

Charitable Giving Reform for 2024?

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Take-Away: Philanthropy may well take on a new look in 2024 coming from a variety of sources, by the Department of Treasury regulating donor advised funds (DAFs), Congresses' effort to curb either contributions to or distributions from DAFs, and even the Supreme Court which will decide whether Congress can tax unrealized earnings, i.e., *wealth*.

Background: For some time now the Department of Treasury has looked at regulating DAFs. And as has been previously reported in these missives, there seems to be a strong inclination in Congress to place some restrictions on deductible contributions to DAFs. Spearheading this DAF reform effort is Senator Grassley who is the senior member of the Senate's tax-writing committee. Apparently there is bipartisan (yes, I actually typed that word!) support for DAF reforms to keep contributed funds from "sitting stagnant to provide tax advantages for some (an immediate income tax deduction) and management fees for others" (e.g., Fidelity Charity.) This proposed reform initially appeared in 2022 in the form of the Accelerating Charitable Efforts Act, or ACE. In addition, for over six years now the Treasury Department has asked for public comments on a variety of DAF topics including: (i) how private foundations use DAFs; (ii) the range of permissible grants from DAFs; and (iii) the inappropriate use of a DAF to avoid the private foundation rules. To date, no rules have been issued by Treasury after comments were solicited, but if Congress acts, expect the Department of Treasury to quickly follow. Finally, the Supreme Court will release its decision in *Moore v. United States* whether an individual's unrealized earnings can be taxed.

2022 ACE Bill: The 2022 ACE Bill's primary focus was to drive more funding to charities by forcing DAF's to make grants on a fixed schedule, along with other more modest changes to DAF's and their charitable sponsors. Since there was not much data to back up the proposed DAF reforms, the Bill stalled in Congress last year. More to the point, the average payout by a DAF to charities is more than

20% every year, leading the DAF 'industry' to ask Congress "where's the problem?"

2023 ACE 2.0 Bill: The ACE Bill is back before Congress, no surprise now called 'ACE 2.0.' The ACE 2.0 Bill brings back many of the earlier ACE Bill's provisions along with proposed new rules to prohibit perceived abuses with regard to private foundations (PFs) and DAFs. Some of the proposed changes in the ACE 2.0 Bill follow, which would-

- Private Foundations: Restrict private foundations (PFs) from counting distributions to DAF's towards the PF's 5% minimum annual payout requirement unless the contributed funds are distributed from the DAF by the end of the *next* calendar year;
- 50% Penalty: Impose a *50% penalty* on charitable contributions held in a DAF that are not distributed under new payout schedule, i.e., a series of deadlines for distributions from the DAF for which an income tax charitable deduction was previously taken;
- Payments to Disqualified Persons: Exclude payments to *disqualified persons* of PFs, e.g., family members who are employed by family foundations, from counting towards the PF's mandatory 5% annual payout;
- Anonymous Contributions: Restrict charities, e.g., 501(c)(3) organizations, from using anonymous DAF donations to satisfy the IRS's *public support* test for that DAF sponsoring charity;
- Annual Reporting: Require reporting the amount of contributions from a PF to a DAF in a specific year, the name of the DAF sponsoring organization, and any donation advice given by the PF to the DAF sponsoring organization; and

- Aggregating Contributions: Treat all individual anonymous DAF contributions to a charity as if they came from a single individual.

Supreme Court: The Court will render its decision in *Moore v. United States*, probably in May or June, 2024 on whether the 2017 Tax Cuts and Jobs Act [Trump's principal claim to fame] which imposed a tax on undistributed foreign earnings even though those earnings had not yet been received, is constitutional or not. How will this Court decision impact philanthropy? Simple, because wealth fuels philanthropy. The more taxes on wealth likely means there will be less for philanthropy- "*the power to tax involves the power to destroy.*"

Conclusion: 2024 could prove to be an interesting year for charities and those interested in philanthropy. Then again, 2024 is an election year, and we all know that Congress is loath to pass any new tax legislation when its members are running (dare I say, perpetually) for re-election.