

# IRS Rules and Regulations - What You Don't Know Might Hurt You!

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## Topics/Agenda

- Legislative Update (thanks Brian Flahaven!)
- Background on IRS Regulations
  - Gift Dates
  - What's A Quid and Does One Hurt?
  - DAF and Family Foundation Issues
- Focus Areas
  - Donor Control
  - Scholarships
  - Gift Myths
  - Auctions
  - Sponsorships/Events
- What Are the Penalties (ending on a positive note 😊)?

## Tax Cuts and Jobs Act: Charitable Giving Impact Summary

- Doubling of Standard Deduction
  - \$13,000 for individuals, \$24,000 couples (sunsets in 2025)
  - Number of itemizers to decline from 30% to 10-15%
  - No universal charitable deduction
- Repeal of 80/20 college athletic seating rule
  - Repeals 80% deduction for charitable gifts made to obtain seating at college and university athletic events
  - Don't worry – we'll get into this in detail!

## Tax Cuts and Jobs Act: Charitable Giving Impact Summary

- Excise Tax
  - 1.4 percent excise tax on net investment income of private colleges and universities meeting specific criteria
    - Over 500 students
    - Over endowment assets of at least \$500K per full-time student
  - Need guidance from Treasury/IRS on how to calculate net investment income.
  - Applies to roughly 30 institutions

## 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

## 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) – 8<sup>th</sup> revision 3/2016
- Two primary areas of interest/concern:
  - Written acknowledgment requirements;
  - Value of Goods & Services (quid pro quo)

## 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

## “Gospel” According to John?

- Mail the receipt before the donor asks for one
- Mail the receipt within 48 hours of receiving the gift AT YOUR INSTITUTION

## Written Acknowledgments

- Written acknowledgments must provide the amount contributed (*or description, not value, of non-cash property*) 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 gifts

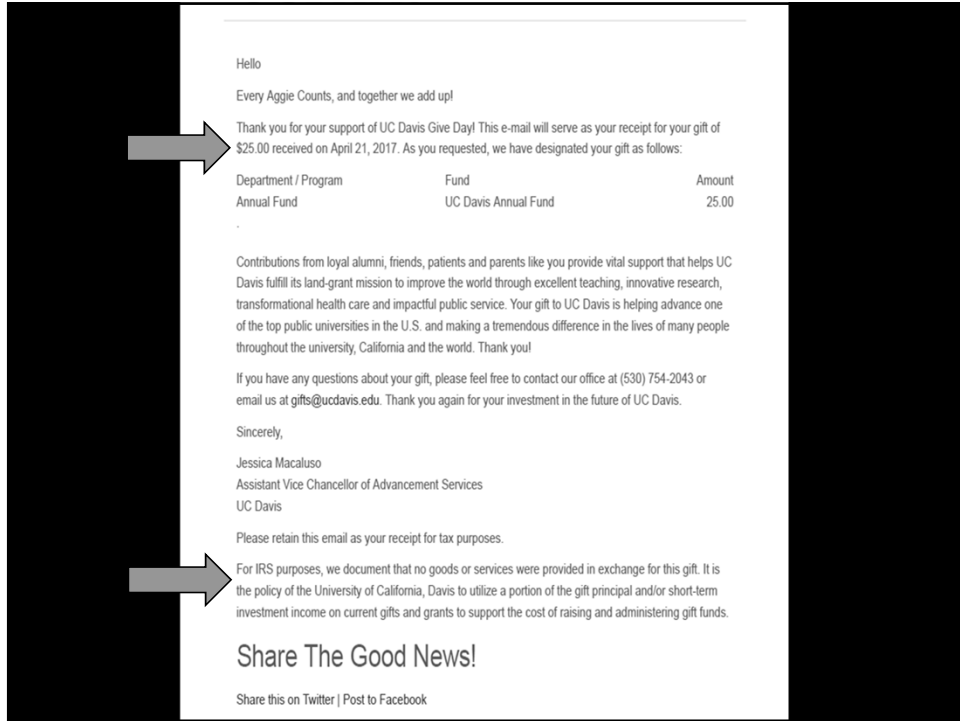
Time for a commercial  
message - DATE is a 4-  
letter word!

## Polling Question: What Date is *Stated* on your Receipt?

- Gift Date
- Processed Date
- Received Date
- No Date
- Just a Date – Not Specified

## 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 – heck, they are missing entirely on BRE's!
- Pub 1771 suggests a "received date"
- 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:



## For Canadian Donors it is Different

- Details here: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/whtnf-eng.html>
- Basically (and no, I am NOT kidding):
  - a statement that it is an official receipt for income tax purposes;
  - the name and address of the charity as on file with the Canada Revenue Agency;
  - the charity's or RCAA's registration number (not required for other qualified donees);
  - the serial number of the receipt;
  - the place or locality where the receipt was issued;
  - the day or year donation was received;
  - the day on which the receipt was issued if it differs from the day of donation;
  - the full name, including middle initial, and address of the donor;
  - the amount of the gift;
  - the value and description of any advantage received by the donor;
  - the eligible amount of the gift;
  - the signature of an individual authorized by the charity to acknowledge donations; and
  - the name and website address of the Canada Revenue Agency.
- **For non-cash gifts (gifts in kind), these additional elements:**
  - the day on which the donation was received (if not already indicated);
  - a brief description of the property transferred to the charity;
  - the name and address of the appraiser (if property was appraised); and
  - the deemed fair market value of the property in place of amount of gift above.

## 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 \$109 (2018)
- Gift is \$54.50 or more and the cost of *all* token benefits given does not exceed the IRS "low-cost articles" minimum of \$10.90 (2018)
  - The only benefit the donor received consisted of token items bearing the institution's name or logo
  - For gifts *below* \$54.50, FIRST BULLET ABOVE APPLIES

## 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



## QPQ Specifics

- FMV Defined
- Low-Cost Defined
- Preferred Seating/Right to Purchase
  - Previously Called the 80/20 Rule. Now Called the NO GIFT RULE
  - 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

## Donor-Advised Fund Issues

- Pledge Payments?
- No Way!!!!!!!!!!
  - Oh, wait, maybe WAY!
  - IRS Notice 2017-73
  - Offers new suggested "rules" for public comment until March 5
  - Can apply DAF gifts as pledge payments as long as:

## DAF Proposed Changes per Notice 2017-73

- (1) the sponsoring organization makes no reference to the existence of a charitable pledge when making the DAF distribution;
- (2) no Donor/Advisor receives, directly or indirectly, any other benefit that is more than incidental (as discussed in this notice and as further defined in future proposed regulations) on account of the DAF distribution; and
- (3) a Donor/Advisor does not attempt to claim a charitable contribution deduction under § 170(a) with respect to the DAF distribution, even if the distributee charity erroneously sends the Donor/Advisor a written acknowledgment in accordance with § 170(f)(8) with respect to the DAF distribution.

## DAF Proposed Changes per Notice 2017-73

- SECTION 7. RELIANCE ON NOTICE

Taxpayers may rely on the rules described in section 4 until additional guidance is issued.

**BUT:**

**DAFs are still in charge and most are not allowing this until it becomes LAW**

## Current Ruling 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!!!

## Donor-Advised Fund Issues

- BTW, pledge payments are absolutely disallowed 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
- And don’t even think about bifurcation!

**Polling Question:  
Do You Invite DAF/FF Donors to  
“Free” Events/Galas?**

- Absolutely Not
- Absolutely Yes
- Well, Yes, But We Bifurcate
- I Can't Tell You (the IRS Might Be Watching)

**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

## 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

## 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

## 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

## 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

## 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

## 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

## Time for *Your* Commercial Message

- What does the IRS require of the *nonprofit* in 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

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”



## 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

## A Little Known IRS Quote

"Taxpayer attends an auction held by Charity C, an organization described in section 170(c). Prior to the auction, C publishes a catalog that meets the requirements for a written disclosure statement under section 6115(a) (including C's good faith estimate of the value of items that will be available for bidding). A representative of C gives a copy of the catalog to each individual (including Taxpayer) who attends the auction. Taxpayer notes that in the catalog C's estimate of the value of a vase is \$100. Taxpayer has no reason to doubt the accuracy of this estimate. Taxpayer successfully bids and pays \$500 for the vase. Because Taxpayer knew, prior to making her payment, that the estimate in the catalog was less than the amount of her payment, Taxpayer satisfies the requirement of paragraph (h)(1)(i) of this section"

See the Final Substantiation Regulations (FundSvcs.org), page 65951 of the 12/16/96 Federal Register – page 6 of John's scan

## Auction Receipt Summary

- Donor of item *may* be able to claim a deduction
  - Only if it is a gift (not a service or partial interest)
  - Only if it sells (?)
  - The receipt should only *describe* the gift
- Buyer of an item *may* be able to claim a deduction
  - Only if the FMV was published *or known* in advance
  - Only if they paid more than that
  - Does not matter if the donated item *was not* a gift
  - Quid pro quo receipt is required

## “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

## 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

## 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

## 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**