COUNCIL on FOUNDATIONS

Housekeeping Items

Access the Help Desk: Select the "Help" option in the toolbar at the top of your GoToWebinar navigation panel.

Ask a Question of the Presenters: Click the "Q&A" icon to type a question for the presenters.

Exit the Webinar: Click the gray "X" in upper right corner of the gray webinar navigation bar.

For Telephone Participants: If you are using the telephone to listen to the webinar, please make sure to use a landline to ensure call clarity.

Webinar Recording: A recording of this webinar will be made available upon request shortly after the webinar's conclusion.

Thank you for joining us. The webinar will begin shortly!

COUNCIL on FOUNDATIONS

Legal Lunch Series
A Conversation with Legal Affairs

A Pre-Thanksgiving Feast
Series #2

November 19, 2015

COUNCIL on FOUNDATIONS

Welcome

Agenda

- Introductions
- Housekeeping Items
- Donor Advised Funds
- Corporate Giving
- Planned Giving
- Economic Development
- Q&A

COUNCIL on FOUNDATIONS

Fearless Legal Pilgrims

Suzanne Friday
Sr. Counsel & VP of Legal Affairs

Favorite Thanksgiving side dish:
Stuffing and Cranberries

Bryan Del Rosario
Staff Counsel

Favorite Thanksgiving side dish:
Sparkling Cider

COUNCIL on FOUNDATIONS

Donor Advised Funds

Tips for Compliance

IRC § 4966

- *What constitutes a Taxable Distribution*
- *Is it a DAF?*

IRC § 4967

- *“a more than incidental benefit”*

Taxable Distribution?

IRC § 4966. Taxes on Taxable Distributions

(c) Taxable Distribution.– For purposes of this section –

(1) In General. The term "taxable distribution" means any distribution from a donor advised fund—

(A) to any natural person, or

(B) to any other person if –

(i) such distribution is for any purpose other than one specified in section 170(c)(2)(B), or

(ii) the sponsoring organization does not exercise expenditure responsibility . . .

(2) Exceptions.

(A) to any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization),

(B) to the sponsoring organization of such donor advised fund, or

(C) to any other donor advised fund.

IRC § 4966. Taxes on Taxable Distributions

(d) Definitions.– For purposes of this subchapter –

…

(2) Donor Advised Fund.—

(A) In General. – Except as provided in subparagraph (B) or (C), the term "donor advised fund" means a fund or account—

(i) which is separately identified by reference to contributions of a donor or donors,

(ii) which is owned and controlled by a sponsoring organization, and

(iii) advisory privileges with respect to the distributions or investment

(B) Exceptions. – The term "donor advised fund" shall not include any fund or account—

(i) which makes distributions only to a single identified organization or governmental entity, or

(B) [Scholarship Exception]

(3) Secretarial Authority

IRC § 4967. Taxes on Prohibited Benefits

(a) Imposition of Taxes –

(1) On the donor, donor advisor, or related person.—

(A) [A] distribution from a donor advised fund which results in such person or any other person described in § 4958(f)(7) receiving, directly or indirectly, <u>a more than incidental benefit</u> as a result of such distribution

So what is NOT a *more than* incidental benefit?

COUNCIL on FOUNDATIONS

“a more than incidental benefit”

IRC § 4967. Taxes on Prohibited Benefits

Corporate Foundations & Corporate Giving Programs

Hot Topics

Corporate Giving

- Comparison: Corporate Foundations & Corporate Giving Programs
- Corporate Foundations going public
- Foreign Grantmaking & Update on Equivalency Determinations

COUNCIL on FOUNDATIONS

Background – Corporate Foundations

- Separate legal entities, maintain close ties with the parent company, and giving usually reflects company interests
- Can be private foundations or public charities
- Generally maintain small endowments and rely on regular contributions from the parent company and other sources to support giving programs
- May grow endowments in profitable years and tap them in leaner years
- Must follow the appropriate laws governing private foundations or public charities, including public disclosure requirements

COUNCIL on FOUNDATIONS

Background – Corporate Giving Programs

- Not separate legal entities, so they are not subject to laws governing exempt organizations, including public disclosure requirements
- Do not have an endowment
- Often include employee matching gifts and in-kind gifts as part of their grantmaking activities
- Often used to support programs that do not fall within the guidelines of the company-sponsored foundation

COUNCIL on FOUNDATIONS

Comparisons

- Foundations can segregate assets for liability purposes
- Foundations can continue beyond the life of the company
- Foundations can incorporate non-company individuals on the board
- May eventually become independent foundations

COUNCIL on FOUNDATIONS

Public Charity vs. Private Foundation

- Public charities receive the maximum tax deduction for contributions
- Private charities must follow additional rules under the Internal Revenue Code
- Private foundations subject to increased restrictions on grantmaking (expenditure responsibility grants)
- Private foundations prohibited from lobbying

COUNCIL on FOUNDATIONS

Going Public

- Public support test calculations – Schedule A of IRS Form 990
- Generally 33 1/3% of support from public sources
- IRS Form 8940 used for “conversion”
- 5-year process based on 990 information

COUNCIL on FOUNDATIONS

IRS Form 8940

Request for reclassification as an organization that normally receives a substantial part of its support from a government unit or from the general public described in sections 509(a)(1) and 170(b)(1)(A)(vi) or

Request for reclassification as an organization described in section 509(a)(2) that normally receives: (1) more than 331/3 % of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions - subject to certain exceptions, and (2) no more than 331/3 % of its support from gross investment income and unrelated business taxable income

COUNCIL on FOUNDATIONS

Foreign Grantmaking and Update on Equivalency Determinations

In 2012, Treasury and the IRS issued proposed regulations applicable to private foundations seeking to make grants to foreign organizations using equivalency determinations. Treasury published a final version of these rules **effective on September 25, 2015.**

As in the proposed regulations, the final version broadens the range of professionals on whose written advice a private foundation may rely for equivalency determinations for grants overseas and narrows the circumstances in which a grantor can make use of a grantee affidavit to make a good faith determination of equivalency. Significantly, the regulations allow a private foundation to rely on written advice of a qualified tax practitioner **without establishing an attorney-client relationship** between that tax practitioner and the grantmaker or the grantee (supports use of repositories)

Planned Giving

* And **YOUR** Foundation

COUNCIL on FOUNDATIONS

Planned Giving

- Planned giving is/could be important to your organization
  - Strategic & Thoughtful Donors
  - Larger Gifts
  - Tax Savings

- What can be given?

COUNCIL on FOUNDATIONS

Planned Giving: What can be given?

- Cash, Marketable Securities, Real Estate and Life Insurance
  - Cash – deductible for the amount given up to 50% of AGI with 5 year carryforward
  - Marketable Securities – gifts of "long-term" capital gain property such as marketable securities are deductible up to 30% of AGI in year of gift with 5 year carryforward
  - Property – due diligence issues, tax issues and debt issues
  - Life Insurance – 3 ways: 1) outright 2) new policy 3) beneficiary only; valuation issues
- Income in Respect of a Decedent (IRD) Assets
  - Qualified Retirement Plans
  - IRAs
  - Savings Bonds
  - Commercial Annuities
- Tangible Personal Property

  Although IRC does not offer definition of what is tangible personal property, IRS Pub. 526 does:

  > "Tangible personal property. This is any property, other than land or buildings, that can be seen or touched. It includes furniture, books, jewelry, paintings, and cars."
- Complex Assets
  - Restricted Stock
  - Stock Options
  - IPO Stock
  - Qualified Replacement Property
  - Oil and Gas Interests
  - Alternative Investments
  - Life Interest in Charitable Gift Annuity and Charitable Remainder Trust

Economic Development

Charitable?

In and of itself, not a charitable purpose!!!

- Relief of the Poor and Distressed or of the Underprivileged
- Advancement of Education or Science
- Erection or Maintenance of Public Buildings, Monuments or Works
- Lessening the Burdens of Government
- Promotion of social welfare by organizations designed to accomplish any of the above purposes, or . . . To lessen neighborhood tensions . . . Eliminate prejudice and discrimination . . . Or to combat community deterioration

- **KEY: Avoiding Private Benefit & Private Inurement**

COUNCIL on FOUNDATIONS

Thank You for Joining Us for
Legal Lunch Series #2

Upcoming Webinars in the series:

Legal Lunch Series #3
TBD

Learn more and register at www.cof.org