

# Donors To Donor Advised Funds Beware

By Leanne Broyles

A recent case in the US District Court for the Northern District of Texas upheld the IRS's denial of a charitable deduction stemming from the donation of interest (1) in a Limited Partnership. The partnership donated to a Donor Advised Fund violated the contemporaneous written acknowledgment ("CWA") requirement for donations to Donor Advised Funds. (2)

The IRS denied the charitable deduction by written notice stating the taxpayers "did not have [a contemporaneous written acknowledgment ("CWA")] from the donee organization showing that the donor-advised fund "has exclusive legal control over the assets contributed." (3) On two separate occasions, the Donor Advised Fund sent to the taxpayer a packet titled "Keefer Donor Advised Fund", stating the taxpayer hereby transfers an irrevocable gift to the Fund and provided the Fund Procedures for the Operation of Donor Advised Funds, detailing the Funds control over the assets. Also, the Donor Advised Fund sent a letter to the taxpayer acknowledging the donation. The taxpayer argued that the packet should be considered a CWA and/or that the packet and the Acknowledgement should be read together to satisfy the CWA requirements.

The Court refused to read the Packet alone as a CWA because the Assignment of the limited partnership interest did not occur until June 18, 2015, meaning that when the Packet was issued, the donation was neither complete nor legally required to occur, and a CWA must "acknowledge a completed contribution or one legally required to occur." Also, the Court refused to read the Packet as supplementing the September 9 acknowledgment letter because the two documents did not reference each other, leaving the Court with no basis for incorporating both.

This case highlights the pitfalls that can occur when making a high-dollar charitable donation without proper financial and legal advice.

Subparagraph B requires in the relevant part that a CWA state:

(1) "The amount of cash and a description (but not

value) of any property other than cash contributed and

(2) Whether the donee organization provided any goods or services in consideration, in whole or in part, for [the donated property.] Id. § 170(f)(8)(B) (i-ii).

A donation to a donor-advised fund must also comply with §170(f)(18), which requires: "A deduction . . . for any contribution to a donor-advised fund . . . shall only be allowed if . . . the taxpayer obtains a [CWA] (determined under rules like the rules of paragraph (8)(C)) from the sponsoring organization . . . of such donor advised fund that such organization has exclusive legal control over the assets contributed."

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