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Before

The Committee on Finance
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on
Charities and Charitable Giving: Proposals for Reform

Mr. Chairman and Members of the Committee, I am Jane G. Gravelle, a Senior Specialist in Economic Policy in the Congressional Research Service of the Library of Congress. I would like to thank you for the invitation to appear before you today to discuss the proposals for reform of charities and charitable giving. Although I discuss options and approaches, please note that the Congressional Research Service takes no position on legislative options.

My discussion is focused on focused particularly on two types of entities that allow individuals to deduct contributions without the gift actually going to charity: donor advised funds and supporting organizations. These entities experience treatment similar to private foundations, but are not subject to the rules affecting foundations (including provisions to address the risk of using the funds for private benefit, minimum distribution requirements, and certain excise taxes). This discussion also addresses issues surrounding gifts of appreciated property. The analysis is related to potential tax revisions including those contained in the Senate staff discussion draft released in 2004[1] and those in a recent Joint Committee on Taxation study.[2]

The bullet points below summarize the important findings of this analysis.

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[1] *Tax Exempt Governance Proposals: Staff Discussion Draft*, posted at http://www.senate.gov/~finance/sitepages/2004HearingF.htm/hearings2004.

[2] *Options to Improve Tax Compliance and Reform* , Joint Committee on Taxation, JCS-02-05, Jan. 27, 2005.

- Donor advised funds and supporting organizations allow the tax free accumulation of assets intended for charitable purposes, just as is the case for a private foundation, but are not subject to private foundation rules, such as minimum payout requirements and restrictions on self dealing. They are, therefore, uniquely tax favored.

- Evidence suggests that both donor advised funds and supporting organizations have been growing rapidly, and are a significant part of the mix of charitable assets. Distributions from large donor advised funds and large supporting organizations are about a third the size of distributions from private foundations, who in turn account for 10% of all giving. Assets in large donor advised funds have grown at an average annual rate of 25% over the years from 1995-2003.

- Although complete data are not available, concerns that funds may not be paid out for charitable purposes appear justified. A survey of several community donor advised funds found that 19% of donors made no distributions during the year. Data on large supporting organizations showed that 25% made no distributions, 47% distributed less than 3%, and 65% distributed less than 5%.

- While tax subsidies should increase giving, econometric studies of charitable giving that attempted to separate permanent and transitory effects of tax subsidies on giving suggest that the effects encouraging delay are 3 to 28 times the effects encouraging increased giving. These analyses showed a dollar of revenue loss encourages from 8 cents to 51 cents of additional permanent giving.

- While there is no method of determining how widespread are uses of these forms of giving for personal benefit, there is considerable indication of the existence of abuses from witness testimony, statements on web sites of practitioners, and, in the case of supporting organizations, data on extensive loans made back to donors.

- Gifts of appreciated property account for 25% of total inter-vivos giving of itemizers, and these shares rise at higher income levels, reaching 50% at the top income level. Econometric analysis suggests that the tax benefits for appreciated property gifts are much more likely to shift the form of giving than the level.

- While there is no way to determine what share of these non-cash transfers are not gifts of publicly traded securities and therefore pose valuation problems, evidence from estate tax returns suggest that about half of the total of real estate, business property, and stock is in publicly traded stock, suggesting a significant potential for contributing assets that are difficult to value.

Donor Advised Funds

Donor advised funds allow individuals to make a gift to a fund, which is organized as a charity, and then advise the fund on distributions from the donor's account.

The first donor advised funds generally date to the 1930s, when they were mostly associated with community foundations. In 1992 Fidelity started a commercial fund and

other firms have followed, including Schwab, Merrill Lynch, Vanguard, and T. Rowe Price.[3] These funds generally charge both an administrative fee to the donor and a fee to the money manager. Merrill Lynch is partnering with a number of community foundations which may change the share of assets in commercial funds.[4]

Contributions to donor advised funds are deductible to the individual donor because technically the contribution is a completed gift to a charity and the fund has legal control over the distributions. For practical purposes, however, the donor determines when and to whom the payments will be made.[5] Some donor advised funds end at the original donor's death while others allow the fund to be passed on to children and in some cases later generations. There is no requirement in many cases to make any type of distribution to a charity.

Two general issues have been raised about donor advised funds: their potential use for private benefit and the need to curb abuses, and the effect of providing an easy substitute for private foundations on the timing of gifts to charity.

The Growth and Characteristics of Donor Advised Funds

Donor advised funds have grown dramatically in the past decade. Assets in a survey of funds in 1995 were $2.4 billion, growing to $7.5 billion in 1999, $11.3 billion in 2000 and $12.3 billion in 2001, for an average annual growth rate of 31%.[6] The surveys for 2002 and 2003 are not comparable because a major community fund did not respond to the survey. For the funds covered, assets fell slightly between 2001 and 2002 (by 2.2%), which is attributed to the poor economy, but rose by 9.4% between 2002 and 2003. In the final survey, the total was $11.3 billion, but since that survey excludes a community fund with assets of over $2 billion, the total is probably over $13 billion, and the total for all funds even larger.[7] One article estimates the total as over $15 billion.[8] These numbers suggest an

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[3] See "Getting Help with Your Giving," *Business Week Online*, Dec. 24, 2001, www.businessweek.com.

[4] "Merrill Eyes Donor Advised Fund for Charitable Giving," *Mutual Fund Market News*, Mar. 10, 2003

[5] To quote one article: "As a practical manner (sic) the fund will honor your request unless you want to pay your grandchild's tuition bill or try to give the money to al-Quaeda." See William Barrett, "Private Foundations on the Cheap," Forbes.com, February 19, 2003, www.forbes.com. Actually, some critics have alleged that donor advised funds have been used for private benefits including paying tuition for related parties (although this would be considered an abusive practice), and that contributions have been made to terrorist groups. Another quote: "Retaining control of the fund, the donor does not have to be personally involved in the day to day administrative tasks, making it a better option than private foundations for a wide range of donors." See Gordon Jenkins, "Advised Funds versus Private Foundations, *Community Matters on Line*, www.wsfoundation.org.

[6] Based on data from the Chronicle of Philanthropy reported in Elfrena Foord, "Philanthropy 101: Donor-Advised Funds," *Journal of Financial Planning*, Nov. 2003, posted on the Internet at http://www.fpanet.org.

[7] See Marni D. Larose, Brad Wolverton and Stanley Krauze, "Donor Advised Funds Experience Drop in Contributions, Survey Finds," *Chronicle of Philanthropy*, vol. 15, issue 15, May 15, 2003; and Leah Kerkman, Nicole Lewis and Stanley Krauze, "Donor Funds on the Rise Again," *Chronicle*

(continued...)

average annual growth rate of about 25% per year over the eight year period from 1995-2003, although that rate appears to be slowing. During those eight years, assets have increased by 500%.

This $11.3 billion asset total covered 90 funds that responded; those funds distributed $2.1 billion.[9] Thus, distribution during the year divided by year end assets was slightly under 19%. These distributions varied considerably across funds, with some distributing less than 2% and others almost a third. The largest amount of assets in a single fund was in the Fidelity Charitable Gift Fund ($2.4 billion); commercial funds altogether accounted for about a third of the total of commercial, community and other funds, (and Fidelity for about a fifth). Fidelity had over 30,000 individual accounts. Note, however, that the commercial share is smaller because the excluded funds are community and other funds.

The total share distributed was smaller for the community and other funds (slightly under 17%) than for the commercial funds (slightly over 22%). The amounts distributed were more variable among the community and other funds (ranging from less than 2% to about 30%) than among the commercial funds (ranging from 7% to 28%).

Of course, the variability among individual accounts in the funds is even greater (although some funds impose minimum distribution requirements). There are three types of accounts: for annual giving (where most is given out), endowment (only a portion is distributed) and flex funds or mid range funds.[10] Organizations with a mix of types may display significant pay-out ratios in the aggregate even though many individuals funds have little or no payout. As shown in **Graph 1**, a recent survey of community foundation donors in several foundations in 2003 indicated that 19% of the donors made no contributions from their accounts. Another 42% made less than five, 31% made between 6 and 20, and only 7% made more than 20. The share of donors with no contributions varied across fund size: 21% of those with less than $50,000 made no distribution, and 25% of those with between $50,000 and $99,000. Of donors with $100,000 to $250,000, 12% made no distribution and of those with more than $250,000, 7% did not make a distribution.[11] While charities would prefer more distributions and some funds formally require a minimum distribution, most do not, and some funds apparently discourage distributions in order to increase endowment size.[12]

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[7] (...continued)
of Philanthropy, vol. 16, issue 16, May 27, 2004.

[8] "New Guide on Donor Advised Funds Underscores Benefits of Fast Growing Charitable Giving Vehicle to Advisors and Brokers," *Business Wire,* Philadelphia, Nov. 15, 2004.

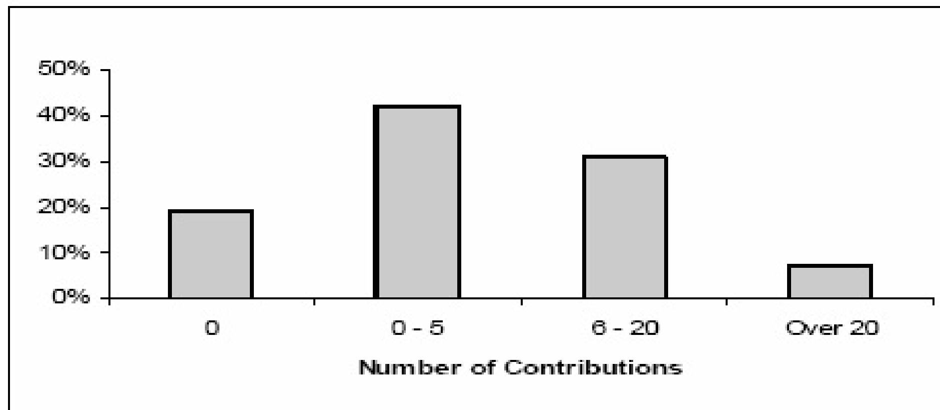
[9] The total number of funds is not known.

[10] "Number of Donor Advised Funds on the Rise," *Business First*, vol. 20, no. 37, June 4, 2004.

[11] Foundation Strategy Group, LLC. "Community Foundation Conjoint Study: Donor Advised Funds." Prepared for Council on Foundations, Sept. 15,2003, at www.foundationstrategy.com.

[12] Leah Kerkman, Nicole Lewis and Stanley Krauze, "Donor Funds on the Rise Again," *Chronicle of Philanthropy*, vol. 16, issue 16, May 27, 2004. The Greater Milwaukee Foundation is cited as one that encourages accounts to contribute no more than 5% per year.

Graph 1: Distribution of Community Donor Advised Fund Donors by Number of Contributions from Their Accounts, 2003



Source: Foundation Strategy Group, LLC.

The Fidelity fund has now become one of the largest charitable organizations in the country, ranking 7th in the most recent survey.[13] Contributions from donor-advised funds to charities are now about 10% of the size of contributions from private foundations, which in turn represent about 10% of all giving.[14]

Most donor advised funds have significant investment minimums (sometimes $10,000, or perhaps $25,000) and administrative and management fees of 1% to 2%.[15] The average amount in the Fidelity fund is about $80,000 but the median is undoubtedly considerably less. A study of donor advised funds in community foundations showed that the size of funds for any individual donor tends to be small by comparison to foundations. Eighteen percent of the funds had less than $10,000 and 58% less than $49,000. Only 3% had assets over $1 million.[16] Some plans pay an individual's financial advisors, and one article stated that some financial planners said those giving more than $10,000 a year create donor advised

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[13] Holly Hall, Leah Kerkman, Cassie J. Moore, Nicole Wallace and Brad Wolverton, "Giving Slowly Rebounds," *Chronicle of Philanthropy*, vol. 17, issue 2, Sept. 28, 2004.

[14] According the *Giving USA 2004*, published by the American Association of Fundraising Counsel in 2004, total giving in 2003 was $249.72 billion. Of that amount $179.36 billion (74.5%), was contributed by individuals, $21.60 billion (9.0%) was via bequests, $26.30 billion (10.9%) was contributed by foundations, and $13.46 billion (5.6%) was contributed by corporations.

[15] Howard W. Wolosky, "Getting Help with Your Giving," *Business Week Online*, Dec. 24, 2001, http://www.businessweek.com.

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[16] Foundation Strategy Group, LLC. "Community Foundation Conjoint Study: Donor Advised Funds." Prepared for Council on Foundations, Sept. 15,2002. Posted at www.foundationstrategy.com.

funds, while those giving more than $50,000 create private foundations. They also expected donor advised funds to become more popular in near future.[17]

Arguments Made for Donor Advised Funds

Arguments have been made as to the benefits of donor advised funds for the individual donor, but only some might be viewed as socially beneficial.[18] The benefits for donors include the simplicity of donor advised funds (especially as compared to private foundations, where the paperwork can be complex). Not only is the paperwork simpler, but the rules are more generous because they follow the rules for general charitable contributions: the limits on giving as a percentage of income are higher (50% as compared to 30%) and the limits on gifts of appreciated property as a percentage of income are more generous (30% compared to 20%). There are also no fees or limits on self dealing, no restrictions to cost basis for gifts of appreciated property that are not publicly traded stock, and no minimum distribution requirements. Donor advised funds also facilitate year end tax planning, so that an individual can increase giving at year end without deciding on the particular charity. Donor advised funds may also permit the contribution of an appreciated asset that is not divisible or publicly tradable (such as real estate) which can then be sold to benefit several recipients, thereby permitting the individual to avoid the capital gains tax that would apply were he to sell the asset and distribute the proceeds. Small charities also may not be set up to receive even property such as stock. Donor advised funds allow more privacy than private foundations. Finally donor advised funds confer a tax benefit because the earnings of funds in the account are exempt.

These private benefits do not, of course, necessarily mean that there are social benefits. One private benefit mentioned that might also be a social benefit is that funds may be held back to ensure the charity spends the money wisely, although only in a limited set of circumstances might a donor be in a better position to evaluate the use of funds than the charity. The general social case for government subsidies to donor advised funds should be that they achieve the social purpose of charitable contributions benefits, that is increasing giving. This is the position taken in the recent statement by the Independent Sector: "Over the past century, donor-advised funds have evolved as an important means of stimulating charitable contributions from a broad range of donors. Community foundations pioneered the development of donor-advised funds and such vehicles remain a vital means for donors to make philanthropic contributions today and to build endowments for long-term community needs."[19]

Thus, an important issue is whether donor advised funds increase giving, or whether they may, instead, delay giving – and what the consequences of delayed giving are. Without minimum distribution requirements it is possible to accumulate assets indefinitely in the fund, receiving a charitable contribution deduction without actually completing the charitable

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[17] Joanna Sabatini, "Donor Advised Funds Court Advisers," *Investment News*, June 21, 2004.

[18] For a listing of a number of these private benefits, see Howard W. Wolosky, "Bring Donor Advised Funds into Play: When are Donor Advised Funds the Best Charitable Giving Option?" *The Practical Accountant*, Vol. 36, no. 11, Nov. 1, 2003, p. 42.

[19] *Panel on the Non-Profit Sector Convened by the Independent Sector*, Interim Report Presented to the Senate Finance Committee, March 1, 2005.

gift. Such concerns led to minimum distribution requirements for foundations (set currently at 5% of assets). Another important issue is whether the benefits of giving, and of simplifying giving through an endowment compared to foundations, overcomes the costs of the more limited oversight of donor advised funds, which requires a consideration of the possibility for using funds for private benefit and abuse. Note also, that the same issues apply to supporting organizations which will be considered subsequently.

Analysis of the Effects of Donor Advised Funds on Giving

How do donor advised funds affect giving to charities? Since a tax benefit has been granted, one might expect giving to increase; at the same time, the nature of the tax benefit can cause giving to be delayed.

There is little or no direct evidence on this subject. A survey of donors to Charles Schwab found that, in 2002, 57% of donors reported increasing their giving while in a similar survey in 2003, 47% reported increasing giving.[20] Economists, however, are hesitant to rely on self-reported behavior, because individuals may not really know how their behavior has changed and because survey data have often been found to be incorrect. In any case, these surveys do not indicate how much giving increased, and they also indicate that about half of donors did not report increasing their giving.

The remainder of this discussion relies on economic theory and on econometric and statistical studies. Four different issues are addressed: the standard price effects on charitable giving, assymetric effects on year-end tax planning, the emerging evidence on the effects of default rules on economic behavior, and the incentives faced by commercial funds. These effects, when addressing behavior of the donor, assume those individuals do have a charitable motive and so do not address the issues of use of the funds for personal benefit, which are considered subsequently.

Standard Analysis of Price Effects.

Even if the sole motive of the individual is to provide charitable donations as opposed to other private benefits and the individual is rational and attentive to this purpose, there is an additional tax subsidy granted by the government via the ability to accumulate earnings in the account tax free that has potential consequences for giving. These behaviors are reactions to a reduction in the cost (or "price" of giving). For funds held for many years, this tax subsidy can become quite large. The tax subsidy has two basic effects, one that is beneficial to the charity although probably costing the government more than the charitable benefit, and one that may be costly to the the charity while not affecting the government. The first is the straightforward price effect for an intended future gift, and the second is the incentive to shift contributions across time.

To demonstrate these effects, consider an example with an interest rate of 7% and a tax rate of 35% (the top individual income tax rate, not taking state and local income taxes into account), and to simplify the example consider a gift to occur a year in the future for which the individual puts $100 aside. If the individual simply saves this money on his own, it will grow to $107 in a year, and a tax of 35% will be paid on the $7 in interest, leaving

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[20] Based on a conversation with Kim Wright-Violich, of Charles Schwab.

$104.50.[21] If the $100 is donated to a fund where it can accumulate tax free, it will grow to $107 because there is no tax. If the individual did not alter his original contribution, the tax revenue lost by the government from allowing the accumulation of the money in the asset would simply be transferred to the charity. The individual could, however, also decide to keep his gift fixed and simply keep the tax benefit for his personal consumption by investing only $97.71, an amount that invested at a 7% return would yield $104.50. It is also possible that the individual would set aside more than $100 because the "price" of giving $104.50 in the future has fallen from $100 to $97.71.

One would expect giving to be above $97.71 as long as there is any price response, but the extent to which it is above that amount depends on the price elasticity (the percentage change in quantity divided by the percentage change in price). If the price elasticity is less than 1, the charity's benefit will increase by less than the government's revenue loss, making tax subsidies an inefficient method of inducing spending (in the sense that the increase in gifts to charity is less than the revenue loss to the government). If the price elasticity is 1, the induced giving will be equal to the government's revenue loss. And if the price elasticity is greater than 1, the charity will benefit more than the revenue loss.

The second behavioral effect is the possibility of substitution over time. In this case, we imagine an individual giving a current gift of $100. He could, instead of providing the gift today, save through a normal taxable account, and make a contribution of $104.50 a year from now. The donor advised account, however, offers the possibility of investing in the account and contributing $107 in the future. The substitution across time effect then addresses, holding the total of $100 constant, how much would be diverted into a donor assisted account and given in a year's time. This allocation depends on a timing price elasticity.

In these illustrations, the price effect was relatively small, only 2.3% (which is also the present value of the revenue loss as a percentage of money switched to the donor advised fund from regular saving), but that is because the time period is very short. If the time period is five years, the price effect and (and present value of revenue loss) would be a reduction of 19.5%

The effect on giving depends on the price elasticity. A number of earlier studies of charitable contributions showed the price elasticity to be typically a little above one. These studies also showed the income elasticity (percentage change in giving divided by percentage change in income) to be low which seems counterintuitive (as one would think of charitable contributions as more a luxury than a necessity). However, in the course of examining other tax issues (especially capital gains) analysts became aware that the behavioral responses in these studies (using tax data) which showed people with higher tax rates making higher contributions reflect in part (perhaps in large part) timing decisions. Individuals, that is, time their contributions to be large when tax rates are high and low when tax rates are low. If

[21] The individual would also save 35% of the contribution when he donates it to charity, or $36.575. However, the value of that tax deduction will be discounted by his rate of return (1.0450) and will be worth $35, the same as if he made the $100 contribution right away and deducted it. This normal deduction would not alter any of the relative prices or behaviors. That is if the quantity of the contribution at the end of the year is fixed at its original amount, the present value of the deduction, discounted at the after tax return, is fixed as well.

people very easily shift their contributions across years, much of the observed response could be due to timing rather than a permanent overall increase in giving.

An important development in the analysis of charitable giving was a study by Randolph that used a long panel (a data set that traces the same individuals over time) that spanned tax law changes that attempted to control for this effect and separate the permanent from the transitory response. This study found a much lower permanent price elasticity (the elasticity that would govern the effect on total giving).[22] He also estimated a transitory elasticity that would also be a proxy for the timing response. (The transitory elasticity is the percentage change in contribution due to a temporary change in price.) This study also found an income elasticity above one, which many people would consider a more reasonable expectation about income effects.

The author reported two permanent elasticities. One of them, for the actual panel that was weighted towards high income individuals (i.e. over-sampled high income taxpayers), was -0.08 and was not statistically significant. This result indicates that a 10% decrease in price would lead to a 0.8% increase in giving. He also weighted the data by giving, and found a larger, significant elasticity of –0.51. For the donor-advised funds the unweighted, lower, elasticity, may be more appropriate because the donor-advised funds probably are held by higher income individuals. Or perhaps some higher value but less than the giving weighted mean would be appropriate. These fairly low elasticities suggest that the giving induced by the tax benefit would be smaller than the revenue the government loses from not taxing the accumulations in the account (induced giving would be 8% to 51% of the government's revenue loss).

A more significant effect would be to delay the contributions to charities because the transitory elasticities were much larger, ranging from -1.55 to -2.27 (the -1.55 elasticity was at the giving weighted mean corresponding to the -0.51 elasticity, and the -2.27 elasticity corresponds to the .08 elasticity). A -2.27 elasticity, for a constant level of giving, means a 10% decrease in price at a future time would decrease giving by 22.7% today and increase it by 22.7% in the future. The values are from 3 to 28 times the permanent responses.

These analyses suggest that the individuals benefit from the tax subsidy, the government, of course, loses, and the charities have offsetting effects. The charities are harmed by any delay in receipt of contributions because they now no longer have the option to spend on current programs if that is deemed more valuable than a later contribution and its accrued interest.[23] They are benefitted, although the magnitude is likely less, by the increased contributions.

The outlook for the charities looks worse, however, although the behavioral responses smaller, if one considers the offsetting effects of high management fees.[24] If these fees are

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[22] Randolph, William C., "Dynamic Income, Progressive Taxes, and the Timing of Charitable Contributions," *Journal of Political Economy.* vol. 103, Aug. 1995, pp. 709-38.

[23] For a discussion of the value of receiving donations early, reflecting the possibility of social returns to spending, see Paul J. Jansen and David M. Katz, "For Nonprofits, Time is Money," *The McKinsey Quarterly*, No. 1, 2002.

[24] The management fees may be smaller than the option of starting a private foundation at least for (continued...)

larger than fees paid for private investment in taxable accounts then the benefit of the government revenue loss is offset by higher management costs. As a result, the shifting of contributions over time harms the charities even if they would have invested the money on their own to fund future benefits, because the management fees reduce the yield. (That is, if excess management fees are 1% then the charity could receive, in our example, $107 in a year while the donor-advised fund would pay only $106.) In five years' time that difference would be $140 compared to $134.

These price effects are also smaller to the extent that individuals invest in corporate stock or other assets that appreciate (and the revenue loss is smaller as well). These earnings are subject to relatively low taxes (or no taxes if the stock itself is contributed and no dividends are paid). And currently dividends are subject to relatively low tax rates of 15% (a provision that expires in 2008 but may be extended). In this case any tax benefit may be easily offset by increased management fees. This analysis suggests that individuals who are contributing appreciating assets that yield little or no current income are probably not motivated by a desire to use the tax benefits of donor-advised funds to increase eventual giving.

A second price effect is the benefit of giving appreciated property whose receipts are ultimately intended for several charities, when the property is not easily divisible or for charities that are not in a position to accept such property. In order to make such gifts directly the property would have to be sold and capital gains tax paid. This provision, because it has a price effect, should induce more giving to the fund. It also, however, is likely to induce individuals to substitute gifts of property for gifts of cash and evidence, discussed subsequently, suggests this is the more important effect. This issue may be less important for donor advised funds than for supporting organizations because of the generally small size of most funds.

Over all, these observations suggest that charities would probably be harmed, or are not likely to benefit much, because of the donor-advised funds, even though the government may lose revenue. They also suggest, however, that these price effects may not be very important in motivating behavior.

Assymetric Year-End Tax Planning.

One of the reasons that there has been such interest in separating permanent and transitory effects of charitable contributions is the recognition that high income individuals with variable incomes are likely to time their contributions to reflect their current marginal tax rates. When tax rates are high, they wish to deduct more of their expected future charitable contributions, while when tax rates are low they wish to deduct less. This planning can be delayed until fairly late in the year if issues of income are not resolved until towards the end of the year (e.g. because of bonuses or because profits are concentrated in

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[24] (...continued)
small investors. (Administrative costs for foundations overall average only about 0.4% of asset value; see CRS Report RS21603, *Minimum Distribution Requirements for Foundations: Proposal to Disallow Administrative Costs*, by Jane G. Gravelle.) Of course if overhead costs became large enough an individual with only a charitable motive would be better off to choose neither donor-advised nor foundation status.

the year end holiday season). If the individual wishes to make a large year-end gift, in the absence of the donor advised fund or similar option, he must transmit the funds to a charitable recipient. The donor advised fund allows him to avail himself of the tax deduction without actually deciding on a recipient.

If the donor is more attentive to and aggressive about the tax benefit than the timing of the gift to charity, he might significantly delay the actual allocation of the gift once he has received the tax deduction, and, on average, charities will receive gifts later than they might if the donor had to make the distribution directly to the charity.

The Importance of Default (Automatic) Rules.

A growing body of evidence has suggested that individual behavior, even by relatively sophisticated individuals, is greatly influenced by default rules, that is, automatic outcomes if the individual takes no action. This evidence has been gathered from studies of firms' 401(k) plans. In some cases, the employee had to take action to enroll in these plans. But in some cases firms switched to automatic enrollment, so that individuals had to take actions to opt out. The basic finding of these studies is that automatic enrollment has dramatic and permanent effects on whether individuals participate in 401(k) plans. For example, in one company automatic enrollment led to almost 100% participation for employees with a one-year tenure, but if the employee had to choose to participate, the enrollment was less than 40%. Enrollment rates tend to rise with tenure, but even with four years of tenure, rates without automatic enrollment tended to be only about 60%.[25] There is reason to believe that some of this difference simply reflects procrastination.[26]

If individuals (or some individuals) are strongly affected by defaults, then donor-advised accounts may, once opened, tend to lead to money simply being retained in the funds, as long as there are no requirements to take any type of action. Such behavior will defer and reduce the receipt of these contributions by charities, without increasing the level of giving.

The Incentives of Commercial Funds.

Commercial firms' fees depend on assets, and therefore there is an incentive for these entities to maximize the amount of assets in these funds. Indeed, when the funds started up there was considerable concern that funds would accumulate, making little or no payments to charities. The fact that these funds are distributing about a fifth of earnings does not mean that they are not discouraging, or at least failing to encourage, individuals to distribute benefits to charities. There is no incentive for the firm to encourage or remind donors to suggest contributions to charity.

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[25] Choi James J., David Laibson, and Brigitte Madrian, "Plan Design and 401(k) Savings Outcomes," *National Tax Journal,* vol. 67, June 2004, pp. 275-298 provide updated estimates and a review of the studies.

[26] The other reason could be that employees take the default as implicit financial advice. Such a view does not seem especially persuasive since firms do offer these plans. In addition, there is evidence that simply forcing a decision (requiring employees to choose actively to participate or not participate) leads to greater enrollment.

The Use of Funds for Private Benefit.

The final attraction of donor advised funds is that they may confer a private benefit on individuals even absent the general tax benefits. Donors who have large accumulated sums in their accounts may enhance their social status in a community – and indeed one common aspect of many types of charitable fundraising is to personalize the contribution (e.g. by allowing funding of particular items in memory or honor of a person). Thus, in general, one of the concerns is that these funds may be used largely to accumulate a large amount of assets that are potentially available to charities but are not actually distributed (parking assets).

But there is a more direct potential use of funds for private benefit which, while perhaps not common, is more freely available to these funds than to foundations. These involve potentially legal actions because there are no self dealing restrictions. Some of these activities have been discussed in recent hearings before the Senate Finance Committee. For example, the Commissioner of Internal Revenue mentioned using funds for personal purposes including school expenses for the donor's children, payments for volunteer work of donors for charities, and loans to the donor.[27] Another witness discussed not only the use of funds to pay compensation for salary and expenses associated with working for the charity, but also the use of funds to pay adoption expenses, private school tuition, family vacations, and swimming pools.[28] Some of these examples can be found advertised on Internet sites. Payment of tuition and costs of family reunions is mentioned in a recent article.[29] And another article discusses the fees paid to donors' private financial advisors as an issue of concern.[30] Finally, one article chronicles the use of a donor advised fund set up in Arizona, which lent, via a for-profit fund set up by the same businessman who set up the donor advised fund, money in the risky real estate market, as well as investing in real estate partnerships. Eventually the developer went bankrupt and the fund had to foreclose on undeveloped land. The founder of the fund made significant profits along the way before ending the arrangement.[31] The Internal Revenue Service listed the contribution of property to supporting organizations and donor advised funds while still retaining control of it as one of its "dirty dozen" notorious tax scams.[32]

Another issue that has emerged is an activity called "roundtripping" where the donor advised fund contributes to a foundation and the foundation then makes a contribution to the donor advised fund, which satisfies the foundation's minimum distribution requirement.

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[27] Statement of Mark W. Everson, Commissioner of Internal Revenue, Charitable Giving Problems and Best Practices, Committee on Finance, U.S. Senate, June 22, 2004.

[28] Testimony of J.J. MacNab, Charity Oversight and Reform: Keeping Bad Things from Happening to Good Charities, Committee on Finance, U.S. Senate, June 22, 2004.

[29] Brad Wolverton, "Rethinking Charity Rules," *Chronicle of Philanthropy*, July 7, 2004, p. 31.

[30] Debra E,. Blum, "Fees Paid to Donor's Financial Advisors Stir Debate in Philanthropic World," *Chronicle of Philanthropy*, Nov. 16, 2000.

[31] Harvey Lipman and Grant Williams, "A Risky Mix for Charity," *Chronicle of Philanthropy*, vol. 14, issue 15, May 15, 2002.

[32] IRS Announces the 2005 Dirty Dozen, IR-2005-19, Feb. 28, 2005.

Supporting Organizations

Supporting organizations, like donor advised funds, can make contributions that accumulate before being paid out like private foundations. They are treated similarly to donor advised funds for tax purposes: contributions are deducted when made, and the rules affecting private foundations, including minimum distribution requirements and self dealing restrictions, do not apply.

Supporting organizations are often associated with a particular charity and usually involve much larger minimum amounts (often $500,000 or $1 million).[33] They were formally recognized in the tax law in 1969, when a number of restrictions affecting private foundations were enacted, but organizations serving these functions were already in existence. A familiar example might be a boosters club for a school.

There are three types of supporting organizations. In types I and II either a majority of the board is appointed by the supported charity or charities, or the majority of the board of both the charity (or charities) and the supporting organization are appointed by a third party. A type III does not have a majority of the board representing the charity but has to have a number of specific connecting rules. The family or donor can appoint the board, and serve on it, but cannot control the majority of the board. The supported charities must have a significant voice, and the assets of the supporting organization must be used for the supported charity. Supporting organizations can support more than one charity and may also support community foundations who direct funds to many charitable purposes. There are many technical rules, but in general these rules for type III organizations potentially permit a lot of control by the donor and they do not have the check of a charity determining the policy. They bear, in some respects, a resemblance to donor assisted funds, in that the donor does not have technical, legal control but may have effective control.

Supporting organizations overall are much more significant than donor advised funds. In 2001 there were almost 400 supporting organizations with assets over $50 million, with assets totaling $76.7 billion.[34] In 2004, there were 45,453 supporting organizations associated with public charities according to the National Center for Charitable Statistics. Since the minimum asset size for a supporting organization ranges from $500,000 to $1,000,000 the smaller supporting organizations may account for a significant amount of assets.[35]

A study of supporting organizations of community foundations indicated that supporting organizations had been growing rapidly: in the entire 1980's 46 were established, while in 1997 and 1998, 92 were established.[36] The study also found that assets of supporting organizations of community foundations accounted for $3.2 billion in assets in 1998, a 50%

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[33] Kristi M. Mathisen and Daniel M. Asher, "Deferred Charitable Giving Options, *The Tax Adviser*, vol. 35, no. 4, Oct. 1, 2004, p. 602.

[34] Tax return data gathered by the Urban Institute, National Center for Charitable Statistices..

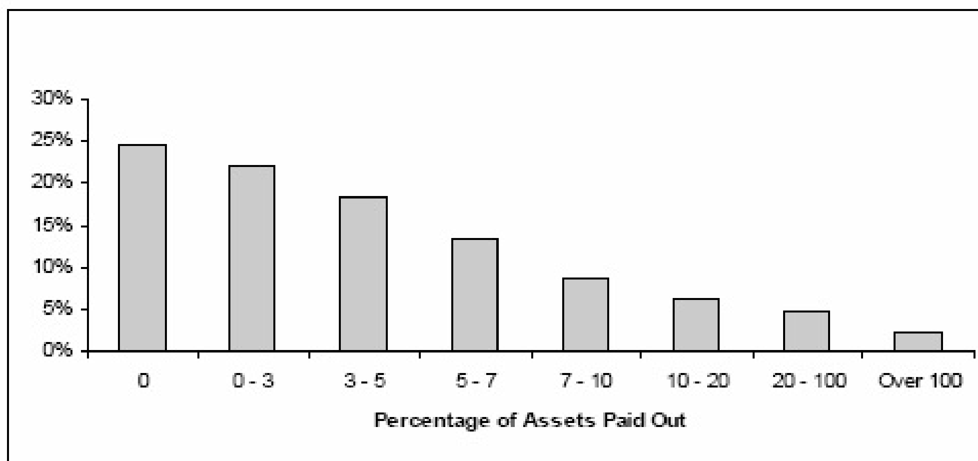
[35] http://nccsdataweb.urban.org/PubApps/profileStateList.htm

[36] Debra E. Blum, "Community Foundations See Sharp Growth in Assets," *Chronicle of Philanthropy*, Nov. 18, 1999, p. 15.

increase over two years. Most of the assets of these organizations ranged from $1 million to $50 million.

In 2001, the average distribution for the almost 400 organizations with assets over $50 million as a percentage of assets was 8.9%.[37] As shown in **Graph 2**, out of the total, 25% had no payout, 22% had positive payout but less than 3% and 18% had payouts of 3% to 5%. Overall, 65% had either no payout or payouts less than 5%. Most of these organizations, therefore distributed less than the minimum requirement for foundations. There is no way to determine the extent to which these were Type I, Type II or Type III organizations.

Graph 2: Percentage of Large Supporting Organizations with Varying Shares of Assets Paid out in Contributions, 2001



Source: National Center for Charitable Statistics

Supporting organizations that permit much more direct involvement of the donors and that can be controlled indirectly by the donor may be more susceptible to large scale business-related abuses such as self-dealing than are donor advised funds. An interesting website that outlines a series of benefits to community supporting organizations is Creative Asset Protection Strategies (www.capstrategies.com). This website spells out how these organizations can make loans, invest in the donor's business, may be co-owner of a title holding corporation which may hold real estate and collect income, pay normal management and other expenses, and may sell to the principal donor. The web site states: "Community Support Organizations (CSO) should be the centerpiece of every financial plan. CSOs offer tax advantages and flexibility of use that are not available through any other form of domestic or offshore planning vehicle."

There are also possibilities for donating assets and buying them back at a discount. Most of these activities are technically illegal (or arguably illegal) but may be difficult to detect.

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[37] There was no apparent trend with respect to size, as the average payout ratio counting each firm's payout ratio equally was 8.4%.

A recent study examined a data file searching for organizations where large loans were made. This study found 18 cases among supporting organizations of loans made to organization directors of $100,000 or more and 10 cases where the loans account for more than half of each groups' assets.[38] However, of those organizations, eight were established by a single individual. For seven of those organizations, the founders contributed $3.1 million and borrowed back $2.5 million.

The issues surrounding supporting organizations are similar to those with donor advised organizations, namely whether regardless of the attraction to donors these organizations serve a social purpose. Supporting organizations, like other donor advised funds, may increase their giving because of the tax benefits allowed. The evidence from statistical studies, as noted above, suggests that the more powerful behavioral effect may be to delay contributions as opposed to increasing them. Indeed, based on the statistical estimates cited above, the argument might be made more strongly with supporting organizations, where the individuals are more heavily concentrated among higher income classes, and where the response of total giving was negligible and the transitory timing response very large. These issues may arise with any supporting organization but is more serious with Type III organizations. Supporting organizations also offer much more potential scope for abuse, at least for the Type III form, and a ready substitute for these organizations may be found in Type I and Type II forms.

One policy issue surrounding supporting organizations is whether to focus primarily on Type III organizations, since Type I and II organizations bear a closer resemblance to ordinary charities and one might rely on oversight by the charities to ensure reasonable payouts and limit self dealing. Of course, the donor may still have considerable influence if the directors appointed by the charity are concerned that making decisions not supported by the donor will affect future contributions to the supporting organizations. Type III organizations bear a more explicit resemblance to donor advised funds (and indeed could use a donor assisted fund to accumulate assets), but the direct involvement in day to day operations facilitates the attainment of private benefits.

Gifts of Appreciated Property

The third major topic discussed in this memorandum is the treatment of gifts of appreciated property. This issue is tied to the benefits of donor advised funds and supporting organizations, since one of the benefits of these organizations is to permit individuals to contribute gifts of appreciated property other than publicly traded stock and take a deduction for the market value. (Contributions of these gifts to private foundations is limited to the cost basis for these assets).

Non-cash contributions are a significant part of giving, accounting for about a quarter of gifts of itemizers. The shares by income class and distribution of each type of giving are shown in Table 1. While there is no way to separate gifts of appreciated property from other

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[38] The results of the study are reported in Harvey Lipman,and Grant Williams, in two reports: "Donors Set up Grant Making Groups, Then Borrow Back Their Gifts," and "One Utah Lawyer Helped Create 8 Groups that Lent Money to Donors or Officers," *Chronicle of Philanthropy*, vol. 16, no. 8, Feb. 5, 2004.

gifts (such as used clothing, furniture, automobiles, etc.), the shares in the higher income levels are most likely appreciated property.

This table demonstrates that the share contributed in property goes up as the income level rises, with individuals with more than $10 million of income providing half their contributions in property – or twice as much as the average. Taxpayers with adjusted gross income over $1 million account for about 18% of cash contributions by itemizers, but account for 40% of property transfers.

The associated issue, which extends beyond the issue of donor advised funds and supporting organizations, is the problem of valuation of appreciated assets, such as stock in closely held firms and real estate, where data on asset values are not publicly available.

There is also no way to separate publicly traded stock from other property such as real estate and closely held stock. However, we may develop some notion of how important property that is not publicly traded is by looking at the ratio of closely held assets and real estate (excluding the personal residence) and business property to the total of those assets plus publicly traded stocks in estates, which is about 45%.[39] These data suggest that assets other than publicly traded stocks are a significant share of assets of high income individuals and therefore may be a significant share of assets given away.

Table 1: Shares of Cash Versus Non-Cash Giving, Returns with Itemized Deductions, 2002

Adjusted Gross Income ($thousands)	Share of Cash Giving	Share of Non-Cash Giving	Non-Cash Giving as a Percent of Total Giving
<50	18.8	12.0	17.6
50-100	30.8	20.8	18.5
100-200	19.4	15.7	21.3
200-500	10.1	9.4	23.7
500-1,000	4.1	4.7	27.8
1,000-5,000	5.1	8.8	36.6
5,000-10,000	4.8	9.6	40.0
>10,000	6.9	21.2	50.5
Total	100.0	100.0	25.0

Source: Internal Revenue Service, Statistics of Income

[39] Internal Revenue Service, Statistics of Income, Estate Tax Returns, 2003.

The contributor of an appreciated asset receives a benefit that is greater than a contribution of cash. Essentially, the donor receives two benefits: a charitable deduction, and also does not have to pay capital gains taxes. This benefit has fallen over the years mainly because the capital gains tax rate has fallen. Under the current tax rate of 15%, and assuming the asset is properly valued, the additional benefit for a 35% taxpayer compared to a cash contribution is up to 43% more (15/35). If the donor is able to increase the valuation of the property, the benefit is even greater. Despite requirements for obtaining appraisals, it is very difficult for the government to monitor the valuation of assets that are not frequently traded, and charities have no reason to reject an undervalued gift (unless it is virtually worthless and costly to maintain or dispose of).

As with other issues of charitable giving, one issue is whether allowing these beneficial treatments for regular charitable giving, including donor advised accounts and supporting organizations, encourages more giving or perhaps harms charities by shifting giving to assets, assets that may be in some cases difficult to deal with because they are not readily marketable. A recent statistical study estimated that the response of individuals to a benefit favoring non-cash over cash giving was very elastic, similar to the substitution across time.[40] This study estimated a variety of specifications, with elasticities well in excess of one (the most typical value was around 2, which is quite similar to the transitory elasticity). If so, the main effect of the beneficial treatment of appreciated property is likely to be a substitution of property for cash.

Gifts of appreciated property can be used in many ways to obtain private objectives. Consider several types of advice given on a university's web site about how to benefit from giving appreciated property.[41] For publicly traded securities, the individual can give the appreciated securities, and then repurchase the same securities in the market. As compared to a cash gift, this approach allows the avoidance of capital gains earned up until that time. Thus the donor will have the same portfolio as before, but stock with a higher basis. (If the securities have losses, the securities should be sold by the individual, and the cash donated, so the individual can take a loss). The website also describes the possibility of donating closely held stock and then selling it back to the corporation (after all, there is no other market) who then retires it, leaving the donor still in control of the company. This approach allows the avoidance of capital gains taxes, which can be very large for a company one founded where the basis is zero.

Certainly one of the most difficult problems is the valuation of property for which there is not an established price. Closely held stock, of course, really has no other market, and the value of real estate and other property can only be estimated. Taxpayers have an incentive to overstate the value so as to maximize the tax deduction, and the charity has little incentive to dispute the value as long as the gift does have some value.

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[40] David H. Eaton and Martin I. Milkman, "An Empirical Examination of the Factors that Influence the Mix of Cash and Non-Cash Giving," *Public Finance Review*, vol. 32, no. 6, Nov. 2004, pp. 610-630.

[41] See http://www.givingto.msu.edu/pgaol/html/appreciated_securities.htm, part of the website of the University of Michigan.l

Policy Options

Aa variety of policy options might be considered to address the issues discussed in this memorandum, including the effect of donor advised funds and supporting organizations in delaying the receipt of funds by charities, the potential abuses of the tax provisions discussed including using tax deductible contributions for private benefits and overvaluing stocks. This section discusses some general policy options, including those by the Senate staff discussion draft[42] and the Joint Committee proposals.[43]

Donor Advised Funds

For donor advised funds, one could simply ban these forms of charitable giving, keep the form of the fund with its non-tax attributes but eliminate the tax benefit (by taxing the earnings in the fund and allowing a charitable deduction only for distributions). Or one could provide a more limited number of revisions. One could impose the rules associated with private foundations (including the minimum distribution requirement, rules against self dealing, and excise taxes).

Senate Staff Discussion Draft.

The Senate staff discussion draft presents some more limited provisions that keep most of the tax benefits intact. First, and importantly for both donor advised firms and supporting organizations, would be to apply self dealing rules of foundations to all charities. (Self dealing involves selling property, lending, etc. and other involvements with disqualified persons, who are generally trustees, directors, substantial donors and the relatives of these individuals.)

For donor advised funds in particular, the staff discussion draft proposes a 5% minimum distribution requirement, but this minimum is imposed on the fund in general, and not on the individual donor account. As the data indicate, of the bigger funds, most already satisfy this rule. Of the 88 funds with data on both assets and distributions in 2003 surveyed by the Chronicle of Philanthropy, only 5 had payout ratios below 5%. If the requirement were applied to individual accounts, the effects would be more significant (as noted earlier, in a community foundation survey, 19% of accounts had no distribution, and of the remainder some may have distributed less than 5%). This provision may also affect smaller donor advised funds that are not listed in the survey.

A related provision would be to provide some minimum activity threshold. The specifics are not detailed, but such a provision would address the problem of dormant accounts, where the money is deposited and no other action taken. A minimum activity threshold and/or a minimum distribution requirement per account might deal with some of the economic issues related to procrastination and year end tax planning discussed above, as well as limiting, to some extent, the magnitude of shifting across time. A per fund minimum

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[42] *Tax Exempt Governance Proposals: Staff Discussion Draft*, posted at http://www.senate.gov/~finance/sitepages/2004HearingF.htm/hearings2004.htm.

[43] *Options to Improve Tax Compliance and Reform* , Joint Committee on Taxation, JCS-02-05, Jan. 27, 2005.

distribution requirement would require the affected funds to take some actions with respect to their donors and accomplish some of the same results, although the effects would be more limited.

Another proposal is either to require gifts other than cash or publicly traded securities to be sold within a year (and a plan for sale to exist at the time of the contribution), or, instead, to prohibit donor advised funds from receiving property other than gifts of cash or publicly traded securities. The stronger form of this rule would eliminate the valuation problem for donor advised funds (an alternative would be only to allow deduction of the basis as in the case of private foundations, which would simply make these assets unattractive to give to the funds). If the revision were limited to requiring sale, valuation problems could still arise (but would be much easier to detect), but the asset could not be parked in the fund for a long time.

A series of provisions are aimed at the potential use of the fund for private benefit and abusive practices (in addition to extending self-dealing rules to these funds). A fund would not be permitted to make grants to a non-operating private foundation or to individuals (which would prevent some of the abuses discussed above as well as roundtripping). Also private foundations could not contribute to donor advised funds, part of the roundtripping issue, but also to prevent donor advised funds from allowing foundations to effectively avoid a real pay out requirement. Also the fund could not spend money on selecting the grantee, such as site visits, that extend beyond basic due diligence. (Such a provision should prevent, for example, the fund paying for the donor and family to snorkle the reefs of Cozumel to ascertain the degree of reef damage before providing a grant for reef restoration). A fund would be required to secure from the recipient of a distribution acknowledgment that the donor will not benefit. A fund would be required to disclose its form and satisfaction of rules on its 990 form. Grants to nondomestic organizations would be permitted only if these organizations appear on an approved IRS list. Investment managers would be hired according to arm's length principles and fees for referrals or transfers of funds to a donor advised fund would be limited.[44] All of these provisions are likely to limit the abuses associated with donor advised funds.

The Joint Tax Committee report does not include provisions directed specifically to donor advised funds.

Supporting Organizations

There are a variety of potential approaches to dealing with supporting organizations. These include deferring the tax deduction until distributions are made to chariti8es and taxing earnings (eliminating the tax benefits), applying foundation rules, or applying some or all of the rules similar to those proposed for donor advised funds. At issue, as mentioned earlier, is whether to focus on all supporting organizations, or type III organizations.

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[44] A clarifying provision would state that grants would be permitted to satisfy a donor's charitable pledge, i.e. that this is not a private benefit.

Senate Staff Discussion Draft.

As noted above, the Senate staff discussion draft applies self dealing rules to all charities, which would, of course, include all types of supporting organizations.

The Senate staff discussion draft proposes eliminating Type III organizations. Type III organizations are perhaps the most likely to engage in abusive practices since there is no oversight by the charity. Type III organizations could retain tax benefits, either by adopting Type I and II rules, or, especially if they wish to support a number of charities, by using the donor advised fund approach (which would, of course, now become somewhat more restrictive) or becoming private foundations.

The Joint Tax Committee proposal has no provisions on supporting organizations.

Gifts of Appreciated Property

One could eliminate the special tax benefits for gifts of appreciated property by allowing only the basis to be deducted. As a result, the best option for the donor would be to sell the property and donate the cash (the benefits of the charitable deduction for value in excess of basis would exceed the capital gains tax due), or donate cash in lieu of the property. Charities might benefit from this rule assuming the effect on total giving was small (although gifts of publicly traded securities are easy to deal with) because of the shift in form. However, since capital gains are not taxed at death, there might be an incentive to shift to a bequest, which could be significant because it is a timing benefit. (The 2001 tax act, which repeals the estate tax, has a provision for taxing capital gains held until death, but with a very large exemption. Also, technically the provisions expire after 2010, although many expect them to be made permanent.)

Senate Staff Discussion Draft and Joint Tax Committee Proposals.

An alternative would be to focus on the valuation problem. Currently donations to foundations allow only basis deductions for property other than publicly traded securities and the staff proposal discusses the possibility of extending that treatment to donor assisted accounts. The Joint Tax Committee proposals would allow only basis deduction for these non-publicly traded assets for all purposes, an approach that would eliminate the problem entirely.

One could also have a look back provision by requiring the charity to sell the asset immediately (or within a year) and any valuation would have to be consistent with that sales price – the same sort of approach used in the recent treatment of donated automobiles.

The Senate staff proposal has an alternative approach, mandatory final offer arbitration over valuations (also referred to as baseball arbitration). In final offer arbitration each party proposes a solution and the arbitrator can only pick one offer (i.e., he cannot choose an intermediate position). There is an extensive economics literature on final offer arbitration,

but basically it suggests that the parties will be more likely to negotiate a solution because of the risk of having the other party's offer chosen.[45]

The proposed arbitration system has some aspects that might lead taxpayers to avoid claiming excessive valuations. First, the final offer for the taxpayer will be amount claimed on his tax return. Secondly, the IRS examiner will see the taxpayer's valuation which, assuming there is some evidence on the value, would allow the IRS to usually pick a winning offer in circumstances where the taxpayer has greatly over valued the asset. The IRS would be in the position to propose a solution that understates the value, because this value will still be more reasonable than the taxpayer's more excessively inflated offer. This plan should not only encourage the taxpayer who is being audited to settle, but also encourage taxpayers to claim reasonable valuations for fear of having to face this situation.

Other Proposals

Senate Staff Discussion Draft.

There are a number of other proposals in the staff discussion draft that in many cases would affect the organizations and issues discussed in this memorandum. These proposals are in response to general concerns about abuses of non-profit organizations and donors, although some are targeted to specific groups (private foundations, credit counseling agencies, and conversions of non-profits, such as hospitals, to profit status).

They include some general monitoring and anti-abuse provisions such as IRS review of exempt status every five years, rules for credit counseling groups (nonprofit credit counseling groups have come under scrutiny), and revoking the charitable status of an organization that participates in certain tax shelters.

For foundations, the draft proposes expansions on self dealing rules (most of which would extend to charities) including expanding a disqualifying person to include a corporation or partnership where the disqualified person is of substantial influence, and increasing taxes for self-dealing. For private foundations, the discussion proposes disallowing or limiting payments to trustees, restricting compensation to disqualified persons, requiring submission of information on administrative expenses, and disallowing administrative costs in excess of 35%. Foundations that pay out more than 12% would not have to pay excise taxes.

Charities' expenses for travel meals and accommodations subject to standard rate (government or private) applies to all charities, but those other than foundations would not be affected if disclosed on tax forms and approved by the board.

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[45] A risk averse person would prefer no payment to a payment that represented a 50% chance of receiving $100 to a 50% chance of losing $100. For papers that discuss final offer arbitration see Richard Sansing, "Voluntary Binding Arbitration as an Alternative to Tax Court Litigation," *National Tax Journal*, vol. 50, June 1997, pp. 279-296 and Philip A. Miller, "A Theoretical and Empirical Comparison of Free Agent and Arbitration-Eligible Salaries Negotiated in Major League Baseball," *Southern Economic Journal*, vol. 67, July 2000, pp. 87-104.

Conversion from nonprofit to profit status would require IRS review and approval; without approval (or lack of disapproval within a year) the highest rate of tax would apply to unrealized gains. The proposal would also establish reporting requirements and modified self dealing rules for converted organizations.

States would be provided with authority to review tax exempt organizations.

Several proposals are made to improve scope and quality of tax and financial documents such as requiring the signature of the CEO, increased penalties for failure to file accurate and timely tax documents, perhaps requiring electronic filing, standards for filing, independent audits, enhanced disclosure of financial forms and certain tax data, and more disclosure of corporate charitable contributions on their tax returns.

Finally there are proposals to encourage strong governance and best practices, proposals for IRS accreditation, prudent investor rules, provision of funding, and additional powers for the tax courts.

Joint Committee on Taxation.

The Joint Committee on Taxation proposal also has a number of provisions other than the proposal discussed earlier to limit the deduction to basis for property contributed other than publicly traded securities.

The Joint Committee on Taxation study discusses some of the same or similar provisions as in the Senate draft: the five year review of status, extending some self-dealing restrictions to organizations converting to profit status, public disclosure and certification changes, and restrictions on credit counseling agencies.

It would also increase a range of excise taxes including some on private foundations, impose a termination tax on charitable assets converted to non-charitable uses, impose a series of additional (fairly technical) restrictions on foundations, impose an entity level tax and suspend some benefits for participation in tax shelter transactions, modify the rules on contributions of facade and conservation easements, limit deductions for clothing and household items to $500 per year, expand the base of the investment income of foundations (to conform the tax code with Treasury regulations and include capital gains), and allow tax exemption for fraternal beneficiary societies only if providing insurance is not a substantial part of their business.