



**COLORADO**  
**Department of Revenue**

Taxation Division

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PLR-19-006

December 13, 2019

XXXXXXXXXXXXXXXXXX  
Attn: XXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Re: XXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXX,

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXXXXX (“Organization”) regarding the Colorado child care contribution income tax credit to the Colorado Department of Revenue (“Department”) pursuant to Department Regulation 1 CCR 201-1, 24-35-103.5. This letter is the Department’s private letter ruling. This ruling is binding on the Department to the extent set forth in Department Regulation 1 CCR 201-1, 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

**Background**

Organization makes the following factual and legal representations. Organization is a nonprofit domestic corporation that qualifies as an entity exempt from federal income tax pursuant to section 501(c)(3) of the internal revenue code (I.R.C.) and is a public charity pursuant to section 509(a)(2), I.R.C. As part of its fundraising activities, Organization occasionally holds charity auctions events through which the Organization raises money. During the auction, the Organization sells donated products or services to the person with the highest bid. To the extent the auction purchase price exceeds the item’s fair market value (which is usually specified by the donor contributing such item), the purchaser treats such excess amount as a charitable contribution to the Organization. For example, Donor A may donate to the Organization tickets to an event with a face value of \$100 for the purpose of allowing the Organization to sell the tickets at a fundraising auction. Donor B purchases the tickets for \$150 during the auction. Donor B then reports a charitable contribution of \$50 to the Organization, the amount by which his or her payment exceeds the goods or services received in exchange (i.e., the \$100 tickets). Organization permits winning bidders to specify that some or all of their charitable gift will be restricted to purposes intended to promote child welfare in Colorado pursuant to the requirements of section 39-22-121, C.R.S.

**Issue**

May Organization issue a Child Care Contribution Tax Credit Certification (DR 1317) to Colorado taxpayers who purchase donated property or services at Organization’s charity

fundraising auction event for the excess of the purchase price paid for an item over its fair market value?

### **Conclusion**

Subject to the requirements, conditions, and limitations set forth in this ruling, the Organization may issue a Child Care Contribution Tax Credit Certification (DR 1317) to Colorado taxpayers who purchase donated property or services at Organization's charity fundraising auction event for the excess of the purchase price paid for an item over its fair market value.

### **Discussion**

A taxpayer who makes a monetary contribution to a qualifying child care facility or program to promote child care in Colorado is allowed a child care contribution credit. The taxpayer must obtain from the qualifying child care facility or program a Child Care Contribution Tax Credit Certification (DR 1317) ("Certification") to substantiate the contribution.

A payment of money generally cannot constitute a charitable contribution if the contributor expects a substantial benefit in return. However, there is a well-established principle in the realm of taxation that the difference between the payment and the benefit received may be considered a charitable contribution, provided two conditions are met. First, the payment is donation only if and to the extent it exceeds the market value of the benefit received. Second, the excess payment must be made with the intention of making a gift.

For the issuance of Certification, Organization must determine the fair market value of the property under the requirements of section 170 of the Internal Revenue Code and the regulations promulgated thereunder, described generally in IRS Publication 561. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. Additionally, a qualified appraisal must be obtained for any item valued at more than \$5,000.

Organization may satisfy the second requirement, ensuring the winning bidder intended to make a gift, by displaying prominently, announcing, or otherwise communicating the fair market value of the item to all bidders prior to bidding.

This ruling addresses only the narrow issue of whether Organization may issue Certification for payment in excess of fair market value. Organization does not request, and the department does not provide, a ruling on whether such contribution otherwise meets all the requirements necessary for a taxpayer to claim the child care contribution credit including, but without limitation, whether Organization promotes child care within the meaning of section 39-22-121, C.R.S. or whether the earmarking of contributions as set forth in the Background meets the requirements, conditions, and limitations of the child care contribution credit statute.

### **Miscellaneous**

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts and that all representations are true and complete. The Department

reserves the right, among others, to independently evaluate Company's representations and assumptions. The ruling is null and void if any such assumption and representation is incorrect and has a material bearing on the conclusions reached in this ruling and is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Sincerely,

Office of Tax Policy Analysis  
Colorado Department of Revenue

**This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.**