

Special Session I-F

Structuring Philanthropy: What Works When

Charitable Giving Series

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**SUMMARY OF PRINCIPAL DIFFERENCES BETWEEN PUBLIC CHARITIES, PRIVATE FOUNDATIONS, PRIVATE OPERATING FOUNDATIONS,
DONOR ADVISED FUNDS, SUPPORTING ORGANIZATIONS AND SOCIAL WELFARE ORGANIZATIONS**

	Charitable Contribution Deduction Limitations for Individuals; Gift and Estate Tax Treatment	Qualified Charitable Distribution (QCD) from IRAs	Controlled/Prohibited Activities Subject to Excise Taxes
Public Charity -509(a)(1) and 509(a)(2) (excluding Donor Advised Fund (DAF)- sponsoring organization)	<p>Income tax deductions are allowed for cash contributions to public charities in an amount up to 50% of an individual's adjusted gross income for a taxable year. The percentage is lowered to 30% for contributions of most long-term capital gain property.</p> <p>Income tax deduction for most long-term capital gain property is based on fair market value on the date of contribution.</p> <p>Gifts and bequests qualify for unlimited gift and estate tax deductions.</p> <p>Partial interest rule applies to all deductions.</p>	Public charities (other than DAF sponsoring organizations) are qualified charities to which QCDs may be made.	<p>Activities regulated:</p> <p>Excess benefit transactions;</p> <p>Excessive lobbying; and</p> <p>Political expenditures.</p>
Private Foundation	<p>Income tax deductions are allowed for cash contributions to private foundations in an amount up to 30% of an individual's adjusted gross income for a taxable year. The percentage is lowered to 20% for contributions of most long-term capital gain property.</p> <p>Contributions of long-term capital gain property (other than</p>	QCDs may not be made to a nonoperating foundation, unless the foundation is structured as a common fund or the QCD is part of a pass-through contribution election.	<p>Activities regulated:</p> <p>Self-dealing with disqualified persons (absolute rule; no need to show detriment to foundation or benefit to disqualified person);</p> <p>Excess business holdings;</p> <p>Jeopardy investments; and</p> <p>Taxable expenditures, including any expenses to influence legislation, influence outcome of election or engage in voter registration.</p>

	<p>publicly traded stock) are deductible only to the extent of donor's tax basis in the property.</p> <p>Gifts and bequests qualify for unlimited gift and estate tax deductions.</p> <p>Partial interest rule applies to all deductions.</p>		
Private Operating Foundation	<p>Income tax deductions are allowed for cash contributions to private operating foundations in an amount up to 50% of an individual's adjusted gross income for a taxable year. The percentage is lowered to 30% for contributions of most capital gain property.</p> <p>Income Tax deduction for most long-term capital gain property is based on fair market value on the date of contribution.</p> <p>Gifts and bequests qualify for unlimited gift and estate tax deductions.</p> <p>Partial interest rule applies to all deductions.</p>	Private operating foundations are qualified charities to which QCDs may be made.	<p>Activities regulated:</p> <p>Self-dealing with disqualified persons (absolute rule; no need to show detriment to foundation or benefit to disqualified person);</p> <p>Excess business holdings;</p> <p>Jeopardy investments; and</p> <p>Taxable expenditures, including any expenses to influence legislation, influence outcome of election or engage in voter registration.</p>
Donor Advised Fund	<p>Income tax deductions are allowed for cash contributions to DAFs in an amount up to 50% of an individual's adjusted gross income for a taxable year. The percentage is lowered to 30% for contributions of most capital gain property.</p> <p>Income tax deduction for most</p>	QCDs may not be made to a DAF.	<p>Activities regulated:</p> <p>Excess benefit transactions; expanded so that all grants, loans, compensation or similar payments to donor, donor-advisor or related person/entity is automatically treated as an excess benefit in the full amount of the transaction, regardless of reasonableness;</p> <p>Excessive lobbying;</p> <p>Excess business holdings;</p>

	<p>long-term capital gain property is based on fair market value on the date of contribution.</p> <p>Gifts and bequests qualify for unlimited gift and estate tax deductions.</p> <p>Partial interest rule applies to all deductions.</p>		<p>Political expenditures;</p> <p>Distributions to individuals;</p> <p>Distributions to any organization, unless made for a charitable purpose or expenditure responsibility is exercised or unless made to the sponsoring organization, another DAF, or a 170(b)(1)(A) organization, other than a disqualified SO; and</p> <p>Distributions that result in a “more than incidental” benefit to a donor, donor-advisor, or family member or 35% controlled entity of donor or donor advisor.</p>
Supporting Organization	<p>Income tax deductions are allowed for cash contributions to SOs in an amount up to 50% of an individual’s adjusted gross income for a taxable year. The percentage is lowered to 30% for contributions of most capital gain property.</p> <p>Income tax deduction for most long-term capital gain property is based on fair market value on the date of contribution.</p> <p>Gifts and bequests qualify for unlimited deductions.</p> <p>Partial interest rule applies to all deductions.</p>	QCDs may not be made to any type of SO.	<p>Activities regulated:</p> <p><u>Type I:</u></p> <p>Excess benefit transactions; general rule expanded so that (i) any loan to a disqualified person and (ii) all grants, loans, compensation or similar payments to a substantial contributor or related person/entity to a substantial contributor is automatically treated as an excess benefit in the full amount of the transaction, regardless of reasonableness;</p> <p>Excessive lobbying; and</p> <p>Political expenditures.</p> <p><u>Type II:</u></p> <p>Same as Type I plus:</p> <p>Excess business holdings, if SO accepts a contribution from a donor who controls the supported organization.</p> <p><u>Type III (functionally integrated):</u></p> <p>Same as Type I.</p> <p><u>Type III (Non-functionally integrated):</u></p> <p>Same as Type I plus:</p>

			Excess business holdings.
Social Welfare Organization	<p>No income tax deduction.</p> <p>Gifts are excluded from transfers subject to gift tax. Partial interest rule not applicable.</p> <p>Bequests are subject to estate tax.</p>	QCDs can only be made to charitable organizations; 501(c)(4) organizations are not eligible.	<p>Activities regulated:</p> <p>Excess benefit transactions; and</p> <p>Payments for political campaign activity may be taxable.</p>

	Entity Level Taxation	Distribution Requirements	Disclosure of Donor Identity	Degree of Donor Control
Public Charity (509(a)(1) and 509(a)(2) (excluding DAF-sponsoring organization)	None, unless there is unrelated business taxable income.	None (except for certain research organizations).	Although charity may be required to include certain contributors' identifying information on Schedule B of its Form 990 (due to the size of the donor's gift), such information is exempt from public disclosure.	Donor may, but generally does not, control due to public nature (support) of entity. Donor(s) may be members of board and may offer non-binding advice on investments and use of assets.
Private Foundation	<p>There is a tax on unrelated business taxable income.</p> <p>In addition, foundation must pay tax on its net investment income.</p>	<p>Must distribute in the form of qualifying distributions at least 5% of the value of the preceding year's average investment assets.</p> <p>Grants to non-functionally integrated Type III SOs and certain other SOs are not qualifying distributions.</p>	Identifying information with respect to donors that must be included on Form 990-PF is not exempt from public disclosure.	Donor may control.
Private Operating Foundation	<p>There is a tax on unrelated business taxable income.</p> <p>In addition, foundation must pay tax on its net investment income, unless it qualifies as an exempt operating foundation.</p>	Must (i) expend at least 85% of its net income (or its minimum distribution amount) actively conducting its exempt activities and (ii) either expend at least 2/3rds of its minimum distribution amount on such activities or meet an assets test.	Identifying information with respect to donors that must be included on Form 990-PF is not exempt from public disclosure.	Donor may control.

Donor Advised Fund	None, unless there is unrelated business taxable income.	None; but many DAF sponsoring organizations have policies that require certain minimum activity level.	Although sponsoring organization may be required to include certain contributors' identifying information on Schedule B of its Form 990 (due to the size of the donor's gift), such information is exempt from public disclosure.	Sponsoring organization owns the assets of the DAF and is ultimately responsible for control of DAF (distribution and investment). Donor (or designee) may offer non-binding investment and distribution advice.
Supporting Organization	<u>All Types:</u> None, unless there is unrelated business taxable income.	<u>Type I, Type II and Type III (functionally integrated):</u> None. <u>Type III (non-functionally integrated):</u> Must distribute an amount equal to the greater of 85% of its adjusted gross income or 3.5% of the fair market value of its investment assets (calculated based on the immediately preceding tax year). Must also meet an attentiveness test that requires certain levels of support be provided to the supported organizations.	<u>All Types:</u> Although SO may be required to include certain contributors' identifying information on Schedule B of its Form 990 (due to the size of the donor's gift), such information is exempt from public disclosure.	<u>Type I:</u> Donor may not control. SO is controlled by its supported organization(s). <u>Type II:</u> Donor may not control. SO is controlled by persons who control its supported organization(s). <u>Type III (functionally integrated):</u> Donor may not control, but SO is also not controlled by its supported organization(s). <u>Type III (non-functionally integrated):</u> Donor may not control, but SO is also not controlled by its supported organization(s).

Social Welfare Organization	None, unless there is unrelated business taxable income, or organization makes expenditures for political campaign activity that attract taxation under Code section 527(f).	None.	Identity of contributors is not subject to public disclosure.	Donor may control (but potential estate tax issues, if donor does control with respect to assets held in 501(c)(4) attributable to donor's contributions to organization).
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