

## U.S. Master Tax Guide (2011), 610. Donor Advised Funds

A charitable organization under Code Sec. 501(c)(3) (other than a private foundation) may establish a donor advised fund which is a separate account identified by reference to contributions made by a donor to the organization under which the donor (or person appointed by the donor) reasonably expects to provide nonbinding advice regarding distributions or investments ( Code Sec. 4966(d)(2)). <sup>18</sup> The donor may be entitled to a charitable deduction for contributions to a donor advised fund ( ¶1061), but only if the sponsoring organization legally owns and controls the contributions. For this purpose, a donor advised fund does not include any fund that only makes distributions to a single identified organization or governmental entity, or a fund that allows the donor to provide advice as to which individuals receive grants for travel, study, or similar purposes through a committee which is appointed by the sponsoring organization and is not controlled by a donor or group of donors with advisory privileges, and under which all grants are made on an objective and nondiscriminatory basis. The IRS has discretionary authority to exempt a fund or account from treatment as a donor advised fund. The charitable organization must provide information to the IRS when it applies for tax-exempt status ( ¶623) whether it maintains or intends to maintain the donor advised fund, and the manner in which it plans to operate those funds ( Code Sec. 508(f)). <sup>19</sup>

An excise tax is imposed on any "taxable distribution" from a donor advised fund which is any distribution to a natural person or to any other person if the distribution is for any purpose other than an exempt purpose under Code Sec. 501(c)(3) ( ¶610) ( Code Sec. 4966). <sup>20</sup> It also includes any distribution to a disqualified supporting organization ( ¶607), unless the sponsoring organization exercises responsibility for the distribution (see Rev. Proc. 2009-32). A taxable distribution does not include any distribution to a 50-percent organization ( ¶1059), to the sponsoring organization, or to another donor advised fund. The excise tax is 20 percent of the distribution and is imposed on the sponsoring organization. A separate five percent excise tax is imposed on any fund manager who knowingly agrees to the distribution (up to \$10,000 per distribution). A fund manager includes any officer, director, or trustee of the sponsoring organization, as well as an employee having authority with respect to the distribution. If more than one fund manager knowingly participates in the transaction, then all those managers will be jointly and severally liable. Both the tax on the sponsoring organization and fund manager are reported on Form 4720. The IRS has discretionary authority to abate both taxes ( ¶647).

An excise tax is also imposed if a donor advised fund makes a distribution to any person that results in (directly or indirectly) a more-than-incidental benefit to the donor, donor advisor, member of the donor's family, or any entity in which the donor holds more than a 35-percent ownership interest ( Code Sec. 4967). <sup>21</sup> The tax is 125 percent of the benefit received and is imposed on the donor, donor advisor, and related persons who recommended the distribution or received the prohibited benefit. A tax of 10 percent of the benefit (up to \$10,000) is also imposed on fund managers who agreed to the making of a distribution knowing it would confer a more-than-incidental benefit. All persons liable for the taxes are jointly and severally liable. If the taxes are imposed, the IRS has discretionary authority to abate them ( ¶647). However, neither tax will be imposed if the distribution is subject to tax as an excess benefit transaction ( ¶617). Also, a donor advised fund will be treated as a private foundation for purposes of the excise tax on excess business holdings ( ¶640).

### Footnotes

<sup>18</sup> FED ¶34,317 EXEMPT: 33,000 PTE §33,720.05

<sup>19</sup> FED ¶22,790 EXEMPT: 33,056 PTE §33,505

<sup>20</sup> FED ¶34,317 EXEMPT: 33,150 PTE §33,720.10

<sup>21</sup> FED ¶34,319 EXEMPT: 33,200 PTE §33,720.05