That's the Ticket

By Jane C. Nober*

Accepting and using tickets and other tangible benefits of more than minimal value raises questions for foundation managers. Here's what the general Tax Code rules say is acceptable.

Phil N. Thropy, the president of the Thropy Family Foundation, was delighted when the board approved a grant of $25,000 to his favorite charity, the local symphony. He was confused, though, when a package of four season tickets for the foundation appeared in his mailbox. Could he use the tickets to attend the symphony? Could he bring his wife and children? If he made his own contribution to the symphony and received another set of tickets, to whom could he give the foundation's tickets?

Reviewing her morning mail, Doe Nation, the manager of the new corporate foundation at XYZ Corporation, paused over the invitation to a fundraising dinner for a local charity. A table for ten at the benefit would cost the foundation $10,000-$1,000 for the dinner and $9,000 for a charitable contribution. Nation wondered whether the foundation should make a practice of funding dinner events. Should the foundation send a check for the cause but refuse the table and dinners? If the foundation accepted the dinners, could corporate executives take the seats and bring some valued customers? Could the corporation's name be listed in the dinner program?

Grant Maker, the corporate contributions manager at QRS Industries, considered an appeal from the local art museum. A $20,000 contribution would entitle the corporation to use the museum for an evening reception and provide free admission and a discount at the museum store for all corporate employees. Should the grant come from the corporate foundation or the corporate giving budget?

Anne Dowment, director of the community foundation, was concerned. She had received 16 requests in one week for $500 gifts to be made from donor-advised funds to the local children's hospital. Now she knew why: in her morning mail was an invitation to a gala dinner dance for the hospital. Tickets cost $500-$100 for the meal and $400 for the charitable contribution.

As these examples suggest, accepting tangible benefits opens a Pandora's Box for foundations and prompts many requests for information from the Council on Foundations. Following is how the general Tax Code rules address these situations for family and community foundations, corporate foundations and giving programs, and public charities.

Tickets are Tangible Economic Benefits

Whether they are tickets to a dinner, a performance or simply for general admission to a facility, tickets have economic value, generally the fair market value of the goods and services provided. The importance of this tangible economic value is that individuals and corporations (we'll come to foundations in a moment) must generally reduce the amount of any charitable income tax deduction taken in connection with a gift that yields benefits with economic value by the amount of that value. If a corporate giving program pays $500 for a table at a fundraising dinner, and the economic value of the dinners provided to attendees is $100, the corporation may take a charitable income tax deduction of $400 ($500 less $100). It's perfectly legitimate for a corporation or individual to accept tickets in exchange for a charitable contribution, but it is important to report the transaction properly. Tax rules dating from 1993 that require charities to disclose the value of tangible economic benefits provided to contributors are designed to aid compliance.

For public charities such as community foundations, the tangible economic value of tickets means that it is important to monitor distributions from donor-advised funds. To the extent that a donor advisor might receive tickets as a result of a distribution from a fund at the community foundation, the community foundation could be viewed as providing benefits to private individuals. To the media and the public, a pattern of this sort of activity may make the community foundation appear to be helping people avoid taxes (donors take a deduction for the full amount given to the donor-advised fund and presumably would not reduce that deduction by the value of the later-acquired tickets). To the IRS, a pattern of this sort of activity might suggest that the community foundation is not operating exclusively for charitable purposes as required to retain its tax exemption. Again, there is no problem with individuals making direct gifts to charities and receiving tickets or other tangible benefits in return; the problem only arises when the community foundation's funds are used to gain these goods and services for a donor.

The tangible economic value that tickets have poses a large problem for private foundations. The private foundation rules in the Tax Code generally provide that it is an act of self-dealing for disqualified persons to receive tangible economic benefits that flow from foundation grants. Disqualified persons are foundation managers, substantial contributors to the foundation, and the families of both of these. In the corporate foundation context, the corporation that funds the foundation is clearly a disqualified person. There is no IRS guidance on whether all corporate employees are disqualified persons or if only certain managers or executives fall into this category. The conservative approach would be to consider all employees disqualified persons. Thus, the private foundation rules generally bar disqualified persons from using tickets that are made available on account of foundation grants.

Reasonable and Necessary

The self-dealing rule's bar on the provision of tangible benefits has an important exception: Treasury Regulations allow a foundation to provide benefits to a disqualified person so long as those benefits are reasonable and necessary to his or her performance of functions that carry out the exempt purposes of the foundation. An IRS technical advice memorandum (TAM 8449008) states that when it is necessary for a disqualified person to attend an event to monitor how the foundation's funds have been spent, he or she may accept tickets provided by the foundation and use them. (Note: A technical advice memo only applies to the parties involved in the particular case, but it does provide an indication of the IRS' thinking on this matter.) There is no IRS guidance on whether a foundation board or staff member could legitimately "monitor" a grantee's activities for an entire season of concerts or whether just one visit is appropriate.

Note that whether or not a private foundation staff or board member attends a function, the value of the tickets need not be deducted from the amount as listed under "Contributions, gifts, [and] grants paid" on the foundations Form 990-PF. If a foundation wishes to, it may list as an administrative expense the value of any tickets used by a staff or board member who attends in a monitoring or administrative capacity and put the balance of the grant under "Contributions," but this type of accounting is not generally required.

A final thought on this topic is that goodwill and publicity are not tangible economic benefits. A foundation, including a corporate foundation, is free to have itself listed in a dinner program or a banner. If support for a particular event comes from both the corporate foundation and the corporation, the two may be listed together.

Dividing Ticket Value into "Charitable" and "Noncharitable" Components Doesn't Work

For the purpose of the self-dealing rule, the IRS takes the position that it is not possible to separate the price of a ticket into its charitable and noncharitable components. In other words, a private foundation cannot avoid the self-dealing problem by having a disqualified person (who has no monitoring or administrative duties to justify his or her attendance at a function) pay for the cost of the dinner ($100) or other tangible benefit and having the foundation pick up the charitable portion ($400) of the ticket. The reasoning behind this IRS position appears to be that the disqualified person would not be in a position to pay the $100 for the dinner unless the foundation paid the $400; the foundation is freeing a disqualified person of a financial obligation that he or she (or, in the case of a corporation, it) would otherwise incur. In a March 1, 1990, private letter ruling involving a corporate foundation (PLR 9021066), the IRS states that such "bifurcation" would constitute self-dealing, as would "any funding approach whereby [the corporate foundation's] funds were used to permit [the corporations'] executives to attend." Again, the ruling applies only to the taxpayer that requested it but provides evidence of the IRS' general attitude.

For public charities such as community foundations, the idea that the charitable and noncharitable components of a ticket are inseparable suggests that the donor advisor cannot correct the private benefit problem posed when fund distributions pay for tickets by offering to pick up the "noncharitable" portion of the tab. Again, the donor advisor would not be in a position to pay for the dinner if the community foundation's funds were not covering the donation, and the community foundation may be seen as discharging an individual's obligation and thus serving private interests.

Tickets May be Refused or Otherwise Disposed of to Prevent Problems

Individuals and corporations seeking to maximize their charitable deductions and grantmakers wishing to avoid the issues potentially raised by tickets may refuse them. As far back as 1967, the IRS provided rules for how benefits might be refused (see Rev. Rul. 67-246, 1967-2 C.B. 104). Options include indicating on a contribution form that no tickets are to be sent and refusing to accept the tickets if they are sent.

Revenue Ruling 67-246 emphasizes that simply not using the tickets does not constitute a refusal or disposition of them that restores the full value of an individual or corporation's charitable contribution; as long as the taxpayer still has the tickets, he or she has the right to attend the event and that right has economic value. However, in a later ruling, the IRS held that a taxpayer who donated the tickets back to the charity for resale was entitled to a charitable deduction equal to his cost of the ticket (see Rev. Rul. 74-348, 1974-2 C.B. 80). Some corporations make a practice of donating tickets back to the charity that issues them. Another option may be to donate the tickets to another charitable group that can put them to good use.

From the General to the Specific

For family foundations, tickets for fundraisers and other events should be used only by foundation staff and directors who have monitoring and administrative responsibilities for the relevant grants. Spouses of these disqualified persons are not covered by the exception to the self-dealing rules, and should not be using foundation-sponsored tickets. Some lawyers suggest that one way of making it possible for spouses to attend fundraisers is to treat the full cost of their tickets (both charitable and noncharitable components) as compensation to the disqualified person who is attending in a monitoring or administrative capacity. If family members want to support and attend a fundraising event, the best course is for them to make their contribution out of their own pocket, not the foundation's.

For Phil N. Thropy, recipient of the symphony tickets on account of the Thropy Foundation's gift, the rules mean that he and perhaps other board members (or staff) may use one or more of the tickets sent by the symphony. Unless his wife and children play a role in the foundation, they should not be using the tickets. Mr. Thropy may return unused tickets to the symphony or perhaps give them to another charitable organization, but there is no requirement that he do so and no tax or other penalty for the foundation if he does not. On the foundation's tax return, the full $25,000 may be shown as a contribution to the symphony, although the foundation is free to list the value of tickets used as an administrative expense. There's no clear answer to the question of whether it is appropriate for Mr. Thropy to use the entire season's worth of tickets or just one.

Corporate foundations, too, would be well advised to look for another source of funding for contributions that will yield tickets or other tangible benefits. If there is a corporate giving program, it is the ideal funder, since the self-dealing rules do not apply when the corporate foundation is not used. If the corporate foundation does provide funding that results in tickets, the key to good compliance is keeping in mind who disqualified persons are: the foundation's managers, board members, the corporation and, potentially, all of its employees. None of these people should be using tickets unless they are attending on behalf of the foundation in an administrative or monitoring capacity. As with family foundations, spouses are not covered by the exception for monitoring and administration. In the corporate context, it may be tempting to invite corporate clients or other business associates to sit at a corporate foundation table, but this should be avoided.

For Doe Nation, the rules mean that the XYZ Corporation Foundation needs to make a policy choice on the issue of whether it will support fundraisers and other events that result in tangible economic benefits. If the decision is that it will not, Ms. Nation may pass on such requests to the direct corporate giving program. If the foundation opts to support these events, it must decide whether it will accept tables and to whom it will distribute tickets. Whether or not the foundation accepts tables, it may be listed in the dinner program as a sponsor. The foundation is free to list the value of tickets used as an administrative expense on its 990-PF, but need not do so.

What Becomes of a Ticket Kept?

Both family and corporate foundation managers might well wonder to whom-other than foundation personnel with administrative and monitoring responsibilities-they may legally give tickets if accepted. There's no clear answer in the law, but returning them to the issuing charity or another charitable group is usually a safe option. Giving the tickets to truly unrelated persons, including other potential contributors to the charity who may benefit from an opportunity to learn about its work, is another possibility.

Corporate giving programs that acquire tickets have much more flexibility in distributing them. So long as the corporation reduces the amount of its charitable deduction by the value of any goods and services received, it may send executives or other employees, customers and other business contacts to an event. Note, too, that under certain circumstances, corporate contributions need not be reduced by the value of benefits received; the 1993 tax rules provide that if a corporation makes a gift to a charity and receives in return benefits for its employees that are identical to membership privileges that an individual might receive for a gift of $50 or less, the value of the these benefits need not be taken into account.

Thus, Grant Maker, who's been offered a package of benefits for QRS Industries' employees in exchange for a large corporate gift would be well advised to make the contribution to the local art museum from the corporate giving program, not the corporate foundation. He will need to verify that the package of benefits available to QRS employees is identical to that offered to museum members who pay $50 or less. If the donation comes from the corporate foundation, and the admission benefits are offered, it may be an act of self-dealing for QRS Industries employees to use them.

Public charities such as community foundations need to exercise caution when dealing with fundraising tickets. The wise community foundation alerts donor advisors from the outset that it will not make recommended distributions that will result in tangible benefits accruing to them. If donors are given forms on which to request distributions, it is helpful to have an acknowledgment or recital that the suggested grants do not represent the payment of a pledge or other financial obligation nor will the donor advisor receive any personal benefit from this charitable distribution.

Community foundation executive Anne Dowment faces the unenviable task of contacting her donor advisors and asking each one gently whether he or she is requesting a distribution in order to buy tickets for the Children's Hospital benefit dinner dance. If the answer is yes, she should tactfully inform him or her that such a gift should come from personal, not community foundation, funds. If a donor advisor mentions that he would like to make a contribution but is not planning to attend the dinner dance, however, the community foundation can make the contribution and indicate that tickets should not be sent. Ms. Dowment may wish to think about revising the community foundation's materials for donor advisors to make the prohibition on personal benefits more prominent.

Tickets and other tangible benefits pose complicated legal and policy challenges for all types of grantmakers, and the guidelines set out here are no substitute for expert counsel from a lawyer familiar with the grantmakers' activities. But understanding the issues and knowing when to call on counsel is an important part of complying with the rules in this area.

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