

Pension Protection Act of 2006...

Select Provisions Affecting Charitable Organizations and Their Donors

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Topics for Discussion

- Charitable giving provisions
- Exempt organization provisions
- Tax penalty and reporting provisions



Charitable Giving Provisions

- IRA rollover
- Charitable substantiation
- Gifts of tangible personal property
- Gifts of fractional interests



IRA Rollover

- Must be a qualified charitable distribution from the IRA trustee to a public charity
- Not to a DAF or Supporting Organization
- IRA owner must be at least 70.5 on date of transfer
- Limited benefit – 2006 & 2007
- No Quid pro Quo
- Obtain receipt from charity!



Charitable Substantiation

- Cash Contributions
 - Receipt or cancelled check required for all cash contributions
 - Charities should provide receipts
 - Unclear whether wage statements will suffice



Non-Cash Contributions

- Clothes and household items must be in at least good condition
- Non-cash contributions > \$5,000
 - New definitions of "Qualified Appraisal" and "Qualified Appraiser"
 - IRS issued Notice 2006-96
 - Taxpayers may rely on notice until Regs. Issued
 - Increased penalties



Gifts of Tangible Personal Property > \$5,000



- Donors and charities must track related use of tangible personal property
- If property disposed of within year of gift, charitable deduction limited to basis
- If property disposed of within first three years recapture provisions will apply to donor

Gifts of Fractional Interests



- Restrictions apply for gifts of fractional interests made after August 17, 2006
- No benefit from future appreciation
- Must transfer entire interest within 10 years
- Stricter rules for charity holding property

Exempt Organization Provisions



- Donor-advised funds
- Supporting organizations
- Private foundation grants to supporting organizations

Donor-Advised Funds



- Definition: Any fund or account
 - Which is separately identified by reference to contributions of the donor or donors;
 - Which is owned or controlled by the sponsoring organization; and
 - With respect to which a donor or person appointed by the donor has or reasonably expects to have advisory rights with respect to investments or distributions.

Prohibited Grants from DAFs



- Grants to individuals
- Grants for non-charitable purposes
- Grants for charitable purposes to organizations not described in IRC Section 170(b)(1)(A) require expenditure responsibility. ER grants include:
 - Grants to private non-operating foundations
 - Grants to controlled supporting organizations
 - Grants to any type III supporting organization that is not “functionally integrated”

Prohibited Benefits



- New 125% penalty applies if donor, advisor, or related parties receive more than incidental benefits from a DAF grant
- Penalty may be imposed on person who recommended the benefit or recipient of benefit
- Note no repayment requirement in this Section
- 10% penalty may be imposed on fund managers who knew about the benefit and approved the grant anyway

Excess Benefit Transactions



- Any grant, loan, compensation, and similar payment from a donor-advised fund to a donor, advisor or related party is an automatic excess benefit under Section 4958
- Section 4958 imposes a 25% excise tax and requires that the amount of the excess benefit be repaid to the charity
- Excess may not be added back to the DAF
- Investment advisors also subject to excess benefit rules

Some Effective Dates



- Prohibited grant rules and prohibited benefit rules are effective for tax years beginning after the date of enactment (August 17, 2006)
- Excess benefit transaction rules are effective for TRANSACTIONS OCCURRING after the date of enactment

Excess Business Holdings



- Private foundation excess business holdings rules will apply to DAFs for tax years beginning after the date of enactment.
- Transition rules will only apply to assets held by the DAF on the date of enactment.

Donor-Advised Funds (cont.)



- Acknowledgements to donors must say sponsoring charity has exclusive legal right over contributed assets
- Sponsoring organizations are subject to additional reporting on Form 990 and must report # of DAFs, assets, and cash flows

Supporting Organizations



- Now there are four kinds
 - Type I
 - Type II
 - Type III – functionally integrated
 - Type III – not functionally integrated
- Excess benefit transactions rules
- Excess business holdings
- New reporting requirements

Supporting Organizations



- Type III:
- New concept - Functionally integrated type III
 - Annual distribution requirements for non-functionally integrated type III (Regs to come)
 - Type III cannot support non-US organizations. Transition rules apply until the beginning of the third tax year beginning after August 17, 2006.

Functionally Integrated Type III



- Must engage in activities that are directly related to performing the functions of or carrying out the purposes of one or more of its supported organizations.
- To be defined in Regulations

Special Rule for Type I and Type III Supporting Organizations



- Type I and type III supporting organizations will lose their supporting organization status if they receive any contributions from a person (other than a public charity) that directly or indirectly controls the supported organization.

Excess Benefit Transactions



Automatic Excess Benefits for:

- Any grants, loans, compensation, or similar payments from a supporting organization to its substantial contributor, family members of the substantial contributor, or businesses controlled by these persons
- Any loans by a supporting organization to any of its disqualified persons
- But no excess benefit if substantial contributor or other DP is a public charity
- Effective date – transactions occurring after July 25, 2006

More Excess Benefits Rules



- Disqualified persons of the supporting organization will also be DPs with respect to the supported organization(s)
- No automatic excess benefit for payments from the supported organization, unless payments are really payments of the supporting organization
- Here, effective date is August 17, 2006

Private Foundation Excess Business Holdings Rules



- Applies to type III supporting organizations unless they are functionally integrated
- Applies to type I supporting organizations if the supported organization is controlled by the S-O's donors
- Disqualified persons defined under 4958 excess benefit rules, not 4946
- Effective date – tax years beginning after August 17, 2006
- Transition rules apply for assets held on August 17, 2006

New Reporting Requirements for Supporting Organizations



- For Form 990s filed after August 17, 2006:
 - Must list the supported organizations and indicate what type of S-O it is
 - Must certify that it is not controlled directly or indirectly by disqualified persons other than those who are DPs solely by being an organization manager.

Private Foundation Distributions to Supporting Organizations



- Private foundations must exercise expenditure responsibility over grants to:
 - Type III supporting organizations that are not functionally integrated
 - Type I and II supporting organizations if a DP of the private foundation directly or indirectly controls the supporting organization
- Private foundation grants to these organizations are not qualifying distributions under Section 4942.

Tax Penalties and Reporting



- Increased penalties
- Form 990-T
- New filing requirements

Increased Penalties



- Public charities
 - Doubles the manager limit to \$20,000
- Private foundations
 - Generally doubles the amounts and percentages

Form 990 -T

- Public inspection and disclosure rules will apply to Form 990-T
- Effective for returns files after August 17, 2006



New Filing Requirement

- IRS will require annual electronic form from organizations that normally have gross receipts under \$25,000
- IRS will send out notices to all organizations it can find
- Failure to file for three years = revocation
- Failure to file 990 for three years = revocation
- Effective for annual periods beginning after 2006



Continuing IRS areas of Concern

- Executive Compensation
- Political Activities of (c)(3)s
- Foreign Grants
- Abusive transactions
- Hospitals


