

organization notifies the taxpayer under section 6033(e)(1)(A)(ii) is allocable to expenditures to which section 162(e)(1) applies. The first sentence of this paragraph (d) applies to dues or other similar amounts whether or not paid on or before December 31, 1993. Section 1.162-20(c)(3) is superseded to the extent inconsistent with this paragraph (d).

[T.D. 6819, 30 FR 5581, Apr. 20, 1965, as amended by T.D. 6996, 34 FR 835, Jan. 18, 1969; T.D. 8602, 60 FR 37573, July 21, 1995]

§ 1.162-21 Fines and penalties.

(a) *In general.* No deduction shall be allowed under section 162(a) for any fine or similar penalty paid to—

(1) The government of the United States, a State, a territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(2) The government of a foreign country; or

(3) A political subdivision of, or corporation or other entity serving as an agency or instrumentality of, any of the above.

(b) *Definition.* (1) For purposes of this section a fine or similar penalty includes an amount—

(i) Paid pursuant to conviction or a plea of guilty or *nolo contendere* for a crime (felony or misdemeanor) in a criminal proceeding;

(ii) Paid as a civil penalty imposed by Federal, State, or local law, including additions to tax and additional amounts and assessable penalties imposed by chapter 68 of the Internal Revenue Code of 1954;

(iii) Paid in settlement of the taxpayer's actual or potential liability for a fine or penalty (civil or criminal); or

(iv) Forfeited as collateral posted in connection with a proceeding which could result in imposition of such a fine or penalty.

(2) The amount of a fine or penalty does not include legal fees and related expenses paid or incurred in the defense of a prosecution or civil action arising from a violation of the law imposing the fine or civil penalty, nor court costs assessed against the taxpayer, or stenographic and printing charges. Compensatory damages (including damages under section 4A of

the Clayton Act (15 U.S.C. 15a), as amended) paid to a government do not constitute a fine or penalty.

(c) *Examples.* The application of this section may be illustrated by the following examples:

Example 1. M Corp. was indicted under section 1 of the Sherman Anti-Trust Act (15 U.S.C. 1) for fixing and maintaining prices of certain electrical products. M Corp. was convicted and was fined \$50,000. The United States sued M Corp. under section 4A of the Clayton Act (15 U.S.C. 15a) for \$100,000, the amount of the actual damages resulting from the price fixing of which M Corp. was convicted. Pursuant to a final judgment entered in the civil action, M Corp. paid the United States \$100,000 in damages. Section 162(f) precludes M Corp. from deducting the fine of \$50,000 as a trade or business expense. Section 162(f) does not preclude it from deducting the \$100,000 paid to the United States as actual damages.

Example 2. N Corp. was found to have violated 33 U.S.C. 1321(b)(3) when a vessel it operated discharged oil in harmful quantities into the navigable waters of the United States. A civil penalty under 33 U.S.C. 1321(b)(6) of \$5,000 was assessed against N Corp. with respect to the discharge. N Corp. paid \$5,000 to the Coast Guard in payment of the civil penalty. Section 162(f) precludes N Corp. from deducting the \$5,000 penalty.

Example 3. O Corp., a manufacturer of motor vehicles, was found to have violated 42 U.S.C. 1857f-2(a)(1) by selling a new motor vehicle which was not covered by the required certificate of conformity. Pursuant to 42 U.S.C. 1857f-4, O Corp. was required to pay, and did pay, a civil penalty of \$10,000. In addition, pursuant to 42 U.S.C. 1857f-5a(c)(1), O Corp. was required to expend, and did expend, \$500 in order to remedy the nonconformity of that motor vehicle. Section 162(f) precludes O Corp. from deducting the \$10,000 penalty as a trade or business expense, but does not preclude it from deducting the \$500 which it expended to remedy the nonconformity.

Example 4. P Corp. was the operator of a coal mine in which occurred a violation of a mandatory safety standard prescribed by the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801 *et seq.*). Pursuant to 30 U.S.C. 819(a), a civil penalty of \$10,000 was assessed against P Corp., and P Corp. paid the penalty. Section 162(f) precludes P Corp. from deducting the \$10,000 penalty.

Example 5. Q Corp., a common carrier engaged in interstate commerce by railroad, hauled a railroad car which was not equipped with efficient hand brakes, in violation of 45 U.S.C. 11. Q Corp. was found to be liable for a penalty of \$250 pursuant to 45 U.S.C. 13. Q

Corp. paid that penalty. Section 162(f) precludes Q Corp. from deducting the \$250 penalty.

Example 6. R Corp. owned and operated on the highways of State X a truck weighing in excess of the amount permitted under the law of State X. R Corp. was found to have violated the law and was assessed a fine of \$85 which it paid to State X. Section 162(f) precludes R Corp. from deducting the amount so paid.

Example 7. S Corp. was found to have violated a law of State Y which prohibited the emission into the air of particulate matter in excess of a limit set forth in a regulation promulgated under that law. The Environmental Quality Hearing Board of State Y assessed a fine of \$500 against S Corp. The fine was payable to State Y, and S Corp. paid it. Section 162(f) precludes S Corp. from deducting the \$500 fine.

Example 8. T Corp. was found by a magistrate of City Z to be operating in such city an apartment building which did not conform to a provision of the city housing code requiring operable fire escapes on apartment buildings of that type. Upon the basis of the magistrate's finding, T Corp. was required to pay, and did pay, a fine of \$200 to City Z. Section 162(f) precludes T Corp. from deducting the \$200 fine.

[T.D. 7345, 40 FR 7437, Feb. 20, 1975; 40 FR 8948, Mar. 4, 1975, as amended by T.D. 7366, 40 FR 29290, July 11, 1975]

§ 1.162-22 Treble damage payments under the antitrust laws.

(a) *In general.* In the case of a taxpayer who after December 31, 1969, either is convicted in a criminal action of a violation of the Federal antitrust laws or enters a plea of guilty or *nolo contendere* to an indictment or information charging such a violation, and whose conviction or plea does not occur in a new trial following an appeal of a conviction on or before such date, no deduction shall be allowed under section 162(a) for two-thirds of any amount paid or incurred after December 31, 1969, with respect to—

(1) Any judgment for damages entered against the taxpayer under section 4 of the Clayton Act (15 U.S.C. 15), as amended, on account of such violation or any related violation of the Federal antitrust laws, provided such related violation occurred prior to the date of the final judgment of such conviction, or

(2) Settlement of any action brought under such section 4 on account of such violation or related violation.

For the purposes of this section, where a civil judgment has been entered or a settlement made with respect to a violation of the antitrust laws and a criminal proceeding is based upon the same violation, the criminal proceeding need not have been brought prior to the civil judgment or settlement. If, in his return for any taxable year, a taxpayer claims a deduction for an amount paid or incurred with respect to a judgment or settlement described in the first sentence of this paragraph and is subsequently convicted of a violation of the antitrust laws which makes a portion of such amount unallowable, then the taxpayer shall file an amended return for such taxable year on which the amount of the deduction is appropriately reduced. Attorney's fees, court costs, and other amounts paid or incurred in connection with a controversy under such section 4 which meet the requirements of section 162 are deductible under that section. For purposes of subparagraph (2) of this paragraph, the amount paid or incurred in settlement shall not include amounts attributable to the plaintiff's costs of suit and attorney's fees, to the extent that such costs or fees have actually been paid.

(b) *Conviction.* For purposes of paragraph (a) of this section, a taxpayer is convicted of a violation of the antitrust laws if a judgment of conviction (whether or not a final judgment) with respect to such violation has been entered against him, provided a subsequent final judgment of acquittal has not been entered or criminal prosecution with respect to such violation terminated without a final judgment of conviction. During the pendency of an appeal or other action directly contesting a judgment of conviction, the taxpayer should file a protective claim for credit or refund to avoid being barred by the period of limitations on credit or refund under section 6511.

(c) *Related violation.* For purposes of this section, a violation of the Federal antitrust laws is related to a subsequent violation if (1) with respect to the subsequent violation the United States obtains both a judgment in a criminal proceeding and an injunction against the taxpayer, and (2) the taxpayer's actions which constituted the