Donor Advised Funds & Family Foundations – Pledges & Benefits

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Originally Written in January, 2015

In response to numerous inquiries regarding the use of gifts from Donor Advised Funds (DAFs) and Family (Private) Foundations (FFs) to satisfy personal pledges and/or that generate benefits, the following guidance is provided:

Pledges

First of all, there is the issue of who can legally make a pledge (and who can pay it off). A published white paper written by me spells it all out citing chapter and verse:

http://fundsvcs.org/modules/wfdownloads/visit.php?cid=19&lid=591

The bottom-line is simply that an individual cannot make a commitment that depends on the resources of a DAF or FF (or matching gifts for that matter) to satisfy that commitment.

Pledge Payments

Simply stated, a gift from a DAF or FF cannot be used to satisfy a personal commitment. This is touched on in the above mentioned paper. From an IRS perspective, doing so with a DAF gift is considered an "impermissible benefit." If done anyway - and "caught" during an audit - the IRS would fine and charge back-taxes on the individual for failure to report that DAF gift as income.

The issues are the same for FF's, although the legal prohibition is referred to as "self-dealing." Regardless as to what it is called, using a gift from a FF to satisfy a personal obligation is forbidden.

There are some "experts" that propose that a way "around" these laws is to have the donor sign a "non-binding letter of intent" rather than a "pledge." There are 3 problems with this proposal and I do my best to discourage clients from even considering this approach because of them:

1. The IRS has never ruled on this and I would not want one of my clients to end up being a test case
2. Non-binding pledges cannot be booked as assets in accordance with FASB or GASB. Business Offices and Auditors would not care for this approach
3. Non-binding pledges cannot be counted in official fundraising totals per CASE

What can be done, however, is for a nonprofit organization to voluntarily reduce a pledge upon receipt of a third-party gift made to a similar purpose as the donor's original commitment. However, the willingness and authority to do this should be documented in the original pledge agreement. I suggest language along the lines of:

"The undersigned acknowledge that for our commitment to be fully recognized as a commitment to XYZ, I/we are personally responsible for its satisfaction. We may not make commitments on behalf of others. Should, however, related payments be received from third parties, XYZ may voluntarily reduce our personal obligation by a like amount."

Under no circumstance can the gift be linked to a pledge. But with language like this you can manually restate the pledge balance.

Benefits

Much like the prohibition against gifts from DAFs and FFs being used as payments on personal pledges, so it is with providing any substantial benefits in exchange for such gifts. Certainly, token appreciation gifts, such as key chains and bumper stickers are fine - provided their value falls below the annual insubstantial benefit limit established by the IRS. But any other benefits are strictly prohibited. This might include coffee table books, sport coats, priority seating points, and invitations to "free" gala donor recognition events. Donors who give through these vehicles cannot receive any of these benefits.

Bifurcation

I have discovered that some "experts" advise their clients that a way to "get around" the benefit rules is to have the individual pay for the benefit they might otherwise have received in exchange for a gift. This, too, is prohibited by the IRS. That would be what the IRS describes as a bifurcated payment. The IRS prohibits those payments as well, indicating that the individual would never have been given the opportunity to purchase the benefit had it not been for the gift from a DAF or FF. Here is a related quote from the *Tax Economics of Charitable Giving*:

"If a private foundation purchases tickets to charitable fundraising events, care must be exercised to be certain that no self-dealing results. The IRS held there was self-dealing where the chairman of a corporate donor, who was not an officer or director of the foundation, used tickets purchased by the company's private foundation. The IRS has also ruled that bifurcation of the purchase costs of attending a fundraising event between a disqualified person (who pays for the quid pro quo portion) and a private foundation (which pays for the charitable portion of the ticket) would result in self-dealing."