

CLIENT ALERT - CHARITABLE CONTRIBUTIONS GUIDANCE UPDATED BY IRS

May 15, 2018

The IRS has consolidated and clarified charitable contributions guidance with new a Revenue Procedure effective May 16, 2018. This impacts both private foundations, as well as individual donors.

Grant Making Procedures Needed to Avoid Incurring a Penalty Tax

Private foundations bear the burden of confirming that the grants they are making each year count as "qualifying distributions." While a foundation can make qualifying distributions to organizations that are not 501(c)(3) public charities, additional requirements must be met in order to count the grant as a qualifying distribution. The trouble arises when a foundation thinks it is making a grant to a 501(c)(3) public charity and therefore does not take these additional steps (such as expenditure responsibility), when in fact, the public charity grant recipient has already lost its status or loses its status as a result of the grant. The same issue can arise when an individual is making a tax deductible charitable contribution to a public charity.

Beware of "Tipping"

If a grant recipient organization has received a determination letter classifying it as tax-exempt, grantors and the grants they made to an organization whose status is later revoked, will generally not be affected until the IRS makes a public announcement of the organization's change in status. This does not apply, however, if the grantor or donor had knowledge of the revocation or was in part responsible for, or was aware of, the organization's act that caused the revocation. The question then arises, if an individual donor or private foundation makes such a large grant to a public charity in a particular year that the public charity no longer meets the public support test (and perhaps no longer qualifies as a public charity) -- can the individual or foundation still be treated as having made a grant to a public charity? Or did the individual or foundation "tip" the public charity into private foundation status and the treatment of such donation has changed?

It Just Got Easier

In the past, the IRS has issued several pieces of guidance to describe the extent to which grantors and donors may rely on the IRS's identification of an organization's tax-exempt status and foundation status. These Revenue Procedures (81-6, 81-7, 89-23, and 2011-33) have been modified and superseded, and consolidated into Revenue Procedure 2018-32.

Revenue Procedure 2018-32 highlights the following:

- Generally, grantors may rely on the IRS database (which has been recently updated) in order to determine if an organization is a 501(c)(3) organization classified as a public charity.
- Grantors or donors will not be considered responsible for "tipping" a public charity grant recipient into private foundation status if the grant or contribution received is 25% or less of the aggregate support received by the recipient organization for the four tax years immediately preceding that tax year.

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- If a grant qualifies as an “unusual grant” then such grant will not “tip” the public charity grant recipient into private foundation status. An unusual grant possesses certain characteristics in order to qualify. For example, an unusual grant is not made by a person who created the recipient organization, is a substantial contributor to the recipient organization, or in a position of authority with respect to that organization, and the grant is in the form of cash, marketable securities, or assets that directly further the exempt purpose of the recipient organization.

For further information, please contact Cara Howe Santoro at (203) 351-4195  or csantoro@cl-law.com or Stefania L. Bartlett, (203) 351-4417  or sbartlett@cl-law.com.