

LEGISLATIVE AND IRS UPDATE 2017

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Topics/Agenda

- ▣ Legislative Update with 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 ☺)?

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Legislative Update

March 21, 2017

Why Tax Reform Will Happen...

- One Party Control
- Agreement on Fundamentals
- Presidential Priority
- Plans in Place
- Accomplishments



Why Tax Reform Will Not Happen...

- Partisan Endeavor
- Healthcare
- Border Adjustability
- Calendar
- It's Hard



Tax Reform: The Issues

- Charitable Deduction
- Endowment



Charitable Deduction: Impact of Standard Deduction Change

- Significant Change

Thresholds	Single	Household
Current Law (2016)	\$6,300	\$12,600
Camp Draft	\$11,000	\$22,000
GOP Blueprint	\$12,000	\$24,000

- Implications

- Only 5 percent would itemize with new SD (roughly 30 percent itemize today)
- Elimination of charitable deduction for overwhelming majority of taxpayers



Charitable Deduction: Caps and Floors

- Pres.'s \$100K/\$200k Cap
- 2% of AGI Floor
- Elimination of Incentive
- Additional Hurdles



Charitable Deduction: Additional Limits

- Reduction in AGI Limit
- Gifts of Appreciated Property
- Athletic Seating
- Repeal of Estate Tax



Endowments: Concerns & Proposals

- Large Endowments (above \$1B)
- College Costs
- Intergenerational Equity
- Proposals
 - Mandatory 5 percent payout requirement
 - Excise tax on net investment income



Endowments: REDUCE Act

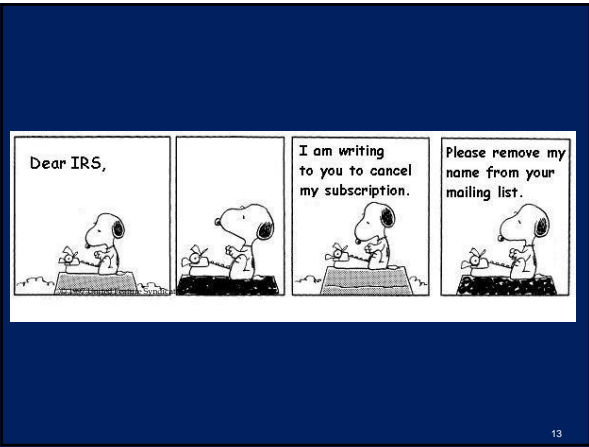
- Rep. Tom Reed (R-NY)
- Large Endowments (above \$1B)
- Provisions
 - 25% of endowment gains to cost of attendance for students from families up to 600 percent of federal poverty level.
 - Excise Taxes
 - Charitable Contributions



How You Can Help

- Stay Informed
 - www.case.org
 - CASE Advocacy Network (Coming Soon!)
 - Washington Update Webinars
- Build Relationships Now
- Government Relations Staff





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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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 48 hours 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*) 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

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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 - 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:

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CMU
CENTRAL MICHIGAN
UNIVERSITY

TAX DOCUMENT

Mr. John O. Doe
122 Main Street
Auburn, MI 49724

Gift Process Date: June 21, 2016
Gift #: 17344276
Donor #: 17364221

Thank you for your recent contribution of \$1,200.00 to Central Michigan University. Your tax-deductible contribution will be used to benefit the colleges and/or programs designated below.

In exchange for your contribution CMU provided you the right to purchase preferred seats for athletic events at CMU with a fair market value of \$250.00. The amount of the contribution that may be deductible for federal income tax purposes is limited to the amount which your total contribution exceeds this amount.

This acknowledgment should be retained as substantiation for any gift that will be claimed as a tax deduction.

Your contribution has been allocated as follows:

\$150.00	General Athletics Program
\$100.00	Football Program
\$950.00	Women's Basketball Program



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Where Can We Find Safe Harbors?



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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 \$107 (2017)
- ▣ Gift is **\$53.50 or more** and the cost of *all* token benefits given does not exceed the IRS "low-cost articles" minimum of \$10.70 (2017)
 - The only benefit the donor received consisted of token items bearing the institution's name or logo
 - For gifts *below* \$53.50, **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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Pause for Q&A Before DAFs



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Donor-Advised Funds

- ❑ A donor sends an asset to a qualified tax-exempt arm of an organization **AS A DONATION TO THAT ENTITY**
- ❑ The assets are now under the name, and control, of that entity
- ❑ The donor contacts the entity and **ADVISES** them to make a gift to a qualified nonprofit organization
- ❑ The entity is the legal donor
- ❑ BTW, why do donors give this way instead of directly to us?
- ❑ **It's partly our fault!**

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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!!!**

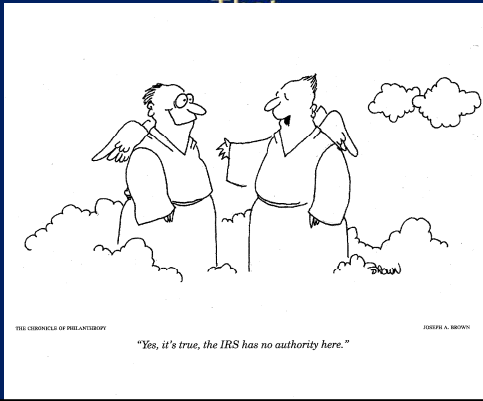
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Private Foundations & Self-Dealing

- ❑ 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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Q&A And Then A Bit of This & That



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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 allow scholarships to be limited to a narrow range of individuals
- ❑ 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 make sure you have a standard template, approved by your attorney, and require any departures from same be approved by same
- ❑ Don't forget to address what is to become of unspent/awarded funds

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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* 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

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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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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

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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

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Sponsorships

Earliest Example Of Corporate Sponsorship

FREEZE FRAME



"I never could've done it without corporate sponsorship."

Ed Wittner

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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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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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What Kind of Trouble Can I Get Into?



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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 (3rd Edition) published by CASE
- ▣ CASE Reporting Standards & Management Guidelines - & 10/2011 Clarification
- ▣ IRS Publications 526, 561, 1771 & 4221 (3 versions)
- ▣ johntaylorconsulting@gmail.com

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