



Advisory Opinion: TSB-A-24(5)I

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether he and his wife are allowed to carry over charitable deductions that exceed limits based on their New York State adjusted gross income (NYAGI) to subsequent tax years on their personal income tax returns.

We conclude that Petitioner may not carry over his excess charitable contributions to subsequent tax years.

Facts

Petitioner and his wife are residents of New York State who filed a joint personal income tax return for tax year 2019. Petitioner's federal adjusted gross income (FAGI) was significantly higher than his New York adjusted gross income (NYAGI) because he and his wife receive pensions from state service and social security benefits, both of which are exempt from New York State personal income tax, but not federal income tax. Petitioner's 2019 FAGI was less than \$1,000,000.

In 2019, Petitioner opened a donor-advised fund managed by an independent IRC § 501(c)(3) organization and made a cash deposit to the fund. When Petitioner computed his itemized deductions for his federal personal income tax return, the entire deposit to the fund was deductible as a cash charitable contribution without any carryover. However, on the New York State return, due to the significantly lower NYAGI, not all of the cash deposit could be used to reduce Petitioner's NYAGI and taxable income. Petitioner asks if the excess amount of the charitable donation can be carried over to reduce NYAGI in subsequent tax years.

Analysis

The Tax Law allows taxpayers to claim a standard deduction or, if elected, an itemized deduction as provided in Tax Law § 615. Tax Law § 613. Tax Law § 615(g), with certain modifications not applicable in this case, conforms to the federal income tax treatment of charitable donations under IRC § 170.

Under IRC § 170, a charitable contribution is a gift or donation to, or for the use of, a qualified organization. There are a wide variety of charitable contributions, from donations of real property, to personal property and cash. Where a taxpayer's NYAGI is under \$1 million for a given year, the amount of a charitable donation that can be deducted from the taxpayer's NYAGI as an itemized deduction is the amount allowed under IRC § 170 for the tax year in which the charitable donation is made. Tax Law § 615(g).

Tax Law § 615(a) provides that the itemized deduction for a taxable year is the federal itemized deduction, with specified modifications not relevant to this Advisory Opinion. In this case there was no carryover of an excess charitable deduction from tax year 2019 for federal purposes. Since no federal charitable amount was carried over, New

York State’s starting point to compute the itemized deduction allowed by Tax Law § 615(a) for the 2020 tax year would be limited to the federal deduction for that year, which did not include the excess amount of 2019 charitable contributions that were not deducted on Petitioners’ 2019 New York return.

A tax deduction, a type of tax exemption, “is not a matter of right, but is allowed only as a matter of legislative grace.” Matter of Grace v. New York State Tax Commission, 37 N.Y.2d 193 (1975). “Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed. Obviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms.” *Id.* There is no provision within the State Tax Law that allows for the carryover of charitable donations to subsequent tax years. Thus, Petitioner may not carry forward to subsequent tax years any part of his charitable donations made during tax year 2019 that could not be deducted because of the limitation in § 615(g).

Dated: April 24, 2024

/s/

Brian McCann
Principal Attorney

Note: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.