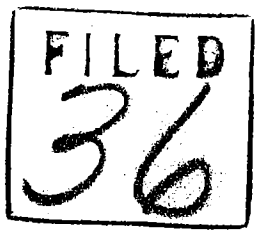
DEDUCTIONS:
INCOME TAX:
TAXATION:

Corporations may properly deduct the fair market value at the time of gift of donations to charitable organizations.

April 29, 1959



Honorable L. A. Haake
Acting Supervisor
Income Tax Department
Department of Revenue
Jefferson City, Missouri

Dear Mr. Haake:

You recently asked this department for an opinion on the deduction that may be allowed a corporation for a charitable gift of land to an acceptable recipient under the law. This request was made at the direction of the Director of Revenue, Mr. Milton Carpenter. The request was rather lengthy and we feel that the question may be clearly stated as follows:

> "When a corporation makes a gift of land to an acceptable charity, can the corporation deduct the fair market value of the land at the time of the gift in computing their Missouri income tax or must they deduct only the cost of the land when acquired by the corporation."

Missouri Statute 143.160 reads, in part, as follows:

> "In ascertaining net income there may be deducted from gross income derived during the same period the following:
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> * * * * * * *
>
> (6) Donations which are made within the taxable year to or for the use of:
>
> * * * * * * *
>
> (b) Corporations, associations and societies organized and operated exclusively for religious, charitable, scientific, liter-

> ary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual; or * * *."

The Federal regulations you noted in your request allow the deduction of such a contribution at fair market value at the time of gift. (See Section 39.23, Subsection (q), Part 1(b), Subsection (3) and Section 39.23, Subsection (o), Part 1, Subsection (g).) The Federal regulations, however, are not controlling in this matter since we are dealing here with the matter of State income taxation. The Director of Revenue is given the power to promulgate rules and regulations to aid the administration of the income tax law. He is directed to make these rules and regulations follow the Federal rules and regulations as nearly as practicable. (See Section 143.200, RSMo 1949). We do not feel, however, that this provision makes the Federal rules applicable to Missouri income tax questions automatically. The Director has failed to make applicable regulations. So the statute involved must be interpreted much in the same manner as other statutory enactments. Section 143.160 allows the deduction for donations to certain charitable enterprises. It is silent as to the method used to determine the amount of the donation. Taxing statutes are construed liberally in favor of the taxpayer and this is especially true in the absence of proper regulation. We feel, therefore, that the donation must be taken at the market value at the time of the gift and that in the absence of statutory requirement or regulation any other construction would be arbitrary. We feel that the date of purchase is not material.

CONCLUSION

Therefore, corporations may properly deduct the fair market value at the time of gift of donations to charitable organizations.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James E. Conway.

Yours very truly,

JOHN M. DALTON
Attorney General

JEC:mc