous* degree relate to the circumstances of a profitable occupation, are nevertheless *personal* in their nature, of a character applicable to human beings generally * * *. [Emphasis added.]

See also *Mildred A. O'Connor, 6 T.C. 323 (1946)*.

Since expenses for child care and household services have been held to be "personal" expenses that have only an "indirect and tenuous" connection to a taxpayer's rendition of *business* services, expenses for child care and household services are "personal" expenses that have the same "indirect and tenuous" connection to a taxpayer's rendition of *charitable* services.

Rev. Rul. 56-508, 1956-2 C.B. 126, held that the expenses incurred for transportation between a taxpayer's residence and a local hospital where the taxpayer rendered gratuitous services were not "personal" expenses and thus were deductible under *section 170 of the Code*, but that the cost of lunch was not deductible because of its "personal" nature.

Accordingly, in the instant case it is held that the expenses the taxpayer incurred for a baby sitter are personal expenses that [*5] are indirectly connected with the taxpayer's rendition of charitable services, and thus are not deductible under *section 170 of the Code*.

Furthermore, since the child care expenses incurred in the instant case are not related to gainful employment, such expenses are likewise not deductible under *section 214 of the Code*.

FOOTNOTES:

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Also released as Technical Information Release No. 1267, dated December 4, 1973.