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