DECEMBER 5, 2017

# IRS Provides Some Limited Guidance on Donor Advised Funds

On December 4th the IRS issued **Notice 2017-73,** which provides some key insights into how the IRS is thinking about **three** distinct areas involving donor-advised funds. The public is invited to provide input and comment by March 5, 2018. Some organizations may not like where the IRS is headed on at least two of the three areas, but these are three important issues that clients ask about frequently.

**Issue 1: Tickets, Dinners and Other Benefits**. IRC Section 4967 imposes a hefty excise tax on a donor who receives more than an "incidental benefit" in connection with an advised gift from a donor-advised fund, but what is an "incidental benefit?" Very typically, a donor asks his or her donor-advised fund to make a donation to the local charity's annual fundraising event. By advising the gift, the donor receives a ticket to the event. For example, if a donor advises a $1,000 gift from a donor-advised fund and receives a ticket worth $200, then has the donor received something that is more than incidental? In Notice 2017-73, the IRS suggests yes, and also that there would be a more than incidental benefit even if the donor-advised fund paid $800 and the donor separately purchased the ticket for $200. IRS argues that the same analysis would apply where a donor receives membership benefits as part of a donor-advised fund's gift. The IRS position follows the approach used with private foundations, but Section 4967 is

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even more strict than the private foundation rules, because a private foundation could receive a ticket and have the donor attend as a representative of the private foundation. Here, the donor could not attend on behalf of the donor-advised fund.

**Issue 2: The Pledge.** Interestingly, and not entirely consistent with its proposed treatment of tickets, the IRS is suggesting that, in most cases, where a donor makes a pledge to a charity, the donor can ask his or her donor-advised fund to fulfill that pledge, and doing so is not more than an incidental benefit to the donor under Section 4967. Similarly, where a charity relieves a donor of a pledge obligation after receiving a gift from the donor advised fund, there would be no excise tax under Section 4967.

**Issue 3: Public Support Treatment of Grants from a Donor-Advised Fund.** Finally, the IRS and Treasury believe that some charities are able to maintain their public support status only by receiving gifts from donor-advised funds, whereas if the donor had given directly to the charity, the charity would be a private foundation. For example, Donor A is the only donor to Charity B. If Donor A gives Charity B 100% of its funding, Charity B will be a private foundation. If Donor A asks his or her donor-advised fund to give Charity B 100% of its funding, then Charity B will be a public charity because it is supported by another public charity, the sponsoring charity of the DAF. The IRS is proposing that in the future, for public support purposes only, that we look through the DAF to its donor and treat that donor as though he or she were the direct donor to the charity. This change, if implemented, will significantly affect a number of charities who may no longer be considered to be publicly supported.

The Notice also asks for public feedback on a few other select topics, and we look forwarding to reading the flood of comments that will no doubt be delivered.