



Changes to Federal Tax Law and Their Impact on Non-Profits

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Introduction

- The impact of the increased standard deduction and simultaneous shifts in itemized deduction rules on charitable giving;
- Is there really less “drive by philanthropy” or is it just shifting to a different platform? If it is just a shift,
- How IRS preliminary guidance on DAF is impacting donors and the organizations they fund;
- How do charities tap the well safely and effectively and get donor acknowledgement correct?
- Trends in alternative investments to achieve charitable goals

Impact of the TCJA on Itemized Deductions



Impact of standard deduction vs. itemized deductions is unknown...it is also temporary through 2025

- Standard deduction doubled, **but** no more personal exemptions, **but** dependent exemption replaced with child credit...time will tell
- State taxes limited to \$10,000 for property and income taxes
- Mortgage interest deduction limited to debt of \$750K after 12/15/17 (\$1M before) half this for single/MFS
- No deduction for most home equity lines of credit interest
- Misc. deductions subject to 2% threshold no longer deductible – e.g. investment fees
- 2017/2018 Medical deductions limited to 7.5% AGI
- Itemized deductions no longer limited

...and the impact on Charitable Contributions

The mortgage interest, tax and charitable contribution deduction are the final big three itemized deductions:

- **The AGI limit is raised from 50% to 60% on charitable cash contribution deductions**
- **No 80% deduction for right to purchase athletic tickets**
- No overall limit on itemized deductions

Hard to say what the overall net effect on charitable giving will be...

- The Urban Institute and Brookings Institute estimate 21 million taxpayers who claimed an itemized charitable deduction before the TCJA who will no longer do so
- The reduction in the tax rates also reduces the value of charitable gifts

Other Levers Which Could Impact Charitable Giving

- Increase the estate and gift tax exemption from \$5M to \$10M and adjusting for inflation after 2011 (2019 exclusion: \$11.4M); Sunsets December 31, 2025
- This could result in a disincentive for charitable giving to reduce estate and gift taxes – Only time will tell
- More incentive for those over 70 ½ to contribute to charity directly from their IRA
 - No recognition of income / No itemized deduction
 - Cannot contribute to a DAF

Donors Accessing Philanthropy Levers

- Looking beyond
 - Greater use of Donor Advised Funds
 - Private Foundations still popular for control
 - Less more “Drive By” Philanthropy
 - Using more “tools” LLC, etc.
- What is the Problem donor is solving?
- What is the best solution to that problem?
 - Loan guarantees
 - Equity investments
 - Direct charitable expenditures
- Today’s Philanthropist wants to be **Actively INVESTED**



- No > Incidental Benefits to allowed to donor/donor advisors
 - No gift splitting
 - No benefits providing more than incidental (rather than insubstantial) benefit
- Initial thinking is it permissible to satisfy a personal pledge under certain circumstances – **may rely on Notice for this provision**
- May implement regulations to look through DAF gifts and combine donations from DAF's and donors for public support purposes to thwart anti-tipping work arounds
 - This may negatively impact small donors
 - Could place a burden on DAF sponsor and recipients of DAF gifts
 - May create a tracking problem and need to collect identifying tax ID #s

- Three important Sections:
- Section 3 - Ticket purchase with a quid pro quo value to the donor fund advisor - **Impermissible**
- Section 4 – Satisfying a personal pledge out of a DAF – **Permissible (pending additional guidance)**
- Section 5 – Changing the way 509(a)(1) and (2) public charities calculate public support when they receive certain funds from a DAF – Subject to the 2% excess contributor limitation

- Section 3 mirrors PLR 9021066 applicable to private foundations controlled by corporation – may be inappropriate as DAFs are required to give written notice to donors in no uncertain terms the gifts are a complete gift. Donor only have advisory privileges and all assets are the property of the sponsoring organization.
- Why would a donor not be allowed to do something indirectly they would be allowed to do directly? i.e. make a gift to a public charity which resulted in “no substantial goods or services being received in exchange for the contribution”

- Allows DAFs to satisfy personal pledges of donor/donor advisors if:
 - Distribution makes no mention of a personal pledge in the DAF distribution
 - Donor/donor advisor receives no more than incidental benefits (see section 3)
 - Donor/donor advisor does not attempt to claim a § 170 charitable deduction even if the distribute charity erroneously sends a donor acknowledgment letter
- Section 4 may be relied upon by taxpayers until further guidance issued
- Makes sense for all of the reasons cited in the Notice – what is an enforceable pledge?
- Relieves burdens on the recipient charities, sponsoring orgs and IRS

- This section would be burdensome on recipient charities
- Considering recalculating 509(a)(1) and 509(a)(2) for pass-thru contributions
- Treasury may want to consider another solution similar to the penalty on private foundations who “tip” a public charity
- Alternatively, if the contribution is truly a completed gift and the donor only has advisory privileges, Section 5 does not seem a reasonable change to the public support test – the sponsoring organization is now the donor and is usually a 509(a)(1) charity not subject to the 2% limitation on public support – who is being harmed by allowing this public support to flow to small public charities if they are not controlled by a single donor?

Donor Acknowledgment

- TCJ Act eliminates the confusing language in §170(f)(8) suggesting charities can provide some other documentation or form other than the contemporaneous donor acknowledgment letter
- Charitable gifts over \$250 require Contemporaneous Written Acknowledgment (CWA) - There is no change here other than the expectation that there might be some other type of acceptable form of donor acknowledgment form in the future

Why is Donor Acknowledgment Important?

- Because the IRS is Winning...routinely...on technical, low-hanging fruit
- YOU do not want to be THAT charity or THAT tax preparer who commits the “foot fault” can causes a donor to lose their tax deduction
- State charity regulators are committed to enforcement activities:
 - Registration before soliciting in 39 plus D.C.; the rest either do not require registration or only require registration of certain types of organizations
- Caution in what to report in donor acknowledgment letters; be complete including all required language but do not include excess information creating a liability (value of donated items)

THANK YOU

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