

Donor Advised Funds



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A donor advised fund generally is a fund or account that is sponsored by a public charity and with respect to which the donor or someone whom the donor designates can advise on distributions or investments.¹ A donor can potentially make a contribution to a donor advised fund, claim an income tax charitable deduction for the contribution in the year in which the contribution is made, and recommend distributions from the fund (typically to public charities) over time.

Contributions

A donor can generally contribute cash or other property to a donor advised fund. The sponsoring organization (i.e., the public charity sponsoring the donor advised fund) may impose limitations or conditions on contributions. For example, a sponsoring organization may be willing to accept shares of a privately held corporation only if it seems likely the shares will be sold within some period of time or only if the sponsoring organization has the right to initiate or participate in a sale of the shares. The sponsoring organization owns and controls the cash and other property contributed to a donor advised fund.²

A donor generally can deduct contributions to a donor advised fund to the same extent that they can deduct contributions to other

public charities. An individual can generally deduct cash contributions to a donor advised fund up to 60% of their adjusted gross income.³ An individual generally can deduct non-cash contributions to a donor advised fund up to 30% of their adjusted gross income, so long as the individual has held the property for more than one year and the property isn't tangible personal property.⁴ (More precisely, these percentage limitations are based on the donor's contribution base, which is the donor's adjusted gross income calculated without regard to any net operating loss carrybacks.⁵) To the extent a donor's contribution exceeds the amount deductible under the percentage limitations, the donor can carry the excess contribution forward for up to five years, potentially enabling the donor to deduct some or all of the excess contribution in a year after the year of the contribution.⁶

A donor who wishes to claim an income tax charitable deduction for a contribution to a donor advised fund must properly substantiate the contribution. The donor generally must obtain a receipt.⁷ For a contribution of property (other than publicly traded securities) having a value of more than \$5,000, the donor generally must obtain a qualified appraisal.⁸ The donor must obtain the receipt and appraisal before filing the income tax return on which they claim the income tax charitable deduction.⁹

¹ IRC § 4966(d)(2).

² IRC § 4966(d)(2)(A)(ii).

³ IRC § 170(b)(1)(G)(i).

⁴ IRC §§ 170(b)(1)(A) and (1)(C).

⁵ IRC § 170(b)(1)(H).

⁶ IRC § 170(d)(1).

⁷ IRC § 170(f)(8)(A).

⁸ IRC § 170(f)(11)(C).

⁹ IRC §§ 170(f)(8)(A) and (11)(C).

Distributions

A donor or someone whom the donor designates (sometimes called a “donor advisor”) usually may advise on distributions from a donor advised fund.¹⁰ A donor potentially can designate one or more family members as donor advisors or successor donor advisors. Neither a donor, a donor advisor, nor a family member of a donor or a donor advisor may receive compensation for advising on distributions from a donor advised fund.¹¹

Distributions generally are made to public charities. (A public charity is a tax-exempt charitable organization (i.e., a 501(c)(3) organization) that isn’t classified as a private foundation.¹²) A donor advised fund may make distributions only for charitable purposes, and it can’t make distributions to individuals.¹³ A sponsoring organization, however, is subject to heightened regulatory obligations when making distributions from a donor advised fund to anyone other than a public charity.¹⁴ Accordingly, many sponsoring organizations won’t permit distributions to persons other than to public charities.

A donor generally cannot receive any benefit by reason of a distribution.¹⁵ For example, a distribution generally can’t be made for purposes of buying a ticket enabling a donor to attend or participate in a charity-sponsored event.¹⁶ A distribution to a charitable organization to a donor has made a pledge is generally okay

so long as the sponsoring organization doesn’t mention the pledge when making the distribution, the donor doesn’t receive any benefit because of the distribution, and the donor doesn’t attempt to claim an income tax charitable deduction with respect to the distribution.¹⁷

Investments

A donor or a donor advisor usually may advise on the investment of the assets in the fund.¹⁸ A donor potentially can designate one or more family members as donor advisors or successor donor advisors. Neither a donor, a donor advisor, nor a family member of a donor or a donor advisor may receive compensation for advising on the investment of assets in a donor advised fund.¹⁹

If the donor contributed an equity interest in a business in which the donor and certain related parties own interests, some or all of the interest held by donor advised fund may have to be sold or otherwise disposed of within five years after the contribution.²⁰ The sponsoring organization can request one or more extensions (which aren’t automatically granted), but the disposition period can’t be extended beyond ten years after the contribution.²¹

Taxation of a donor advised fund

A donor advised fund is generally exempt from income tax.²² It generally won’t incur any tax upon the sale of assets that it receives as a contribution from a donor. To the extent a donor advised fund has income that is subject to the unrelated business income tax,

however, the sponsoring organization may be subject to tax.²³ The unrelated business income tax may apply if a donor advised fund has income from a trade or business, has income from debt-financed property, or owns share of an S corporation.²⁴ (An S corporation is an entity that’s classified as a corporation for federal tax purposes and elects to be taxable as an S corporation.²⁵) Some sponsoring organizations won’t accept contributions of property that would cause it to be subject to the unrelated business income tax. Some may accept the contribution but allocate any taxes to the donor advised fund to which the contribution was made.

Privacy

With a donor advised fund, a donor can potentially maintain privacy while fulfilling their philanthropic goals. A donor’s contributions to a donor advised fund aren’t subject to public disclosure. In addition, a distribution from a donor advised fund ordinarily can be made without identifying the donor, any donor advisor, or the donor advised fund to the recipient of the distribution.

Additional reading

For a more in-depth discussion of donor advised funds, see Rebecca Sterling, *Donor Advised Funds and Private Foundations* (a publication of the UBS Advanced Planning Group). For a more in-depth discussion of charitable giving, see David Leibell and Nicole T. Sebastian, *Charitable Giving: Rules of the Road* (a publication of UBS Family Office Solutions, UBS Advanced Planning Group, and UBS Family Advisory and Philanthropy Services).

¹⁰ IRC § 4966(d)(2)(A)(iii).

¹¹ IRC § 4967(a)(1).

¹² See IRC § 509(a).

¹³ IRC §§ 4966(c)(1) and (c)(2).

¹⁴ IRC § 4966(c)(1)(B)(ii).

¹⁵ IRC § 4967(a)(1).

¹⁶ Notice 2017-73.

¹⁷ Id.

¹⁸ IRC § 4966(d)(2)(A)(iii).

¹⁹ IRC § 4967(a)(1).

²⁰ IRC § 4943(e)(1).

²¹ IRC § 4943(c)(7).

²² IRC § 501(a).

²³ IRC § 511.

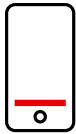
²⁴ See IRC § 512.

²⁵ IRC § 1361(a).

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