Deductibility for Payments that Entitle to Donor to Purchase Tickets for Seating at Athletic Events

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I thought that it might be helpful to summarize the history of this topic, as a way to provide context for the changes made in December 2017.

There is a short version and a long version.

Also, it's worth mentioning that the 80/20 rule only applies to gifts that entitle the donor to purchase tickets for seating at athletic events. Before December, that might have seemed like a bad thing, since the simple analysis of the 80/20 rule didn't apply to payments that entitled the donor to buy tickets to, say, theatrical events. Now that the 80/20 rule has been zeroed out, as it were, it might not be a bad thing. The analysis of the athletic case prior to the special 80/20 rule may provide some guidance there as well. That's the last section.

Here's the short version:

Prior to the change to the tax code that made such contributions 80% deductible, there was a revenue ruling (Rev. Rul. 86-63) that made some distinctions between different situations, primarily between

- cases where the tickets "would not otherwise have been readily available" to the donor without the payment (in which case the contribution was not deductible), and
- a case where "reasonably comparable seating would have been readily available" without the contribution, even though "the taxpayer was entitled to purchase a ticket before tickets went on sale to the public and although the ticket was for seating in a designated area" (in which case the contribution was deductible).

The Technical and Miscellaneous Revenue Act of 1988 (HR 4333) pre-empted that whole analysis and said that contribution are 80% deductible if "the taxpayer receives (directly or indirectly) as a result of paying such amount the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution" (including, apparently, the contributions that were formerly 100% deductible). So it took a couple of different cases and made them all 80% deductible. And in December Public Law 115-97 made all such payments non-deductible.

Here's the long version:

Apparently, the chain of events started with Revenue Ruling 84-132, which applied the general provision of Revenue Ruling 67-246 that "As a general rule, if a payment to a charitable organization results in the receipt of a substantial benefit the presumption arises that no gift has been made for charitable contribution purposes." Applying that rule to a situation where a $300 membership was required to purchase a ticket between the 40 yard lines, RR 84-132 found that

> On the basis of the facts presented, the preferred seating has significant value, therefore the taxpayer cannot deduct any part of the $300 payment to the athletic scholarship program as a charitable contribution under section 170 of the Code, unless the taxpayer can establish that the $300 payment exceeds the monetary value of the right to purchase a season ticket for $120.

The key part of the analysis was, first, this characterization of example 7 from RR 67-246:

> The revenue ruling concluded that even apart from the other benefits, the fair market value of the privilege of having choice reserved seats for the concerts would, in all likelihood, exceed the amount of the payment, and thus, no part of the "contribution" was deductible.

That characterization led to this analysis:

> Similarly, the taxpayer here can purchase a season ticket between the 40 yard lines only by contributing $300 to the athletic scholarship fund. The fact that there is a waiting list for membership in the program further indicates that this preferred seating has significant value. In view of this, the value of the benefit received as a result of the payment is considered to be commensurate with the amount of the payment made, and therefore no part of the payment constitutes a gift.

There was major pushback against this ruling by colleges and universities, the NCAA, and even by Congress, which took the unusual step of holding a hearing on and IRS Revenue Ruling (cf. this from the University of Richmond Law review in 1985, and, oddly enough, this). As a result, the ruling was suspended until "its implications upon the varied athletic scholarship programs in existence throughout the country" were determined.

RR 84-132 was then superseded by Revenue Ruling 86-63, which looked at several situations. It reiterated the finding of RR 84-132 that where the tickets "would not otherwise have been readily available" full value was received, and there is no charitable contribution (although an additional amount above the amount required to qualify for the tickets would be deductible):

> In Situations 1 and 2, because tickets to the games covered by the season ticket would not otherwise have been readily available to A and B, the right to purchase a season ticket in a designated area in the stadium was a substantial benefit. This substantial benefit was afforded to A and B because each paid the minimum membership fee of $300. Accordingly, a presumption arises that the $300 reflects the value of the benefit received. Unless the taxpayer can establish that $300 exceeded the value of the benefit received, no part of the $300 payment is a charitable contribution under section 170 of the Code.
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> In Situation 2, however, the additional $200 contributed by B resulted in no additional substantial benefit and thus, is a charitable contribution.

RR 86-63 also looked at a case where the membership payment allowed the purchase of tickets before they went on general sale but reasonably comparable seats would have been available even in the absence of the payment, so the full payment is deductible:

> In Situation 3, although the taxpayer was entitled to purchase a ticket before tickets went on sale to the public and although the ticket was for seating in a designated area, reasonably comparable seating would have been readily available to C even if C had not made a payment to the program. Although C received the benefit of obtaining a ticket early and of sitting with other program members, the benefit was not substantial. Accordingly, the entire $300 is a charitable contribution.

Finally, and most interestingly, RR 86-63 looked at a case that split the difference:

> Situation 4. Taxpayer D, an individual, made a payment of $300 to an athletic scholarship program of a university, an organization described in section 170(c)(2). This payment entitled D to become a "member" of the program and, as a member, to purchase a season ticket to the university's home football games, for an additional payment of the stated price, in a designated area of the stadium. The membership fee is paid annually and a member is required to make a separate $300 payment for each season ticket the member purchases. Although the games are not regularly sold out, seating reasonably comparable to that available to do as a result of membership in the program would not have been readily available to D if D had not made the payment to the program. The university reasonably estimated that the fair market value of the right to purchase a season ticket in the designated area of the stadium would be x dollars, and advised prospective members that the additional ($300 - x dollars) was being solicited as a contribution. In making the estimate, the university considered the level of demand for tickets, the general availability of seats, the relative desirability of seats based on their types, locations, and views, and other relevant factors.

In this case, it found that the university could determine the FMV of the taxpayer being able to get the better seat:

> In Situation 4, because reasonably comparable seating would not otherwise have been readily available to D, the right to purchase a season ticket in a designated area in the stadium was a substantial benefit. This substantial benefit was afforded to D because D paid the minimum membership fee of $300. Accordingly, a presumption arises that the $300 reflects the value of the benefit received. The university, however, after taking all relevant facts and circumstances into account, reasonably estimated the fair market value of the benefit as x dollars. Because the university solicited the other ($300 - x dollars) as a contribution and the x dollar figure reflected the fair market value of the benefit provided, ($300 - x dollars) of D's $300 payment is a charitable contribution.

That put the university in the position of determining—and the IRS in the position of evaluating—the FMV of the benefit.

The 1990 Exempt Organizations CPE Text Topic K summarized this as

> This revenue ruling outlines the pre-Omnibus Budget Reconciliation Act (OBRA) rules concerning the deductibility of payments to athletic scholarship programs when the payments afford a right to purchase preferred seating at athletic events. A number of situations are discussed, in some a charitable contribution was permitted. The general rule enunciated is that a taxpayer will have made a charitable contribution only if, and only to the extent that the payment made exceeded the value of any substantial privileges or benefits afforded by membership in the program.

So at that point if the payment qualified you for tickets that would not otherwise be available, no portion was deductible; if comparable tickets would otherwise be available, the full amount of the payment was deductible; and if tickets but not comparable tickets were available, the university would have to “reasonably estimate” the FMV of the right to purchase as a result of the payment, “the level of

demand for tickets, the general availability of seats, the relative desirability of seats based on their types, locations, and views, and other relevant factors."

Enter the Technical and Miscellaneous Revenue Act of 1988 (HR 4333). The Conference Report accompanying HR 4333 states that, under this statute, the new rule that 80 percent of "payments that would be deductible as a charitable contribution but for the fact that the taxpayer receives (directly or indirectly) the right to purchase seating at an athletic event in the institution's stadium" be treated as a charitable contribution "applies whether or not the tickets would have been readily available to the taxpayer without making the payment."

So HR 4333 didn't, in effect, simplify the calculation of the value of the FMV, it applied a new treatment for payments that the existing law (as interpreted by RR 86-63) had treated as non-deductible (and also limited deductibility for payments that RR 86-63 held were fully deductible!).

So that was the situation until December 2017 with the passage of Public Law 115-97, the "Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," which took that whole class of transactions and rendered them non-deductible (including, apparently, those which allow the taxpayer the right to purchase seats preferentially although comparable seats would otherwise be available).

So, in the current environment, any payment in return for which the donor receives the right to buy seating at the institution's athletic events is entirely non-deductible, regardless of any other circumstances.

Here's the application to other (non-Athletic) seating benefits.

The considerations that apply to the right to purchase tickets to events other than athletics are essentially the same as those that applied to the athletic tickets case prior to the establishment of the 80/20 rule, so it would seem that they would be subject to the same analysis that was laid out by RR 86-63: if the payment allows the taxpayer to purchase tickets that would not otherwise be available, the taxpayer has received full value for their payment and no potion of the payment would be deductible as a charitable contribution (except to the extent that the taxpayer pays more than the minimum required to receive the benefit); that if the taxpayer would otherwise be able to purchase tickets for "reasonably comparable seating," the payment is fully deductible; and if tickets would be available to the taxpayer in the absence of the payment but not for reasonably comparable seats, any deductibility is dependent on the organization reasonably estimating the FMV of access to the better seats.

All of this would operate under general rule of RR 67-246 that "if a payment to a charitable organization results in the receipt of a substantial benefit the presumption arises that no gift has been made for charitable contribution purposes."
