

# CHARITABLE GIVING IN A CHANGING WORLD

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1

## Charitable Giving Issues and their Tax Implications

- Donor Control and What Is a Gift?
  - Should we allow donors to choose “their” scholarship recipients?
  - What limits should we place on donor input into use of gifts?
  - How do tax rules governing deductibility interact with institutional policy and considerations?
- Interfacing with Donors
  - How can gift receipt practices support or endanger donor deductions?
  - Are we handling Forms 8283 and 8282 correctly?
- Institutional Impacts
  - Will the new DAF regulations impact our institution?
  - Where do sponsorships raise UBTI risks?

2

## Differing perspectives

### University GC Office

- Gift Acceptance Policies (GAP) advice
- Gift Agreements and trust instruments, e.g., templates and guidance when off-template for donor-requested modifications, restrictions, preferences
- Gift receipts and acceptance agreement review
- Interaction with donors to support Development Officers

### Outside tax advisor

- Tax implications of accepting gift
- Maintaining donor relationships
- Quid pro quo letters
- Donor acknowledgment letters
- Forms 8283
- Forms 8282

### Public University GC

- Working with affiliated Foundation, maintaining separateness
- State AG as statutory counsel
- Government relations
- State ethics laws

## Tax is not Accounting is not “Counting”

- Tax:
  - Is it deductible for the donor?
  - Could it give rise to UBTI for the institution?
- Counting: What counts toward our fundraising goals and when?
  - CASE Guidelines
  - Campaign Counting Guidelines
- Accounting: What is revenue or an asset for accounting purposes might be different for tax or counting purposes?
  - Note further differences between GAAP and GASB institutions
- For example:
  - Donation of services
  - Seating rights

# WHAT IS A GIFT AND WHAT IS NOT?

Donor Control, Gift Completion, and Deductibility

5

## What is a tax-deductible charitable contribution

- The complete and irrevocable transfer of money or property by a competent Donor to a qualified donee without adequate consideration. IRC 170.
- Essential elements: (1) competent donor; (2) qualified donee; (3) donative intent; (4) donor transfer of title ownership and possession; (5) acceptance by donee. *US v. Amer. Bar Assoc.*, 477 US 105 (US Supreme Court, 1986).
- Donor motivated by detached and disinterested generosity. *Dubenstein*.
- Donor return benefit or quid pro quo, other than token items, reduces and offsets the available charitable contribution deduction. 1.170A-1(h)(2)/IRC 6115.

6

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