Athletic Donations and IRS Issues

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Background & Introduction

Two areas are often debated regarding the tax-deductibility of payments that result in certain athletic benefits. The following will cite IRS rulings and hopefully provide helpful information to address those debates. Regarding athletic seating issues, the first case below is provided for historical reference. However, IRS rules have changed for athletics only.

Cases

- **Minimum Donation Required to Purchase Tickets**

  The following applies to all seating programs, including cultural and arts programs and the like. Initially, these rules applied to athletic programs as well. However, IRS regulations regarding athletic seating programs *only* have changed (explained later). The underlying tenants explained here remain in force for non-athletic seating applications.

  The case involves the purchase of a ticket (single or season) with an additional, required gift component. As demonstrated below, the additional amount paid above the ticket price is not deductible in most situations.

  There have been numerous revenue rulings regarding situations where there is a stated ticket price, but an additional "contribution" was required to obtain those tickets. Revenue Ruling 84-132 and Revenue Ruling 86-63 are particularly important to this discussion. The concern, in many cases, pertains to tickets that "would not otherwise have been readily available." (84-132).

  As amplified in the ruling two years later (86-63), "because tickets to the games covered by the season ticket would not otherwise have been readily available to [members], the right to purchase a season ticket in a designated area in the stadium was a substantial benefit. This substantial benefit was afforded to [members] because each paid the minimum membership fee of $300. Accordingly, a presumption arises that the $300 reflects the value of the benefit received. Unless the taxpayer can establish that $300

exceeded the value of the benefit received, no part of the $300 payment is a charitable contribution under section 170 of the Code."

86-63 did offer a provision to permit a deduction for amounts paid over the stated ticket value when comparable seating is unavailable to non-members. However, **to provide any deduction, institutions were required to calculate a fair market value (FMV) for the rights to purchase those tickets**.

Most collegiate athletic organizations could not, or would not, perform this calculation. This led to an appeal to the IRS for help in determining a fair market value. Please see the next section.

Therefore, to summarize, if a payment allows a taxpayer to purchase tickets that would not otherwise be available, the taxpayer has received full value for their payment. Therefore, no portion of the payment would be deductible as a charitable contribution (except to the extent that the taxpayer pays more than the minimum required to receive the benefit). However, if the taxpayer would otherwise be able to purchase tickets for "reasonably comparable seating," the payment is fully deductible (above the value of the tickets).

- **Special Athletic Provision**

As noted above, many organizations found calculating the fair market value of rights to purchase athletic tickets now or in the future complex. So, nationally, athletic programs sought relief from the IRS, requesting a method or formula for calculating the FMV.

The request for assistance was answered in the Technical and Miscellaneous Revenue Act of 1990 (HR4333). The Conference Report that accompanied HR4333 introduced a new rule. It stated that 80% of "payments that would be deductible as a charitable contribution but for the fact that the taxpayer receives (directly or indirectly) the right to purchase seating at an athletic event in the institution's stadium" should be treated as a charitable contribution. This "***applies whether or not the tickets would have been readily available to the taxpayer without making the payment***."

The language italicized above is crucial. It rendered all payments for rights to purchase as only 80% deductible, essentially applying to any gift to athletics that included a "required" or mandatory contribution.

The above provision became affectionately referred to as "The 80/20 Rule" and superseded 86-63, but only for donations resulting in athletic seating benefits.

- **Preferential Seating Rights**

  The following applies to any contribution that results in a specific athletic benefit – not just gifts made to athletic programs. For example, some colleges and universities will offer athletic seating benefits and rights for contributions made to other areas of the institution.

  Since the implementation of HR4333, payments that resulted in rights to purchase tickets to home athletic events resulted in a 20% reduction in the *donation's tax-deductible (net of other tangible benefits) amount*. We also know that under no circumstances could these rights be granted to **anyone** paying through a donor-advised fund or a family foundation. See the "Other Cases" section below.

  Effective 1/1/2018, the IRS changed the rules by repealing the section of code that applied to these rights and replaced it with a statement reducing the deductibility to zero. A simple way of thinking about this change is, "Whatever once was 80% deductible is now 0% deductible." No other changes were made.

  Here is what 26 USC 170(l)(1) **used to say**:

  > (l) Treatment of certain amounts paid to or for the benefit of institutions of higher education
  >
  > (1) In general
  >
  > For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.
  >
  > (2) Amount described
  >
  > For purposes of paragraph (1), an amount is described in this paragraph if-
  >
  > (A) the amount is paid by the taxpayer to or for the benefit of an educational organization-
  >
  > (i) which is described in subsection (b)(1)(A)(ii), and
  >
  > (ii) which is an institution of higher education (as defined in section 3304(f)), and

(B) such amount would be allowable as a deduction under this section but for the fact that **the taxpayer receives (directly or indirectly) as a result of paying such amount the right to purchase tickets for seating at an athletic event** in an athletic stadium of such institution.

If any portion of a payment is for the purchase of such tickets, such portion and the remaining portion (if any) of such payment shall be treated as separate amounts for purposes of this subsection.

Enter the Tax Cuts and Jobs Act H.R. 1. This Act went into effect 1/1/2018 and was elegant in its simplicity by adding one amendment with one sentence. The law states:

(b) Denial Of Deduction For College Athletic Event Seating Rights.—Section 170(l)(1) is amended to read as follows:

"(1) IN GENERAL.—No deduction shall be allowed under this section for any amount described in paragraph (2)."

If we reread the "old" section, paragraph B (bolded), we note that the rule now results in **no deduction** applied not just to purchasing tickets but for the **right** to buy tickets. As the accumulation of points (at some institutions) will elevate an individual to a greater ability to purchase (or improve existing) tickets when they are available, said points are earning donors' greater rights – even if it is unknown when those rights can be executed.

Note that H.R.1 was written to replace the HR4333 provisions. Therefore, H.R.1 **does not** allow institutions to revert to 86-63 for athletic donations.

- **Other Cases**

The IRS has long held that under no circumstances may a donor-advised fund or private foundation gift result in any points or ticket acquisition. In the case of a donor-advised fund, the IRS uses the phrase "impermissible benefit." For private foundations, the common IRS term is self-dealing.

However, it is often the case in athletic foundations that they will accept these gifts and record them on an individual's record in the athletics CRM to receive seating benefits – in essence, *giving the individual a benefit disallowed by the IRS.*

Further, and as acknowledged in grant application forms executed by individuals, not only may the grant **not** result in any tangible benefit (the individual obtained a 100% tax-

deduction when giving to the DAF or private foundation and, therefore, grants issued must also be fully deductible), but neither can the payment be used to satisfy an obligation on the part of the individual. Here is the specific language found in the 2022 Fidelity Charitable Grant Application form listing conditions you agree to:

- Certify that neither you nor anyone else will receive any impermissible benefit (e.g., tuition, membership fees with more than incidental benefits, dues, admission to a charitable or other event, goods bought at auction) from the recommended charitable organization from this grant, if distributed.

- Certify that this grant will not fulfill all or a portion of a pledge to the charitable organization.

Therefore, it is not legally possible for specific categories of foundations or charities (specifically private foundations), frequently referred to as "family foundations," to satisfy another entity's pledge or promise to give. In IRS-speak, this is considered self-dealing. A Council on Foundations article from 2003 explains further (only the portion of the article on pledges and fundraising activities are included in this quote):

"The main prohibition for family foundations is "self-dealing." Simply stated, a family foundation can not enter into any financial transaction with certain related parties, defined in the law as "disqualified persons." A disqualified person is any officer, director, trustee or employee with the authority to act on behalf of the foundation and substantial contributors.

"The list of prohibited transactions between a private foundation and a disqualified person includes:

* Satisfying the enforceable pledge (such as a donation) of a disqualified person"

"Some specific examples of self-dealing are:

* Personal family pledges- A legally binding pledge (personal pledge to charity, etc) is a personal debt, and if a disqualified person makes such a pledge, its an act of self-dealing for a foundation to pay that debt.

* Attending fundraisers - If the foundation buys a ticket to a fundraising event, and the ticket price includes payment for goods and services (dinner and entertainment) the ticket cannot be used by a disqualified person."

Bifurcation

It is essential to note the IRS's concern regarding delivering benefits to donors because of gifts made by either DAFs or private foundations. In both cases, no tangible benefit can be given in exchange for donations made through these sources. These benefits include invitations to special recognition events or galas. These donors cannot be invited to these events if they have a fair market value benefit.

Some have questioned whether these rules can be circumvented by allowing the individual to pay a fee equal to the fair market value to attend. The short answer is "No." In a discussion about private foundations on this topic, the Tax Economics of Charitable Giving states:

"If a private foundation purchases tickets to charitable fundraising events, care must be exercised to be certain that no self dealing results. The IRS held there was self dealing where the chairman of a corporate donor, who was not an officer or director of the foundation, used tickets purchased by the company's private foundation. The IRS has also ruled that bifurcation of the purchase costs of attending a fundraising event between a disqualified person (who pays for the quid pro quo portion) and a private foundation (which pays for the charitable portion of the ticket) would result in self dealing."

Along the same lines, the IRS reinforced its prohibition of delivering benefits to donors in exchange for DAF gifts in Notice 2017-73. Quoting from a summary provided by Ropes & Gray, LLC:

"Charity Events and Membership Fees: Grants from a DAF that enable a Donor/Advisor to attend or participate in a charity-sponsored event would result in a more than incidental benefit, even if the Donor/Advisor pays the non-deductible portion of the cost of the ticket. This would result in a penalty excise tax on any Donor/Advisor who advises as to the distribution or who received the benefit of the payment from the DAF. The IRS has previously indicated informally that it views grants that enable a Donor/Advisor to attend an event as a violation of the rule prohibiting more than incidental benefits from DAFs. Similarly, a grant from a DAF to pay on behalf of a Donor/Advisor the deductible portion of a charity membership fee that has deductible and non-deductible portions would also result in a more than incidental benefit and penalty excise tax."