



May 1, 2015

Via Hand Delivery

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2015-27)
1111 Constitution Avenue N.W.
Washington, D.C. 20224

RE: Recommendations for 2015-2016 Priority Guidance Plan Notice 2015-27

Dear Ladies and Gentlemen:

On behalf of the Council on Foundations, I write to urge the Treasury Department and the Internal Revenue Service to include five items in the 2015-2016 Priority Guidance Plan that impact our foundation members. These are listed below in order of urgency, though the Council emphasizes that our foundation members would benefit significantly from further clarity on each of these regulatory issues.

First, guidance on the statutory provisions related to donor advised funds, which became law in the Pension Protection Act of 2006 (PPA) and are codified in Internal Revenue Code Sections 4966 and 4967.

Second, guidance on the standards IRS officials employ to recognize nonprofit media organizations as exempt under Section 501(c)(3).

Third, clarification on whether foundations may apply the three-part test for program-related investments to their mission-related investments, for assurance that they will not face an unexpected tax burden such as a tax on jeopardizing investments on their mission-related investments.

Fourth, guidance on economic development as a charitable activity as applied to foundation-sponsored student loan forgiveness programs in addition to or in replacement of scholarship programs.

Fifth, updated guidance regarding economic development as a charitable activity generally, including a more definitive test and/or examples of acceptable charitable activities that reflect the current needs and economic climate in many communities.

Guidance on Pension Protection Act Donor Advised Fund Provisions

Clarification of Section 4966(d)(2)(A) Definition of “Donor Advised Fund”

While a statutory definition is helpful, significant confusion remains within the philanthropic community over whether the statutory definition of “donor advised fund” includes the following types of funds:

- Funds that have multiple unrelated donors;
- Funds established by civic organizations and other membership associations;
- Funds established by public charities and governmental entities;
- Funds established by private foundations; and
- Memorial funds.

Clarification of Section 4966(d)(2)(B) Exemptions

Tax-exempt organizations would benefit significantly from additional precision around the application of the exemption for distributions to a single organization or governmental entity, and the exemption for funds that make grants for travel, study, or similar purposes, in the following circumstances:

- Whether the exemption for single organization funds applies to funds established by organizations not described in Section 501(c)(3);
- Whether the exemption for single organization funds applies to funds established for the benefit of a single foreign organization;
- Whether the exemption for funds that make grants for travel, study, or similar purposes applies to exempt funds that make awards to individuals for past achievements; and
- Whether identifying members of a committee for a scholarship fund by position or title would constitute appointment by the donor, which could make the fund ineligible for the exemption if the donor was deemed to have “control” of the committee.

Additional Exemptions under Section 4966(d)(2)(C)

In addition to guidance on the statutory exemptions, the Council asks the Secretary to exercise his discretion under Section 4966(d)(2)(C) to create two other exemptions from the definition of a donor advised fund:

- Employer-sponsored funds for emergency hardships; and
- Non-employer funds that provide hardship assistance to individuals under certain circumstances.

Section 4966 Definition of “Distribution”

The Council believes that “distribution” as defined in Section 4966 should be interpreted consistent with the meaning of this term in Section 4967 and the definition of the term “grant” in Section 4945, which would include all gratuitous transfers that foundations make but exclude expenditure payments to vendors for goods and services.

Application of Section 4967 Penalties

The Council requests guidance clarifying the application of Section 4967 penalties for “more than incidental benefit” to two common situations encountered by our foundation members:

- Whether grants from donor advised funds may be used to satisfy a legally-enforceable pledge made by the fund’s donor or a related person;
- Whether a payment that would require a reduction in the donor’s charitable deduction can be split—or bifurcated—with the advised fund paying only the portion that would be deductible, and the donor paying the remainder; and
- Whether grants can satisfy a fund donor’s charitable pledge without incurring Section 4967 penalties.

Many of the Council’s members rely on donor advised funds as valuable charitable giving vehicles in support of their grantmaking work. A lack of clear guidance from Treasury on the tax treatment of certain types of funds and distributions creates tremendous uncertainty for both organizations and individual donors, hindering planned giving efforts. We encourage Treasury to issue this guidance as expeditiously as possible.

Guidance on Section 501(c)(3) Nonprofit News Organizations

The Council is deeply committed to ensuring that nonprofit media organizations are treated appropriately and fairly under the tax code. These diverse organizations serve a valuable role in educating citizens. A recent John S. and James L. Knight Foundation report indicates that nonprofit media organizations “remain very reliant on foundation funding.”¹ Indeed, foundations recognize that nonprofit media organizations fill a crucial civic education gap, especially at the local level, and are increasingly looking to make significant investments in these organizations.

Yet, uncertainties over their Section 501(c)(3) tax-exempt status often makes attracting philanthropic investments from foundations prohibitive for these organizations. Guidance will help streamline the grantmaking efforts of our foundation members who seek to invest in these organizations and ensure that investments in nonprofit media organizations serve charitable purposes.

A 2013 Council on Foundations Nonprofit Media Working Group report, [*The IRS and Nonprofit Media: Toward Creating a More Informed Public*](#), found that nonprofit media organizations frequently experienced long delays or rejections of applications for tax-exempt status. The report

¹ John S. and James L. Knight Foundation, *Gaining Ground: How Nonprofit News Ventures Seek Sustainability* (2015), available at: http://features.knightfoundation.org/nonprofitnews-2015/pdfs/KF_NonprofitNews2015.pdf.

recommended that the IRS approach for evaluating whether a news organization qualifies for tax-exempt status (Revenue Ruling 67-4, 1967-1 C.B. 121) be updated to reflect the modern digital era.

While the IRS has not yet publicly updated its guidance on the standards for exemption for nonprofit media organizations, the log jam of pending exemption applications has diminished. We appreciate this progress that the IRS has made to ensure that applications for tax-exempt status for nonprofit news organizations are processed as efficiently and equitably as possible, and urge the agency to continue with these efforts.

Despite this progress in processing their exemption applications, nonprofit media organizations would benefit from guidance on the standards the IRS applies to their applications for exempt status.

Instead of relying on operational similarities between nonprofit and for-profit media organizations in an age when practices for collecting and disseminating information are consistent across organizational forms, this guidance should specify that IRS evaluators should focus on whether an organization is engaged in primarily educational activities that provide a community benefit rather than a private interest, and whether an organization is organized and managed like a tax-exempt organization.

The Council urges the IRS to prioritize the issuance of a revenue procedure that outlines the criteria that agents will employ to evaluate Section 501(c)(3) applications from news organizations, along with the factors that are not relevant to making this determination.

Clarification on the Treatment of Mission-Related Investments

Our foundation members would benefit from clarification from Treasury and the IRS that explicitly permits foundations to treat mission-related investments (“MRIs”) in a manner comparable to program-related investments (“PRIs”).

The Council on Foundations works with foundations to assist them with using their grants as well as their invested assets for charitable purposes. When a private foundation makes an MRI, it generally needs to ensure that the investment qualifies as that type of investment for U.S. federal tax purposes in order to safeguard the organization from unexpected tax burdens such as a tax on jeopardizing investments. These U.S. tax consequences are generally so important to a private foundation that the private foundation must ensure that an MRI qualifies under federal tax rules before it commits to making the investment.

MRIs are akin to PRIs except that they are made from an organization’s investment funds rather than its grant pool. Consequently, many foundations currently apply the IRS’s three-part test for PRIs to their MRIs, as the most relevant guidance that is currently available. When the prongs in this test are satisfied, a PRI that does not meet market-rate return levels can nonetheless have confidence that the foundation has not engaged in a jeopardizing investment. The Council seeks clarification regarding whether MRIs can also benefit from this three part PRI test that offers a

“safe harbor” from what otherwise might be considered a jeopardizing investment due to the return on the investment.

Foundations understand the three part PRI test from Proposed Treasury Reg. § 53.4944² as follows:

- The investment’s primary purpose is to further the private foundation’s tax exempt purposes or mission;
- The production of income or increased value is not a significant purpose of the investment (meaning that an investor solely engaged in investing for profit would not likely enter into such a transaction on the same terms as the private foundation); and
- The proceeds of the private foundation’s investment cannot be used to support lobbying or electioneering.

We ask Treasury and the IRS to consider explicitly extending this three-part test to MRIs to give foundations the same assurance for these investments that they currently experience for PRIs.

Talent Retention Programs: Foundations Providing Student Loan Forgiveness

With many U.S. communities struggling to retain local college graduates as part of their economic growth strategies, community foundations are exploring offering student loan forgiveness programs in addition to or in replacement of scholarship programs. Treasury has a history of providing Revenue Rulings, Private Letter Rulings, and additional examples regarding economic development as a charitable purpose; and the Council is requesting specific guidance related to economic development and student loan forgiveness programs.

The student loan forgiveness program would resemble the structure of the National Health Service Corps Loan Repayment Program for medical professionals or the Teacher Loan Forgiveness program for teachers committing to serve a specific period of time in a high-need area. The program dollars are primarily intended to help pay off student debt. While the program could run through either the government or foundations, foundations would work with donors to provide funding for the program. Award recipients are expected to live and work in their communities in order to be eligible for the program.

This program is a response to foundations investing in students via scholarships only to see them use that investment to leave the community that provided the scholarship. Donors are excited by the idea of supporting the community by offering students an opportunity to return and to receive assistance with the burdensome student debt that is regularly in the headlines. Our foundation members have an opportunity to bring young people back to high-need communities, slow or reverse the “brain drain”, bring skilled, educated and trained professional into high-need communities, increase entrepreneurship, fill skilled and educated job openings, and give farmers and small shop owners hope that a family member or community member will take over their business.

² Prop. Reg. §§ 53.4944, 77 Fed. Reg. 23429 (April 19, 2012).

The Council recognizes that this program may need legislation as well as Treasury's guidance to take effect. However, additional guidance from Treasury on economic development as a charitable purpose would be a critical step facilitating an important new tool for our communities to build resiliency and talent.

Clarification of Economic Development as Charitable Activity

The Council seeks further clarification regarding when economic development will be considered a charitable activity and requests reliable guidance for foundations wishing to support such activity with charitable dollars.

The Council often fields questions from its foundation members regarding economic development. Community foundations in particular are interested in creating funds and using charitable dollars to support activities such as redevelopment of city centers, small business incubation, job training programs, home purchase assistance, and promotion of local communities for new business relocation and tourism. Currently, these foundations can look to several rulings related to economic development, including Revenue Rulings 74-587, 76-419, 77-111, and 2006-27, and can draw from these some guidance regarding the factors that will support a finding by the IRS that an activity is considered charitable. However, all of these rulings were issued prior to the recent economic downturn, and there is a general consensus in the field that this type of guidance needs to be updated to reflect current economic realities and the work that foundations wish to do. Foundations are also often asked to partner with local government entities and organizations that are qualified as tax-exempt but are not Section 501(c)(3) organizations, and guidance specifically addressing these types of partnerships is needed as well.

The Council urges the Treasury to consider updating previous guidance regarding economic development as a charitable activity by providing a more definitive test and/or examples of acceptable charitable activities that reflect the current needs and economic climate in many communities.

Conclusion

Thank you for the opportunity to comment on priorities for inclusion in the 2015-2016 Priority Guidance Plan. We would welcome the opportunity to discuss any of these matters with the IRS or with the Department of Treasury if it would be helpful. Please feel free to contact me for additional information or analysis on any of these topics.

Sincerely,

A handwritten signature in cursive script that reads "Sue Santa".

Sue Santa

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