

April 6, 2007

Internal Revenue Service
P. O. Box 7604
Ben Franklin Station
Washington, D.C. 20044
Attn: CC:PA:LPD:PR
Room 5203

By email: Comments@irs.counsel.treas.gov

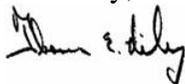
Re: IRS Notice 2007-21: Study on Donor Advised Funds and Supporting Organizations

To Whom It May Concern:

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, submits the following comments to you regarding the above captioned notice. NYSSCPA thanks the Department of the Treasury for the opportunity to comment on this notice.

The NYSSCPA Exempt Organizations Committee deliberated the exposure draft and prepared the attached comments. If you would like additional discussion with the committee, please contact Paul E. Hammerschmidt, chair of the Exempt Organizations Committee, at (212) 885-8321, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



Thomas E. Riley
President

Attachment

**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS ON
INTERNAL REVENUE SERVICE NOTICE 2007-21**

**STUDY ON DONOR ADVISED FUNDS AND
SUPPORTING ORGANIZATIONS**

April 6, 2007

Principal Drafters

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Paul E. Hammerschmidt, CPA**

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**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

EXEMPT ORGANIZATIONS COMMITTEE

COMMENTS ON IRS NOTICE 2007-21

Study on Donor Advised Funds and Supporting Organizations

Background

Donor advised funds and supporting organizations are tax-exempt organizations under Section 501(c)(3) of the Internal Revenue Code (“the Code”). Sections 170 and 509(a) of the Code include organizations ranging from public charities to private foundations. These organizations are distinguished primarily by the degree of widespread public oversight and funding, with organizations having significant community involvement in their operations and funding like schools and hospitals at one end of the spectrum, and private family foundations at the other end. The Code provides statutory requirements for both the deductibility of contributions of various types of property as well as the operation of these organizations which vary inversely with the degree of widespread public oversight and funding. The Pension Protection Act of 2006 added regulatory burdens to both donor advised funds and supporting organizations to curb what has been perceived as abuses of these types of organizations and enable them to maintain their status as public charities.

The rules concerning both the deductibility of donations of various types of property to charitable organizations and the operation of charitable organizations are based upon the principle (which has been borne out by a history of incidents involving abuses of charitable organizations) that active, competent and independent management helps to prevent many scandals or mitigate those scandals that do occur. As a result, the common belief among professionals who practice in this area is that private foundations and other charities controlled by substantial contributors or other interested parties need more government oversight than charities with active boards of independent directors or trustees. Legislation should be drafted with this in mind.

Issues and Comments

The following comments address the enumerated issues within IRS Notice 2007-21 for which IRS and Treasury requested comment:

- 1) Advantages and disadvantages of donor advised funds and supporting organizations, compared to other charitable giving arrangements:
 - a) Donor advised funds and supporting organizations serve a public purpose of encouraging people who cannot afford the substantial expense of running a private family foundation to have a substitute vehicle channeling

family charitable traditions with a lower administrative cost, and without the private foundation excise tax on investment income or the private foundation minimum distribution requirement.

In addition, private foundations do not provide anonymity of grants, should the donor wish to do so. Donor advised funds fill this gap by permitting a donor/adviser to suggest that a donor advised fund make a grant without identifying the donor/adviser.

- b) The disadvantage of donor advised funds in comparison to private foundations is the lack of control by donors over investments, and the specific subsequent charitable use of funds.
- 2) Comments concerning the determination of the amount of a charitable contribution deduction for transfers to donor advised funds and supporting organizations if the transferor retains certain rights, receives certain benefits, or the property is not readily convertible to cash:

- a) A donor who places specific restrictions upon the use by the charitable recipient of a gift has the opportunity to exercise some degree of indirect control (through those enforceable restrictions) over the gift. This does not prevent the gift from qualifying for a charitable contribution deduction. However, the quid pro quo rules prevent a donor from qualifying for a charitable deduction for the portion of a gift that is used for the benefit of that donor. Since the right to suggest grants to particular grantees by a donor advised fund or supporting organization does not even give a donor the indirect control of specific restrictions, we believe that as long as the donor advised fund or supporting organization has a governing board with a majority of members who are independent of substantial contributors (to prevent the donor from exercising control), it would be appropriate for the donor to continue to qualify for a charitable contribution deduction consistent with a contribution to a public charity. As a result of the Pension Protection Act of 2006 donor advised funds are governed by self-dealing rules similar to private foundations, and as such, are prohibited to use contributed funds for the benefit of the donor.

The appropriateness of donated assets being used to pay compensation of relatives of a donor who perform services for a donor advised fund or supporting organization should be determined using the current law's intermediate sanctions, excess benefit transaction taxes and other reasonable compensation standards. Compensation to relatives of a donor in excess of reasonable compensation standards should result in the organization receiving a nondeductible reimbursement from the donor.

b,c)The retention of certain rights by the donor with respect to transferred assets (including advisory rights with respect to making grants or investing assets) is consistent with treating the transfers as completed gifts. Since a completed gift requires a donor to relinquish control over the asset, no control over the use of an asset contributed to a charity can be retained by a donor who took a charitable contribution deduction for the gift. When advice given by a donor to an independent governing board of a charity about the way contributed funds should be invested and then distributed, that advice is not binding upon the charity. Consequently, control over the contributed funds is not retained by a donor, and the funds contributed to supporting organizations and donor advised funds should be treated as completed gifts.

Adjustments to the amount of the charitable contribution deduction for gifts to donor advised funds or supporting organizations should not be changed from the current law. The mere right to advise the independent governing board of the donor advised fund or supporting organization on the investment and use of the contributed assets, should not reduce the amount of a charitable contribution deduction for gifts to donor advised funds or supporting organizations. Retention of other rights (or the receipt of benefits other than those already exempted under the *de minimus*, sponsorship or other provisions of the current law) should reduce the amount of a charitable contribution deduction.

d,e)The valuation of donated property not readily convertible to cash should follow current law.

3) The effects of new legislative provisions (including applying excess benefit transaction taxes) on the practices of these organizations and their donors:

a) Organizations should change the membership of their governing boards to have a majority of members who are independent of substantial contributors. The control by independent directors will help the organizations to avoid situations that run afoul of the new legislation.

4) Appropriate payout requirements:

a) A private foundation, whose management desires to maintain control of all of its assets, needs minimum distribution rules to require it to periodically pay out some minimum amount on an annual basis. This requirement would not be appropriate for the governing board of a donor advised fund or supporting organization with a majority of members who are independent of substantial contributors, since the sense of civic obligation of the members of the board could be counted upon to distribute the organization's funds periodically.

Minimum distribution rules would add tremendously to the administrative costs of operating a donor advised fund, since the rules would have to be

calculated and implemented separately for each donor's account. In contrast, the minimum distribution rules for private foundations are calculated and implemented for the foundation as a whole. Extending the 5% private foundation minimum distribution rules to donor advised funds requires allocating the fund-wide requirement to the individual accounts of a donor advised fund, notifying donors of the required grant amounts, and making sure that those required grants are paid timely. This would present an administrative nightmare. This may cause many donor advised funds to close, shut out middle class donors from access to long-term charitable vehicles and only leave the wealthy with access to them through private foundations.

- b) No comment
 - c) Included in a) above
 - d) Whether issues identified in a) – c) are also issues for other types of charitable giving arrangements. We do not believe that these issues require changes for other types of charitable giving arrangements.
- 5) Advantages and disadvantages of perpetual existence for these organizations:
- a) Since a community will always have some need that should be met by the private sector, community organizations will always be needed, and they in turn need access to pools of charitable funds held by community foundations, private foundations, donor advised funds and other supporting organizations. These needs also include providing for continuing funding (through dedicated subaccounts at donor advised funds or supporting organizations) of projects that escape widespread public attention, such as continually providing preventive health care services or endowing specific chairs at universities to promote specific studies. These organizations should be allowed perpetual existence.
 - b) Some donors to donor advised funds intend to only have part of their contributions to be spent by the funds during their lifetimes. These donors want their descendants to continue family charitable traditions by continuing to exercise the donors' right to suggest grants from funds remaining in the families' accounts to particular grantees. We believe that this feature of donor advised funds serves the public purpose of allowing people who cannot afford the substantial expense of running a private family foundation to have a substitute vehicle with a lower administrative cost.
- 6) We do not believe that changes are needed for other forms of charities or charitable donations for these issues.

Conclusion

We recommend that the governing boards of all supporting organizations and donor advised funds be required to have a majority of members who are independent of substantial contributors (to prevent the donor from exercising control) in order for these organizations to retain their public charity status. Supporting organizations and donor advised funds that do not have governing boards with a majority of members who are independent of substantial contributors should be regulated more closely in future legislation.