

Tax Update in an Era of Change – Top 10 Tax Considerations



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Learning Objectives

- Obtain an understanding of the current IRS compliance and regulatory environment
- Understand the top 10 tax considerations to foundations
- Address additional horizon issues impacting organizations

Donor Advised Funds

- Abuses led to statutory changes in 2006; scrutiny continues
- Excise taxes may apply to transactions between sponsoring organizations and DAF insiders
- Treasury study of DAF and supporting organizations

Supporting Organizations

- Legislation enacted in 2006; additional scrutiny surrounding use of supporting organizations
 - Type III supporting organizations
- Distributions by non-operating private foundations
- Expenditure responsibility requirements

Program Related Investments (PRIs)

- Defined in IRC Sec. 4944 – Three prong test
 - Primary purpose must be exempt function;
 - No significant purpose may be the financial return; and
 - No electioneering or lobbying activity will be supported by the PRI.
- May be domestic or foreign
- May include loans, equity investments, guarantees
 - Must further exempt purpose
- May count towards qualifying distributions by PFs
 - Expenditure responsibility may be required

Program Related Investments (PRIs)

- Examples of PRIs issued by Treasury
- Investments made for the purpose of advancing science, environmental protection, arts, and alleviating the impact of natural disasters

Mission Related Investments (MRIs)

- Investment with goal of generating a reasonable rate of return plus furthering a social purpose
- Do not meet requirements to be classified as a qualifying distribution
- Many organizations choose to adopt a MRI policy
- Use of alternative structures for MRIs

IRS College & Universities Final Report

- Compliance project began in 2008 and report issued in 2013
- 34 colleges and universities audited
- Focus area of the final report:
 - Unrelated Business Income and
 - Compensation
- Implications for Private Foundations

Unrelated Business Income

- Continues to be a focus of regulators
- Complexities associated with alternative investments
 - Equity investments
- Other common sources of UBI
 - Services to outside organizations
 - Investment management
 - Debt-financed income

Compensation

- Requires proper benchmarking and documentation
- All forms of compensation must be addressed
- Compensation paid by any EO must be reasonable
- Private foundations have prohibition on self-dealing
 - Reasonable compensation for personal services may be paid to disqualified persons
 - ◇ Legal
 - ◇ Accounting
 - ◇ Banking
 - ◇ Investment services
 - ◇ Programmatic

Foreign Activities

- Complexities associated with international activities continue
- Due diligence required whether public charity or private foundation
- Expenditure responsibility vs. equivalency determinations
 - Application of Rev. Proc. 92-94 following changes to public support calculation
- Foreign Corrupt Practices Act
- Anti-Terrorist Financing Guidelines

Election Year Issues

- All Section 501(c)(3) organizations have an absolute prohibition on political activities
- Violations may result in revocation of tax-exempt status plus excise taxes
- Possible permitted activities
 - **Non-partisan** voter education activities
 - ◇ Presentation at public forums
 - ◇ Voter education guides
 - ◇ Voter registration (if through 4945(f) organization)
 - ◇ Get-out-the-vote drives

Proposed 501(c)(4) Regulations

- Issued in November 2013
- Promotion of social welfare does not include direct or indirect candidate-related political activities
- Provides guidance on:
 - Activities that constitute “candidate-related political activities”
- Request comments on:
 - Definition of “operated exclusively for the promotion of social welfare” (i.e., how much candidate-related political activity is permitted)
 - Whether the definitions of candidate-related political activity should be extended to 501(c)(3),(5) and (6) organizations

Large Foundation Audits

- Audits of large private foundations with foreign investments or grants
- Results of audits. Adjustments to
 - Excise tax on net investment income
 - Taxes imposed on UBI
 - Excise tax on taxable expenditures
 - Employment related taxes

Miscellaneous Tax Considerations

- IRS/Treasury Business Plan includes a project affecting private foundations
 - Guidance under Section 4941 on private foundation investments in partnerships in which disqualified persons are also investors
- Continued focus on EOs by Congress, media, and others
- With leadership transition, future unknown
- IRS workplan not yet issued – what is on the horizon?
- Other considerations....

Questions

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