



Donor-Advised Funds

Advantages & Implications

Donor-Advised Funds

- Charitable giving vehicle set up under the tax umbrella of a public charity.
- Alternative to direct or checkbook giving, or creating a new corporation.
- Fastest growing charitable giving vehicle, with over 100,000 accounts holding \$17.5 billion in assets.

Advantages to donor

- Relief from administrative, filing, and cost burdens.
- Immediate and maximum tax deduction available (cash or securities).
- More generous deductibility percentage limitations than private foundations (50/30% AGI vs. 30/20% AGI).
- Avoiding excise taxes and other restrictions imposed on private foundations, e.g. 5% minimum payouts (not yet, at least).
- Advisory status.
- Can make future gifts to the fund.
- Can request anonymity.

Advantages to organization

- Ownership of and control over funds.
- Attracting more funding and publicity.
- An engaged donor or group of donors (partners).
- Most portfolio managers can establish sub-accounts, tracking income and expenses.

3 exceptions to DAF rules...

- A transfer to a field of interest fund or designated purpose fund will not create a DAF.
- A DAF is not created where a donor retains advisory rights, but all distributions will be within that charity, e.g., a gift to a fund with a university for various programs exclusively at that university.
- A fund maintained with a governmental entity is excluded from the DAF definition.

...And the Three Types

- Deductions are not permitted for gifts to DAFs held by Type III supporting organizations that are not "functionally integrated" with the parent charities. The Type III supporting organization that is operationally integrated into a public charity may also maintain a DAF and receive deductible contributions.
- Type I and Type II supporting organizations may receive deductible DAF contributions.

Distributions

- Distributions from DAFs may be made to public charities, Type I and Type II supporting organizations and "functionally integrated" Type III supporting organizations.
- Distributions may not be made to an individual.
- Distributions to the parent charity, to another DAF, or to an operating foundation are permitted.

Do not throw caution to the wind!

- PPA of 2006 requires separate identification, ownership, and control, along with advisory rights.
- Contribution must be irrevocable with no material restrictions.
- IRA rollover provision does not apply.
- Contemporaneous written acknowledgment rule still applies.
- Watch double-dealing and conflict of interest. Donors, advisors, family members, and 35% controlled entities are disqualified persons for purposes of payouts or benefits from DAFs.
- Excess benefit and private foundation excess business holdings rules apply.
- Donor or representatives do not direct, only advise. Must be able to solicit other opinion beside formal advisors.
- Fund's purpose and distributions must support organization's exempt purpose.
- Have a sunset provision.
- Establish a reasonable threshold.

Regulations

- **Acceptable Control Factors**
[Reg. §1.507-2(a)(8)(iv)(A)(2)]

- Donee charitable organization's solicitations specifically state (either in writing or orally) that it will not be bound by donor's advice.
- Donee charitable organization has conducted an independent investigation determining whether the donor's recommendations mesh with the organization's needs.

- **Material Restriction Factors**
[Reg. §1.507-2(a)(8)(iv)(A)(3)]

- Donee charitable organization only solicits the donor's advice on distributions from the donor-established fund, without any procedure for seeking others' advice.
- Distributions are based only on donor advice, without an independent investigation conducted to determine if advice is consistent with the organization's needs.

And more regulations

- **Acceptable Control Factors**
[Reg. §1.507-2(a)(8)(iv)(A)(2)]

- Donee charitable organization distributes a greater amount of funds than the donor-established funds to organizations similar to those advised by the donor.
- Donee charitable organization has created guidelines outlining the charitable needs of the organization, for which the donor's advice is consistent.

- **Material Restriction Factors**
[Reg. §1.507-2(a)(8)(iv)(A)(3)]

- Donee charitable organization's solicitations declare (or imply), either in writing or orally, that donor's advice will be followed.
- The donee charitable organization substantially follows the advice of the donor regarding distributions from the donor-established fund for the current tax year and all prior taxable years.



Visit the “Heritage Circle” area at
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Robert A. Vitas, Ph.D., CFRE
rvitas@aapd.org



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