

WHAT HAVE I GOTTEN MYSELF INTO? IRS REGULATIONS AND OTHER COMPLIANCE ISSUES

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Agenda – Part 2 of 3

- ▣ Background on IRS Regulations
 - IRS Updates
 - Gift Dates
 - What's A Quid and Does One Hurt?
 - DAF and Family Foundation Issues
- ▣ Focus Areas
 - Donor Control
 - Scholarships
 - Gift Myths
 - Auctions
 - Events
 - PCI
 - Record Retention
 - Sponsorships vs. Advertising

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**Color copies of all text slides will be found
in the Presentations & Papers section of
the FundSvc.org download site:
<http://fundsvcs.org/modules/wfdownloads/>**

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Disclaimer

- ▣ I Cannot Make the IRS Go Away

- ▣ I Am Not a Lawyer (Thank Goodness!)

- ▣ Gray Really Is a Color

- ▣ If I Don't Know The Answer - I Will Make
Something Up

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What's New for 2016?

- IRA Rollovers are PERMANENT!
 - New Act passed in December simply removed the 12/31/2014 expiration date from the old provision – so all the rules for these are still the same
 - Remember, these are NOT tax-deductible gifts; they are tax-free withdrawals
 - They CANNOT be given to DAFs, supporting organizations, or private foundations
- Is eliminating the charitable deduction off the table?
 - Probably – only embraced by the extreme right. But either a cap (which will hurt the wealthy) or a floor (which will hurt the middle class) are possible (my guess is no major change until after the next Presidential election)
- Is Schedule B Going Away?
- See CASE's website:
http://www.case.org/Public_Policy/United_States.html

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IRS Regulations

- IRS issued final *and* temporary regulations in 1995 to *clarify a clarification* issued the previous year that *clarified* a new section of tax code issued in 1993
- IRS final FINAL regulations issued on 12/16/96
- IRS *clarification* of the *clarified clarification* of the final regulations – Pub. 1771 (2002) – 8th revision 3/2016
- Two primary areas of interest/concern:
 - Written acknowledgment requirements;
 - Value of Goods & Services (quid pro quo)

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Written Acknowledgments . . .

- ▣ Required for all contributions of \$250 or more in order to claim a charitable deduction. Canceled checks are not sufficient ABOVE this amount but ARE below
- ▣ Absolutely, positively must possess a receipt for *cash* donations of *any* amount to claim a deduction
- ▣ Donor is responsible for obtaining
- ▣ Substantiation to donor must be contemporaneous (*typically* mailed by 1/31) - must be *received* by the day they file their taxes

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“Gospel” According to John?

- ▣ Mail the receipt before the donor asks for one
- ▣ Mail the receipt within 2 business days of receiving the gift AT YOUR INSTITUTION

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Written Acknowledgments

- ▣ Written acknowledgments must provide the amount contributed (*or description, not value, of non-cash property which applies to gifts of securities, too!!!!*) and a statement indicating whether or not any goods or services were provided in exchange for the gift
- ▣ Neither the donor SSN nor your tax ID are required - Except for gifts of vehicles!
- ▣ Payroll Deduction Exception - Only applies to single deductions of \$250 or more. Not required, period, if employer evidences the amount withheld (pay stub) and provides a "no goods or services" statement (pledge card)
 - **No similar rules for other recurring/sustaining gifts**

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**Time for a commercial message -
DATE is a 4-letter word!**

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What's In A Date?

- ▣ A “gift date” is NOT required
- ▣ Page 3 of Pub. 1771 listing receipt requirements does not even mention any date
- ▣ “Official bank record”?
- ▣ Postmarks do not always prove a gift date – shucks, they are missing entirely on BRE’s!
- ▣ Pub 1771 suggests a “received date” on page 5
- ▣ John Taylor suggests a “processed” date - and had that confirmed by IRS nonprofit section head in the late 1990’s and 3 tax attorneys since
 - Many examples at FundSvcs.org – but here’s one:

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Safe Harbor Rules

Quid Pro Quo (QPQ) receipts are not required when:

- ▣ Fair Market Value (FMV) of *all* benefits received in connection with the payment does not exceed the *lesser* of 2% of the gift amount or \$106 (2016)
- ▣ Gift is **\$53.00 or more** and the cost of *all* token benefits given does not exceed the IRS “low-cost articles” minimum of \$10.60 (2016)
 - The only benefit the donor received consisted of token items bearing the institution’s name or logo
 - For gifts *below* \$53.00, **FIRST BULLET ABOVE APPLIES**

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Value of Goods & Services

- ▣ QPQ receipt required: Gift exceeds \$75 where part of the payment is for goods or services received, and part is a contribution
- ▣ If payment is under \$75, QPQ requirements still apply, just no mandated receipt
- ▣ Disclosure must inform donor that the tax deductible amount is limited to the excess of the amount contributed over the value of goods or services provided. Must also provide donor with a good-faith estimate of the value of such goods or services

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QPQ Specifics

- ▣ FMV Defined
- ▣ Low-Cost Defined
- ▣ 80/20 Rule Applications
 - Which comes first, the benefit or the percent reduction?
 - Other seating applications?
- ▣ And what about membership (\$75 or less) benefits?
 - Free or discounted admission
 - Free or discounted parking
 - Preferred access to and/or discounts on goods/services

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Donor-Advised Fund Issues

- ▣ Pledge Payments?
- ▣ No Way!!!!!!!!!!
- ▣ BTW, this is also true for gifts from Family (private) Foundations but for a different reason – self-dealing – more in a bit
- ▣ Benefits?
- ▣ No Way!!!!!!!!!!
- ▣ Again, the same is true for Family Foundations

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Straight from the IRS:

- ▣ “A charitable pledge is an obligation of the donor to give money or property to a charity at a future time. Where a charity (including a charitable organization of which a donor advised fund is treated as a component part) relieves a donor of a substantial obligation by satisfying the donor’s pledge, **the charity is providing the donor with an impermissible benefit**. Accordingly, a donor’s charitable pledge may not be fulfilled by a single payment or a series of payments from the charity.”
- ▣ In other words – it is *income* to the individual!!!

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Private Foundations & Self-Dealing

- ▣ Cannot enter into any sort of financial relationship with “disqualified persons”: officer/ director/trustee/ employee/ donor
- ▣ Lengthy list of “prohibited transactions” for these folk, which includes satisfaction of a pledge & purchases, e.g.:
 - Family pledges are personal debts, and if a disqualified person makes such a pledge, its an act of self-dealing for a foundation to pay that debt
 - If the foundation buys a ticket to a fundraising event, and the ticket price includes payment for goods and services (dinner and entertainment), the ticket cannot be used by a disqualified person

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Let’s Talk About “Control”

- ▣ Once a gift always a gift
 - Cannot give a gift back – 1099s? What if the gift was matched?
 - Retain gift after a restricted program is canceled
- ▣ Cannot require institution to take action it otherwise would not take
- ▣ Scholarship recipient selection
 - Donor’s involvement
 - ▣ Certainly cannot have a majority vote
 - ▣ Control based on position/power

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Other Scholarship Do's & Don'ts

- ▣ Do get award criteria outlined in writing
- ▣ Don't make the award criteria too specific
- ▣ Do write an "escape clause" into the scholarship agreement
- ▣ Don't spend funds in an alternate way without donor/family amendment or approval of your State Attorney General
- ▣ Do ensure your agreement includes language addressing your State's* UPMIFA law and responsibilities should the endowment go underwater

* Okay - only PA and PR have never adopted one to my knowledge

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Other Scholarship Do's & Don'ts

- ▣ Don't allow scholarships to be limited to a narrow range of individuals
- ▣ Do be mindful of Title VI and the related prohibition of scholarships limited to classes of people based on their "race, color, or national origin" and Title IX pertaining to gender-based scholarships (athletics excepted)
- ▣ Don't forget to address what is to become of unspent/awarded funds
- ▣ Do make sure you have a standard template, approved by your attorney, and require any departures from same be approved by same

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Common Gift Myths

- ▣ **Donation of time or service.** While truly a charitable act, only a volunteer's **REQUIRED** out-of-pocket expenses (mileage, parking, supplies, etc.) may be deducted.
 - FASB/GASB may recognize as an asset
 - Expressly forbidden as a charitable donation per IRS Publication 526
 - Donated advertising space is a "service" per IRS Revenue Ruling 57-462

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Common Gift Myths

- ▣ **The use of a donor's property by a charitable organization** (partial interest - IRS Pub 526)
 - Vacation home for charity auction
 - Office space in lieu of rent
 - One-time display of artwork (fractional gifts are the exception - and are legal!)
 - Use of software

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How Will This Benefit Us?

- What's the determining factor for acceptance of a Gift-In-Kind (GIK)?
 - Related use: The GIK must be useful to the institution in fulfilling the purpose or mission for which the institution was granted tax-exempt status

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Time for a Commercial Message

- What does the IRS require of the *nonprofit* when accepting in-kind donations?
 - Proof of gift (receipt or 1098c)
 - 8283 – MAYBE:
 - Section A (<\$5K & Public Securities)
 - Section B (>\$5K – Part IV is for US!)
 - Related/Unrelated
 - 8282 – MAYBE:
 - \$5K+
 - *Disposed of* within 3 years

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How Will This Benefit Us?

- Unrelated use: May still qualify as a gift-in-kind (that you can count and the donor can deduct – sort of), provided it was given specifically to be sold (charity auction)
- “the Treasury Regulations under section 170 provide that if a donor contributes tangible personal property to a charity that is put to an ‘unrelated use’, the donor's contribution is limited to the donor's tax basis in the contributed property”
- “The term "unrelated use" means a use that is unrelated to the charity's exempt purposes or function . . . **The sale of an item is considered unrelated, even if the sale raises money for the charity to use in its programs**”

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Unrelated Gifts – Charity Auctions

- ▣ Not many specific IRS rules here! But what rules there are can be found at:
<http://www.irs.gov/Charities-&Non-Profits/Charitable-Organizations/Charity-Auctions>
- ▣ Donor’s item must (?) sell – NO receipts until AFTER the auction
- ▣ Purchaser MUST “know” the FMV in advance and pay in excess
 - Quid pro quo receipt

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Can Donors to Other Events Claim a Deduction?

- ❑ Maybe! But be clear/concise *in advance*
- ❑ Remember, it matters not if the event has been underwritten. What matters is the fair market value of what participants receive
- ❑ The dreaded golf tournament? Quite likely. But entry “fee” must exceed the value of the round of golf, cart, balls, food/drink, ball towels, etc.
- ❑ \$1,000/plate dinner? Sure. But a \$25 reception? Don’t split hairs – probably best to call it a “Proceeds to Benefit” event

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PCI Compliance Issues

- ❑ PCI For Dummies:

<https://www.qualys.com/forms/ebook/pci-compliance-for-dummies/>

<http://www.merchantmaverick.com/pci-dss-compliance/>

- ❑ Does PCI mean we cannot take credit cards during phonathons?
- ❑ Does PCI mean we cannot ask for credit cards in direct mail pieces?
- ❑ Does PCI mean we cannot offer recurring/sustaining giving options?

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What Must We Retain and For How Long?

- ▣ IRS Publication 4221 (3 versions):
 - Public Charities
 - Private Foundations
 - Other Tax-exempt Organization
- ▣ Ya don't gotta keep anything ☺
- ▣ Okay, maybe a few things. The only requirement is "documentation that supports entries in the books."
- ▣ NO requirement for check copies
- ▣ Certainly legally enforceable (still) documents

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"Free" Recognition A Sponsor Can Receive

- ▣ Mention of location, phone number, website
- ▣ Value-neutral descriptions, including displays or visual depictions, of the sponsor's product line or services
- ▣ Displays of brand or trade names and product or service listings
- ▣ Logos or slogans that are an established part of the sponsor's identity
- ▣ Mere display or distribution (free or at a cost) of the sponsor's product at a sponsored activity

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Recognition Cannot Include:

- ▣ Qualitative or comparative language
- ▣ Price information or other indications of savings or value
- ▣ An endorsement or inducement to purchase, sell, or use the sponsor's service, facility, or product
- ▣ A *single* message containing advertising and acknowledgement is considered 100% advertising

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So What Is a "Good" Sponsorship?

- ▣ Any payment by any person engaged in a trade or business with respect to which there is no arrangement or expectation that the person will receive any substantial return benefit

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Sponsorship “Worry Words”

- ▣ Try to keep words out of sponsorship documents that are red flags to the IRS: *sponsorship agreement; partnership; joint venture; royalty agreement; advertising*

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What Kind of Trouble Can I Get Into - Legally?

- ▣ Internal Revenue Code 6700 & 6701
 - Negligently or intentionally providing misleading information regarding gift values can result in severe fines
 - “Gross valuation overstatement” will result in a fine of \$1,000 – “a person furnishing the gross valuation overstatement need not have knowledge that the valuation is overvalued”
 - “False or fraudulent” gift receipts will result in above fine
 - Fines imposed on a **person**

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Final Q&A Additional Resources

- ▣ John’s listserv, “FundSvcs”
- ▣ Advancement Services Download Site
 - www.FundSvcs.org
- ▣ Association of Advancement Services Professionals (AASP – Advserv.org)
- ▣ 2015 Advancement Services book just published by CASE
- ▣ CASE Reporting Standards & Management Guidelines - & 10/2011 Clarification
- ▣ IRS Publications 526, 561, 1771 & 4221 (3 versions)
- ▣ jhtaylorconsulting@gmail.com

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