

May 1, 2014

Via Hand Delivery

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2014-18)
1111 Constitution Avenue N.W.
Washington, D.C. 20224

RE: Recommendations for 2014-2015 Priority Guidance Plan Notice 2014-18

Dear Ladies and Gentlemen:

On behalf of the Council on Foundations, I write to urge the Treasury Department and the Internal Revenue Service to include two items in the 2014-2015 Priority Guidance Plan that impact our foundation members. First, guidance on the statutory provisions related to donor advised funds, which became law in the Pension Protection Act of 2006 (PPA) and are codified in Internal Revenue Code Sections 4966 and 4967. Second, guidance on the standards IRS officials employ to recognize nonprofit media organizations as exempt under Section 501(c)(3).

Guidance on Pension Protection Act Donor Advised Fund Provisions

Clarification of Section 4966(d)(2)(A) Definition of “Donor Advised Fund”

While a statutory definition is helpful, significant confusion remains within the philanthropic community over whether the statutory definition of “donor advised fund” includes the following types of funds:

- Funds that have multiple unrelated donors;
- Funds established by civic organizations and other membership associations;
- Funds established by public charities and governmental entities;
- Funds established by private foundations; and
- Memorial funds.

Clarification of Section 4966(d)(2)(B) Exemptions

Tax-exempt organizations would benefit significantly from additional precision around the application of the exemption for distributions to a single organization or governmental entity, and the exemption for funds that make grants for travel, study or similar purposes, in the following circumstances:

- Whether the exemption for single organization funds applies to funds established by organizations not described in Section 501(c)(3);
- Whether the exemption for single organization funds applies to funds established for the benefit of a single foreign organization;
- Whether the exemption for funds that make grants for travel, study, or similar purposes applies to exempt funds that make awards to individuals for past achievements; and
- Whether identifying members of a committee for a scholarship fund by position or title would constitute appointment by the donor, which could make the fund ineligible for the exemption if the donor was deemed to have “control” of the committee.

Additional Exemptions under Section 4966(d)(2)(C)

In addition to guidance on the statutory exemptions, the Council asks the Secretary to exercise his discretion under Section 4966(d)(2)(C) to create two other exemptions from the definition of a donor advised fund:

- Employer-sponsored funds for emergency hardships; and
- Non-employer funds that provide hardship assistance to individuals under certain circumstances.

Section 4966 Definition of “Distribution”

The Council believes that “distribution” as defined in Section 4966 should be interpreted consistent with the meaning of this term in Section 4967 and the definition of the term “grant” in Section 4945, which would include all gratuitous transfers that foundations make but exclude expenditure payments to vendors for goods and services.

Application of Section 4967 Penalties

The Council requests guidance clarifying the application of Section 4967 penalties for “more than incidental benefit” to two common situations encountered by our foundation members:

- Whether grants from donor advised funds may be used to satisfy a legally-enforceable pledge made by the fund’s donor or a related person; and
- Whether a payment that would require a reduction in the donor’s charitable deduction can be split—or bifurcated—with the advised fund paying only the portion that would be deductible, and the donor paying the remainder.

In addition to these comments, the Council would like to refer Treasury to comments submitted by The Jewish Federations of North America (JFNA) to Ruth Madrigal, Office of Tax Legislative Counsel, on July 15, 2013. JFNA requested guidance on several of the PPA provisions governing donor advised funds on which the Council also seeks guidance, including:

- Clarity on the Section 4967 standard for “more than incidental benefit”;
- Whether bifurcated distributions trigger Section 4967 penalties; and

- Whether grants can satisfy a fund donor's charitable pledge without incurring Section 4967 penalties.

Like JFNA, many of the Council's members rely on donor advised funds as charitable giving vehicles in support of their grantmaking work. A lack of clear guidance from Treasury on the tax treatment of certain types of funds and distributions creates tremendous uncertainty for both organizations and individual donors, hindering planned giving efforts. The Council echoes JFNA's requests for guidance on these unresolved issues, and we support many of their recommendations.

Guidance on Section 501(c)(3) Nonprofit News Organizations

The Council is deeply committed to ensuring that nonprofit media organizations are treated appropriately and fairly under the tax code. These diverse organizations serve a valuable role in educating citizens, and foundations are increasingly looking to make significant investments in them. Yet, uncertainties over their Section 501(c)(3) tax-exempt status makes attracting philanthropic investments from foundations nearly impossible for these organizations. Guidance will help streamline the nonprofit news grantmaking efforts of our foundation members and ensure that investments in nonprofit media organizations serve charitable purposes.

A 2013 Council on Foundations Nonprofit Media Working Group report, [The IRS and Nonprofit Media: Toward Creating a More Informed Public](#), found that nonprofit media organizations frequently experience long delays or rejections of applications for tax-exempt status. We appreciate recent progress that the IRS has made to ensure that applications for tax-exempt status for nonprofit news organizations are processed as efficiently and equitably as possible, and urge the agency to continue with these efforts.

The IRS approach for evaluating whether a news organization qualifies for tax-exempt status (Revenue Ruling 67-4, 1967-1 C.B. 121) should be updated to reflect the modern digital era. Instead of relying on operational similarities between nonprofit and for-profit media organizations in an age when practices for collecting and disseminating information are consistent across organizational forms, IRS evaluators should instead focus on whether an organization is engaged in primarily educational activities that provide a community benefit rather than a private interest, and whether an organization is organized and managed like a tax-exempt organization.

The Council urges the IRS to prioritize the issuance of a revenue procedure that outlines the criteria that agents will employ to evaluate Section 501(c)(3) applications from news organizations, along with the factors that are not relevant to making this determination.

Thank you for the opportunity to comment on priorities for inclusion in the 2014-2015 Priority Guidance Plan. Please feel free to contact me for additional information or analysis on any of these topics.

Sincerely,

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CC:

Ruth Madrigal