



March 5, 2018

Internal Revenue Service
CC:PA:LPD:PR (Notice 2017-73)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

VIA ELECTRONIC MAIL Notice.Comments@irs.counsel.treas.gov

Re: Notice 2017-73

Dear Sir/Madam,

I write in response to Notice 2017-73 which indicated that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) are considering developing proposed regulations relating to donor advised funds (DAFs) of sponsoring organizations.

Other commenters will no doubt provide comments on all aspects of the Notice, but I want to raise a single point for your consideration. Section 5 of the Notice addresses treatment of funds received from a DAF for purposes of calculating public support under Internal Revenue Code (IRC) § 170(b)(1)(A)(vi) and § 509(a)(2). The notice indicates that for this purpose only, the Treasury Department and IRS are considering proposing regulations that would treat support received from a DAF as being an indirect contribution from the donor (or donors) that funded the DAF rather than as a contribution from the sponsoring organization.

I am not writing to urge a particular solution to this question. There are good arguments to be made as to why this treatment would not be appropriate in many cases, but there are also legitimate concerns about the use of DAFs to circumvent the rules applicable to private foundations. But however this question is resolved, I request that any proposed rule also address how contributions from a DAF should be treated under IRC § 4945(f).

“Taxable expenditures” by private foundations include any amount paid or incurred “to carry on, directly or indirectly, any voter registration drive.” IRC § 4945(d)(2). However, IRC § 4945(f) carves out an exception for organizations that meet a list of different tests. Among other requirements, that section describes an organization:

substantially all of the support (other than gross investment income as defined in section 509(e)) of which is received from exempt organizations, the general public, governmental units described in section 170(c)(1), or any combination of the foregoing; **not more than 25 percent of such support is received from any one exempt organization** (for this purpose treating private foundations which are described in section 4946(a)(1)(H) with respect to each other as one exempt organization); and not more than half of the support of which is received from gross investment income. IRC § 4945(f)(4). [Emphasis added.]



In contrast to the regulations under §§ 170(b)(1)(A)(vi) and 509(a)(2), the regulations associated with § 4945 provide little guidance on calculating “support” in order to carry out these calculations. *See* Treas. Reg. § 53.4945-3(b). If proposed regulations are to address the treatment of funds received from a DAF for purposes of calculating public support, it would be tremendously helpful if they could also explicitly address the treatment of such funds for purposes of applying the 25 percent of support limitation or IRC § 4945(f)(4). I suggest that whatever resolution is reached with respect to §§ 170(b)(1)(A)(vi) and 509(a)(2), the same treatment should apply for purposes of § 4945(f)(4).

Thank you for the opportunity to submit this comment. If you have any questions about this matter I would be happy to provide any further information that might be useful.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth Kingsley'.

Elizabeth Kingsley