Summary of the Pension Protection Act of 2006

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INTRODUCTION

On August 17, 2006, President Bush signed into law the "Pension Protection Act of 2006" (P.L. 109-280 (the "Act")). While much press coverage has been given to the pension plan reform provisions, the Act provides for a number of significant changes in the charitable arena. This article highlights the most important of these provisions. In general, unless indicated otherwise, the provisions in the Act are effective after August 17, 2006. California taxpayers should note that the Franchise Tax Board has conformed to some of the provisions of the Act and should review the Franchise Tax Board's report regarding these changes titled *Summary of Federal Income Tax Changes – 2006*.[1]

CHARITABLE GIVING

IRA Rollover Light

For 2006 and 2007, donors who are over age 70 ½ can directly transfer up to $100,000 from an IRA to a public charity other than a support organization or donor advised fund. The donor is not required to take the distribution into income and is not entitled to a charitable income tax deduction. A deduction is allowed for the portion of the rollover that represents after tax contributions made by the taxpayer to the IRA. The distribution will count towards the donor's required minimum distribution. The instructions for the Form 1040 provide guidance on how to exclude the charitable distribution from a donor's income tax return.

Basis Reduction for S-Corp Gifts Limited to Basis in Donated Property

For 2006 and 2007, when an S-Corporation makes a charitable contribution of appreciated property, the shareholders' basis in the corporation will be reduced only by the corporation's basis in the donated property, not the fair market value of the donated property.

Deduction for Hunting Trophy Gifts Limited to Basis

Effective July 25, 2006, a donor who stuffed or mounted an animal or who paid to have the animal stuffed or mounted will be entitled to a deduction limited to cost basis for a charitable gift of the trophy. Cost basis includes only the cost

[1] You access the Franchise Tax Board's report on its website at http://www.ftb.ca.gov/law/legis/06FedTax.pdf.

of stuffing and mounting the animal, not any costs to hunt, kill or transport the animal.

Related Use Property Must Stay in Related Use for Three Years

Effective for contributions made after September 1, 2006, if a donor contributes tangible personal property to a public charity with an expectation that it will be put to a related use, the donor is entitled to a deduction for the fair market value of the property. If the charity stops making a related use of the property or sells it within three years of the gift (but after the end of the tax year of the gift), the donor must recapture as income the difference between the deduction claimed and the donor's basis in the property. The donor can avoid recapture if the charity certifies it intended a related use of the property and that the use became impossible or infeasible. There is a $10,000 penalty for giving a false certification.

Deductions Only Allowed for Gifts of Clothes and Household Items in Good Condition

Donors are only allowed to claim a deduction for a gift of clothing or other household items that are in good condition. The limit does not apply to gifts over $500 for which the donor has a qualified appraisal. Further, the Treasury can issue regulations prohibiting deductions for items of minimal value such as socks and other undergarments.

Additional Record Keeping

Starting in 2007, donors must maintain a written record of every cash contribution to a charity in the form of a bank record or a communication from the charity giving its name, and the date and amount of the contribution. These record keeping rules are in addition to existing requirements that charities acknowledge gifts of $250 or more.

Fractional Interest Gifts in Tangible Personal Property Must Lead to Gift of All the Property

A donor who makes a gift of an undivided fractional interest in tangible personal property to a charity must donate the balance of the property to the charity no later than the earlier of 10 years after the gift of the first fractional interest or the donor's death. If the donor does not make the additional gifts in the required time frame, the donor is required to recapture the deduction with interest, and the recapture is at a tax rate 10% higher than the applicable rate for the year of recapture. Future gifts of interests in the property are valued at the lower of the value of the property when the first gift was made or the fair market value when the later gift is made. Before making the first gift, all the interests in the property must be owned by the donor or the donor and a charity. Similar rules are imposed for the gift and estate tax deductions.

Increased Penalty for Valuation Overstatements

Effective for returns filed after August 17, 2006, the penalties for overstatement of the value of charitable gifts are increased. The threshold for a substantial misstatement of value is lowered from 200% to 150%, and the threshold for a gross misstatement of value is lowered from 400% to 200%. For estate and gift taxes, the substantial understatement moves from 50% to 65%, and the gross understatement threshold moves from 20% to 40%. The reasonable cause exception is eliminated for gross valuation misstatements.

Qualified Appraiser Requirements and Penalties

The definition of "qualified appraiser" is modified to require appraisers to be recognized by a professional association or equivalent qualification and to have education and experience related to the particular property being valued. An appraiser is subject to a penalty of the greater of (1) $1,000, (2) 125% of his or her fee or (3) 10% of the underpayment of tax for any appraisal that results in a substantial or gross valuation misstatement. The penalty is abated if the appraiser proves that more likely than not, the appraised amount was the correct value. The IRS also can bar the appraiser from providing tax appraisals.

Conservation Easement Deduction Limits Increased

For 2006 and 2007, a donor who makes a contribution of a conservation easement may offset up to 50% of his or her adjusted gross income (instead of 30% under prior law). In the case of a farmer or rancher who donates an easement to maintain his or her property as farming or ranching property, the contribution limit is 100% of adjusted gross income. Farmers and ranchers that operate in corporate form can offset 100% of the corporation's taxable income with a gift of a conservation easement to maintain the property as farming or ranching property. The deduction for any conservation easement gift carries forward for 15 years after the year of the gift if made in 2006 or 2007.

Façade Easements

Donors claiming a deduction for an easement to maintain the façade of a historic building must agree to maintain all sides of the building and the space above the building. The donor also must agree not to alter the exterior in anyway that is not consistent with the historic character of the building. Donors must supply photos of the entire building, descriptions of all existing zoning and other restrictions and other information to the IRS. If the deduction claimed exceeds $10,000, the donor must pay a fee of $500 to be used by the IRS to cover enforcement costs. If the donor claimed a rehabilitation credit within five years of donating the façade easement, the benefit of the credit will offset the deduction for the façade easement.

Extension of Enhanced Deduction for Contributions of Books and Food

The Act extends for 2006 and 2007 the enhanced deductions under the Katrina Emergency Tax Relief Act of 2005 for contributions of food and book inventories.

CHARITABLE REFORM

UBI Holiday for "Arm's Length" Payments to a Tax Exempt Parent from a Controlled Entity Pursuant to an Existing Contract; Potential 20% Penalty for Excess Payments

For interest, rent, annuity, or royalty payments received or accrued after December 31, 2005 and before January 1, 2008 by a tax-exempt parent from a controlled entity, the Act modifies the unrelated business income definition to provide that only the portion of such a payment that exceeds a "Section 482 arm's length" payment can be treated as unrelated business income. There is also a new 20% penalty that could apply to such excess portion. The modification applies only to payments made pursuant to a binding written contract in effect on August 17, 2006 (or to a renewal of such a contract on substantially similar terms). Intercompany transactions (including these types of payments, loans, etc.) are subject to new reporting requirements on the tax-exempt parent's annual information return.

New Temporary Reporting Requirement for Acquisitions of Interests in Applicable Insurance Contracts

Through August 17, 2008, certain exempt organizations will be required to file an information return if they acquire a direct or indirect interest in certain types of insurance contracts and such acquisition was part of a structured transaction involving a pool of such contracts.

The insurance contracts generally covered are life insurance, annuity, or endowment contract with respect to which both the exempt organization and a person other than the exempt organization have directly or indirectly held an interest (whether or not at the same time). The Act does provide a handful of exceptions from this reporting requirement for certain contracts, including if the sole interest in the insurance contract of the exempt organization or person other than the exempt organization is as a named beneficiary.

Increase the Amounts of Excise Taxes Imposed Relating to Public Charities, Social Welfare Organizations, and Private Foundations

All of the following increases are for taxable years beginning after August 17, 2006.

Self-dealing and excess benefit transaction initial taxes and dollar limitations

For acts of self-dealing by a private foundation to a disqualified person, the initial excise tax on the self-dealer is increased from 5% of the amount involved to 10% of the amount involved. The initial tax on foundation managers is increased from 2.5% of the amount involved to 5% of the amount involved and the dollar limitation on the amount of the initial and additional taxes on foundation managers per act of self-dealing is increased from $10,000 per act to $20,000 per act. The dollar limitation on organization managers of public charities and social welfare organizations for participation in excess benefit transactions is increased from $10,000 per transaction to $20,000 per transaction.

Failure to distribute income, excess business holdings, jeopardizing investments, and taxable expenditures

The Act also doubles the amounts of the initial taxes and the dollar limitations on foundation managers with respect to the private foundation excise taxes on the failure to distribute income, excess business holdings, jeopardizing investments, and taxable expenditures.

For the failure to distribute income, the initial tax on the foundation is increased from 15% of the undistributed amount to 30% of the undistributed amount.

For excess business holding, the initial tax on excess business holdings is increased from 5% of the value of such holdings to 10% of such value.

For jeopardizing investments, the initial tax of 5% of the amount of the investment that is imposed on the foundation and on foundation managers is increased to 10% of the amount of the investment. The dollar limitation on the initial tax on foundation managers of $5,000 per investment is increased to $10,000 and the dollar limitation on the additional tax on foundation managers of $10,000 per investment is increased to $20,000.

For taxable expenditures, the initial tax on the foundation is increased from 10% of the amount of the expenditure to 20%, the initial tax on the foundation manager is increased from 2.5% of the amount of the expenditure to 5%, the dollar limitation on the initial tax on foundation managers is increased from $5,000 to $10,000, and the dollar limitation on the additional tax on foundation managers is increased from $10,000 to $20,000.

Establish Additional Exemption Standards for Credit Counseling Organizations

Credit counseling organizations continue to be a source of great controversy and under this new provision, an organization that provides credit counseling services as a substantial purpose of the organization is eligible for exemption from Federal income tax only as a charitable or educational

organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), or as a social welfare organization under Section 501(c)(4) of the Code, and only if (in addition to existing present-law requirements) the credit counseling organization is organized and operated in accordance with specific requirements set forth in the Act.

Expand the Base of the Tax on Private Foundation Net Investment Income

The definition of gross investment income (including for purposes of capital gain net income) includes items of income that are similar to the items presently enumerated in the Code. Such similar items include income from notional principal contracts, annuities, and other substantially similar income from ordinary and routine investments, and, with respect to capital gain net income, capital gains from appreciation, including capital gains and losses from the sale or other disposition of assets used to further an exempt purpose.

Certain gains and losses are not taken into account in determining capital gain net income. Specifically, no gain or loss shall be taken into account with respect to any portion of property used for a period of not less than one year for a purpose or function constituting the basis of the private foundation's exemption, if the entire property is exchanged immediately following such period solely for property of like kind which is to be used primarily for a purpose or function constituting the basis for such foundation's exemption. However, there are no carrybacks of losses from sales or other dispositions of property.

Definition of Convention or Association of Churches

An organization that otherwise is a convention or association of churches does not fail to so qualify merely because the membership of the organization includes individuals as well as churches, or because individuals have voting rights in the organization.

Notification Requirement for Exempt Entities Not Currently Required to File an Annual Information Return; Revocation for Failure to File Returns

Beginning with annual periods starting after December 31, 2006, small organizations (gross receipts under $25,000) that were otherwise excused from filing Form 990 will now be required to complete annually an abbreviated notice with mailing address, officer and other information. While there is no monetary penalty for a failure to file the notice, a continuing failure could result in the revocation of tax-exempt status. Every organization that is subject to the notice filing requirement of the new filing obligation is required to be notified by the IRS.

If an organization (large or small) fails to file its required return or notice for three consecutive years, the organization's tax-exempt status is revoked. A revocation under the provision is effective from the date that the IRS determines was the last day the organization could have timely filed the third required information return or notice. To again be recognized as tax-exempt, the organization must apply to the IRS for recognition of tax-exemption, irrespective

of whether the organization was required to make an application for recognition of tax-exemption in order to gain tax-exemption originally.

Disclosure to State Officials Relating to Section 501(c) Organizations

Upon written request by an appropriate State officer, the IRS may disclose: (1) a notice of proposed refusal to recognize an organization as a Section 501(c)(3) organization; (2) a notice of proposed revocation of tax-exemption of a Section 501(c)(3) organization; (3) the issuance of a proposed deficiency of tax imposed under Section 507 of the Code, chapter 41, or chapter 42; (4) the names, addresses, and taxpayer identification numbers of organizations that have applied for recognition as Section 501(c)(3) organizations; and (5) returns and return information of organizations with respect to which information has been disclosed under (1) through (4) above.

The IRS also is permitted to disclose or open to inspection the returns and return information of an organization that is recognized as tax-exempt under Section 501(c)(3) of the Code, or that has applied for such recognition, to an appropriate State officer if the IRS determines that disclosure or inspection may constitute evidence of noncompliance under the laws within the jurisdiction of the appropriate State officer.

Unrelated Business Income Tax Returns of Section 501(c)(3) Organizations Must Be Made Publicly Available

Form 990-T returns filed after August 17, 2006 will be subject to the same public inspection and disclosure requirements and penalties applicable to the Form 990. The provision provides that certain information may be withheld by the organization from public disclosure and inspection if public availability would adversely affect the organization, similar to the information that may be withheld under present law with respect to applications for tax-exemption and the Form 990 (*e.g.*, information relating to a trade secret, patent, process, style of work, or apparatus of the organization, if the IRS determines that public disclosure of such information would adversely affect the organization).

DONOR ADVISED FUNDS ("DAFs") PROVISIONS

The Act imposes numerous new rules on DAFs. These new rules result in (1) excise taxes on taxable distributions, certain prohibited benefits, excess benefit transactions and excess business holdings; (2) limitations on charitable contribution deductions for donations to DAFs for income, gift and estate tax purposes; and (3) disclosure requirements on information returns and exemption applications regarding the maintenance of DAFs. Congress chose not to include the annual distribution requirements that were included in previous versions of the Act.

Definition of a DAF

In general, under the new provisions of the Code, a DAF is defined as a fund or account that is:

- separately identified by reference to contributions of a donor or donors;

- owned and controlled by a sponsoring organization – *i.e.*, an organization that:

  - is described in Section 170(c) of the Code (other than a governmental entity described in Section 170(c)(1) of the Code, and without regard to any requirement that the organization be organized in the United States), and

  - is not a private foundation; and

- with respect to which a donor (or any person appointed or designated by such donor (*i.e.*, a "donor advisor")) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the separately identified fund or account by reason of the donor's status as a donor.

Separately Identified by Reference to a Donor or Donors

The first prong of the definition requires that a DAF be separately identified by reference to contributions of a donor or donors. The legislative history indicates that a fund or account may be treated as identified by reference to contributions of a donor or donors if the reference is to persons related to a donor. For example, if a husband made contributions to a fund or account that in turn is named after the husband's wife, the fund is treated as being separately identified by reference to contributions of a donor. Thus, in the case of a memorial fund, if the family members of the decedent have advisory privileges, the fund will generally be treated as a DAF even though there are multiple unrelated contributors to the fund.

A distinct fund or account of a sponsoring organization does not meet this prong of the definition unless the fund or account refers to contributions of a donor or donors, such as by naming the fund after a donor, or by treating a fund on the books of the sponsoring organization as attributable to funds contributed by a specific donor or donors. A fund or account of a sponsoring organization that is distinct from the organization's general fund and that pools contributions of multiple donors generally will not meet the first prong of the definition unless the contributions of specific donors are in some manner tracked and accounted for within the fund. Accordingly, if a sponsoring organization establishes a fund dedicated to the relief of poverty within a specific community, or a scholarship

fund, and the fund attracts contributions from several donors but does not separately identify or refer to contributions of a donor or donors, the fund is not a donor advised fund even if a donor has advisory privileges with respect to the fund. However, a fund or account may not avoid treatment as a DAF even though there is no formal recognition of such separate contributions on the books of the sponsoring organization if the fund or account operates as if contributions of a donor or donors are separately identified. The IRS has the authority to look to the substance of an arrangement, and not merely its form to determine whether the first prong is satisfied.

Owned and Controlled by a Sponsoring Organization

The second prong of the definition provides that the fund be owned and controlled by a sponsoring organization. To the extent that a donor or person other than the sponsoring organization owns or controls amounts deposited to a sponsoring organization, a fund or account is not a DAF.[2]

Advisory Privileges

The third prong of the definition provides that with respect to a fund or account of a sponsoring organization, a donor or donor advisor has or reasonably expects to have advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of a donor's status as a donor. Advisory privileges are distinct from a legal right or obligation. For example, if a donor executes a gift agreement with a sponsoring organization that specifies certain enforceable rights of the donor with respect to a gift, the donor will not be treated as having "advisory privileges" due to such enforceable rights for purposes of the DAF definition.

The presence of an advisory privilege may be evident through a written document that describes an arrangement between the donor or donor advisor and the sponsoring organization whereby a donor or donor advisor may provide advice to the sponsoring organization about the investment or distribution of amounts held by a sponsoring organization, even if such privileges are not exercised. The presence of an advisory privilege also may be evident through the conduct of a donor or donor advisor and the sponsoring organization. For example, even in the absence of a written agreement, if a donor regularly provides advice to a sponsoring organization and the sponsoring organization regularly considers such advice, the donor has advisory privileges under the provision. Even if advisory privileges do not exist at the time of a contribution, later acts by the donor (through the provision of advice) and by the sponsoring organization (through the regular consideration of advice) may establish advisory privileges subsequent to the time of the contribution.

[2] However, in the case where a donor retains control of an amount provided to a sponsoring organization, there may not be a completed gift for purposes of the charitable contribution deduction.

A person reasonably expects to have advisory privileges if both the donor or donor advisor and the sponsoring organization have reason to believe that the donor or donor advisor will provide advice and that the sponsoring organization generally will consider it. Thus, a person reasonably may expect to have advisory privileges even in the absence of the actual provision of advice. However, a donor's expectation of advisory privileges is not reasonable unless it is reinforced in some manner by the conduct of the sponsoring organization.

The third prong further requires that the reasonable expectation of advisory privileges is by reason of the donor's status as a donor. Under this requirement, if a donor's reasonable expectation of advisory privileges is due solely to the donor's service to the organization, for example, by reason of the donor's position as an officer, employee or director of the sponsoring organization, then the third prong of the definition is not satisfied. However, if by reason of such donor's contribution to such fund, the donor secured an appointment on a committee of the sponsoring organization that advises how to distribute or invest amounts in such fund, the donor may have a reasonable expectation of advisory privileges, notwithstanding that the donor is an officer, employee or director of the sponsoring organization.

The third prong of the definition is applicable to a donor or any person appointed or designated by such donor (the donor advisor). For purposes of this prong, a person appointed or designated by a donor advisor is also treated as being appointed or designated by a donor. In addition, for purposes of any exception to the definition of a DAF provided under the provision, to the extent a donor recommends to a sponsoring organization the selection of members of a committee that will advise as to distributions or investments of amounts in a fund or account of such sponsoring organization, such members are not treated as appointed or designated by the donor if the recommendation of such members by such donor is based on objective criteria related to the expertise of the member.

Exceptions to DAF Definition

Distributions to a Single Identified Organization or Governmental Entity

A DAF does not include a fund or account that makes distributions only to a single identified organization or governmental entity. For example, an endowment fund owned and controlled by a sponsoring organization that is held exclusively to for the benefit of such sponsoring organization is not a DAF even if the fund is named after its principal donor and such donor has advisory privileges with respect to the distribution of amounts held in the fund to such sponsoring organization. Thus, a donor that contributes to a university for purposes of establishing a fund named after the donor that exclusively supports the activities of the university is not a DAF even if the donor has advisory privileges regarding the distribution or investment of amounts in the fund.

Certain Grants to Individuals

A DAF also does not include a fund or account with respect to which a donor or donor advisor provides advice as to which individuals receive grants for travel, study, or other similar purposes, provided that:

- the donor's or donor advisor's advisory privileges are performed exclusively by such donor or donor advisor in such person's capacity as a member of a committee all of the members of which are appointed by the sponsoring organization;

- no combination of a donor or donor advisor or persons related to such persons, control, directly or indirectly, such committee; and

- all grants from such fund or account are awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the board of directors of the sponsoring organization, and such procedure is designed to ensure that all such grants are within one of the following categories as described in Section 4945(g) of the Code:

    - scholarships or fellowships that pay for tuition, books, supplies, room and board and are to be used for study at an educational organization described in Section 170(b)(1)(A)(ii) of the Code (*i.e.*, an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on),

    - prizes or awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement if the recipient is chosen from the general public without any action on his or her part to enter the contest or proceeding and is not required to render "substantial future services" in order to receive the prize or award, or

    - grants with the purpose of achieving a specific objective, producing a report or other similar product, or improving or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Employer-Sponsored Disaster Relief

In Notice 2006-109, the IRS excluded from the definition of a DAF any employer-sponsored disaster relief fund that meets the following requirements:

- the fund serves a single identified charitable purpose, which is to provide relief from one or more qualified disasters within the meaning of Section 139(c)(1), (2), or (3) of the Code;

- the fund serves a large or indefinite class (a "charitable class");

- recipients of grants from the fund are selected based on objective determinations of need;

- the selection of recipients of grants from the fund is made using either an independent selection committee (*i.e*., a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer) or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous; and

- no payment is made from the fund to or for the benefit of:

    - any director, officer, or trustee of the sponsoring organization of the fund, or

    - members of the fund's selection committee; and

- the fund maintains adequate records that demonstrate the recipients' needs for the disaster relief assistance provided.

No Control by a Donor

The IRS *may* exempt a fund or account from treatment as a DAF if such fund or account is advised by a committee not directly or indirectly controlled by a donor, donor advisor, or persons related to a donor or donor advisor. For such purposes, indirect control would include the ability to exercise effective control.

Single Identified Charitable Purpose

The IRS *may* exempt a fund or account from treatment as a DAF if such fund or account benefits a single identified charitable purpose.

Excise Taxes on Taxable Distributions

The Act adds Section 4966 to the Code which provides that certain distributions from a DAF are subject to an automatic excise tax. Specifically, the tax is imposed on a "taxable distribution" which is any distribution from a DAF to:

- an individual;[3] or

[3] Note that while a grant to an individual is a taxable distribution without exception, certain DAFs that make grants to individuals for travel and study are excluded from the definition of a DAF under the Code as discussed above. Thus, sponsoring organizations can still maintain scholarship funds that otherwise meets the definition of a DAF without running afoul of the taxable distribution rules.

- to any organization for any purpose other than one specified in Section 170(c)(2)(B) of the Code (*i.e.*, generally, a charitable purpose); or

- to any organization for a charitable purpose if the sponsoring organization does not exercise expenditure responsibility with respect to the distribution in accordance with Section 4945(h) of the Code.

Permitted Distributions

A taxable distribution does not include a distribution from a DAF to:

- an organization described in Section 170(b)(1)(A) of the Code (other than to a disqualified supporting organization);

- an organization not described in Section 170(b)(1)(A) of the Code or a disqualified supporting organization if the sponsoring organization exercises expenditure responsibility;

- the sponsoring organization of such DAF; or

- to another DAF.

For purposes of the first bullet point, an organization described in Section 170(b)(1)(A) of the Code includes:

- churches and conventions and associations of churches;

- schools, colleges, universities, and any other organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on;

- organizations that are organized and operated exclusively to hold investments and make expenditures for the benefit of a college or university, are an arm of state or local government, and normally receive substantial parts of their support from governments and contributions from the general public;

- hospitals and organizations carrying on medical research in conjunction with hospitals;

- federal, state, and local governments;

- organizations receiving substantial parts of their support (apart from revenues generated in the performance of charitable or other exempt purposes) in the form of contributions from the general public or government subsidies;

- organizations that normally receive more than one third of their support from gifts, grants, contributions, membership fees, and gross receipts from activities related to the organizations' exempt purposes and do not normally derive more than one third of their support from investment income and after-tax income from unrelated trades or businesses;

- satellite organizations of publicly supported charities; and

- private foundations that (a) are operating foundations; (b) expend or distribute contributed funds within two and one-half months after the close of the year in which received; or (c) pool contributions in common funds from which donors may direct income and corpus to public charities.

Additionally, a "disqualified supporting organization" is (1) a Type III supporting organization, other than a functionally integrated Type III supporting organization; or (2) any other supporting organization if either (a) the donor or donor advisor of the distributing DAF directly or indirectly controls a supported organization of the supporting organization, or (b) the IRS determines by regulations that a distribution to such supporting organization otherwise is inappropriate.

In Notice 2006-109, The IRS excluded certain educational grant payments made after August 17, 2006, if the payment is made pursuant to a grant commitment entered into on or before August 17, 2006. A commitment will be considered entered into on or before August 17, 2006, if:

- the educational grant was awarded on an objective and nondiscriminatory basis and is reasonable in amount in light of the purposes of the educational grant;

- the educational grant was not awarded to, nor are payments made pursuant to that grant, to a donor, donor advisor, or any person related to a donor or donor advisor;

- on or before August 17, 2006: (1) (a) the name of the educational grant recipient, the nature of the educational grant, the amount of the educational grant, the date on which it was awarded, and the educational grant period, were entered on the records of the sponsoring organization or were otherwise adequately evidenced, or (b) notice of the payments to be received was communicated to the payee in writing, and (2) the sponsoring organization keeps a record of such information or notice for a period that ends no earlier than three years after the close of the taxable year in which the last payment is made under the grant; and

- there is no material change in the amount or in the conditions of the educational grant, such as a required reapplication for the grant.

Summary of Taxable Distribution Rules

The following table illustrates the application of the taxable distribution rules to grants made by a DAF to certain persons:

Prohibited Distributions	Permitted Distributions	Permitted Distributions but only with Expenditure Responsibility
Individuals (except educational grants described in Notice 2006-109)	Public charity Private operating foundation DAF Supporting organization (unless it is a Type III that is non-functionally integrated or it supports an organization controlled by the donor, donor advisor or any one related to either)	Private non-operating foundation Non-functionally integrated Type III supporting organization Supporting organization that supports an organization controlled by the donor, donor advisor or any one related to either Any taxable organization (if for a charitable program)

Note that although distributions are permissible to private foundations under the new legislation, under existing law, grants from a DAF to the donor's private foundation is evidence of excessive donor control that could cause recharacterization of the DAF as a private foundation. The legislation also does not address what happens to the charitable contribution deduction limitations that apply to private foundations. An individual's charitable contribution deduction to certain private foundations is subject to a 30% limitation. However, when a DAF makes a contribution to the private foundation for the donor, the donor's contribution of those funds to the DAF should have been subject to the 50% limitation because the supporting organization of the DAF was a public charity.

Expenditure Responsibility

The necessary expenditure responsibility requirements were not described in the new legislation. However, the expenditure responsibility requirements for private foundations provide some guidance. The expenditure responsibility rules generally require that an organization exert all reasonable efforts and establish adequate procedures to ensure that the distribution is spent solely for the purposes for which made, to obtain full and complete reports from the distributee on how the funds are spent, and to make full and detailed reports with respect to such expenditures to the IRS. Specifically, the requirements include:

- pre-grant inquiry – a review of the identity and prior history of the grantee organization and its managers and the management, activities, and practices of the grantee organization; in general, pre-grant inquiries should be complete enough to give a reasonable person assurance that the grantee will use the grant for the proper purposes.

- written commitment – assuming satisfaction with the initial assessment, the grant must be made subject to a written agreement that clearly specifies the purposes of the grant and documents certain commitments by the grantee regarding progress reports and the use of funds.

- grantee reports – grantee must report at least annually to the grantor regarding the use of the funds and upon completion of the project.

- grantor reports – the grantor is required to report annually (on Form 990-PF) to the IRS the status of the expenditure responsibility grant and maintain its own records documenting the steps taken to comply with the expenditure responsibility requirements.

Excise Taxes

An excise tax equal to 20% of the amount of the distribution is imposed against the sponsoring organization. In addition, an excise tax equal to 5% of the amount of the distribution is imposed against any fund manager of the sponsoring organization who knowingly approved the distribution, not to exceed $10,000 with respect to any one taxable distribution. Fund managers include officers, directors, trustees or any person with similar powers or responsibilities and any employees having the authority or responsibility with respect to the distribution. The taxes on taxable distributions are subject to abatement under generally applicable present law rules.

Effective Date: The effective date of the taxable distribution rules are effective for taxable years beginning after August 17, 2006.

Excise Taxes on Prohibited Benefits

The Act also adds Section 4967 to the Code which provides that if a disqualified person of a DAF provides advice as to a distribution that results in any such person or other disqualified person receiving, directly or indirectly, a more than incidental benefit, an excise tax will be imposed upon the amount of the benefit. A disqualified person includes:

- a donor;
- a donor advisor;
- a person related to a donor or donor advisor which includes:
    - family members of donor or donor advisor (*i.e.*, spouses, ancestors, descendents, brothers, sisters and any spouse of such persons), and
    - an entity in which the donor or donor advisor own more than 35 percent of:
        - in the case of a corporation, the total combined voting power,
        - in the case of a partnership, the profits interest, and
        - in the case of a trust or estate, the beneficial interest.

In general, a distribution results in a more than incidental benefit if, as a result of a distribution from a DAF, a disqualified person receives a benefit that would have reduced (or eliminated) a charitable contribution deduction if the benefit was received as part of the contribution to the sponsoring organization. If, for example, a donor advises a that a distribution from the donor's DAF be made to the Girl Scouts of America, and the donor's daughter is a member of a local unit of the Girl Scouts of America, the indirect benefit the donor receives as a result of such contribution is considered incidental under the provision, as it generally would not have reduced or eliminated the donor's deduction if it had been received as part of a contribution by donor to the sponsoring organization.

Excise Taxes

An excise tax that equals 125% of the amount of the prohibited benefit is imposed against the person who advised as to the distribution, and against the recipient of the benefit. Persons subject to the tax are jointly and severally liable for the tax.

In addition, if a fund manager of the sponsoring organization agreed to the making of the distribution, knowing that the distribution would confer a more than incidental benefit on a donor, a donor advisor, or a person related to a donor or

donor advisor, the manager is subject to an excise tax equal to 10% of the amount of such benefit, not to exceed $10,000. The taxes on prohibited benefits are subject to abatement under generally applicable present law rules.

Effective Date: The effective date of the prohibited benefit rules are effective for taxable years beginning after August 17, 2006.

Excise Tax on Excess Benefit Transactions

Automatic Excess Benefit Transactions

The Act added new provisions to Section 4958 of the Code regarding excess benefit transaction. Under the new provisions certain transactions are automatic excess benefit transactions. These transactions include any grant, loan, compensation, or other similar payment from a DAF to a person that, with respect to such fund, is a donor, donor advisor, or a person related to a donor or donor advisor (*i.e.*, a disqualified person of a DAF as described above). The *entire* amount paid to any such person is treated as the amount of the excess benefit. The requirement that the entire amount of the payment be treated as the amount of the excess benefit differs from the generally applicable rules of Section 4958 of the Code, which provides that the excess benefit is the amount by which the value of the economic benefit provided exceeds the value of the consideration received.

"Other similar payments" include payments in the nature of a grant, loan, or payment of compensation, such as an expense reimbursement. Consequently, a donor cannot be reimbursed from a DAF for out-of-pocket payments for fundraising event expenses. Other similar payments do not include, for example, a payment pursuant to bona fide sale or lease of property, which instead are subject to the general rules of section 4958 under the special disqualified person rule of the provision described below. Also as described below, payment by a sponsoring organization of, for example, compensation to a person who both is a donor with respect to a DAF of the sponsoring organization and a service provider with respect to the sponsoring organization, generally, will not be subject to the automatic excess benefit transaction rule of the provision unless the payment is properly viewed as a payment from the DAF and not from the sponsoring organization.

Excess Benefit Transactions Generally

The Act also subjects DAFs to the generally applicable excess benefit transaction rules under Section 4958 of the Code with respect to transactions with its disqualified persons (though not necessarily with respect to transactions with the sponsoring organization more generally). For example, if a donor of a DAF purchased securities from the DAF, the purchase is subject to the rules of Section 4958 of the Code because, under the provision, the donor is a disqualified person with respect to the DAF. Thus, if as a result of the purchase, the donor receives an excess benefit as defined under generally applicable

section 4958 rules, then the donor is subject to tax under such rules. If the purchase was of securities that were contributed by the donor, a factor that may indicate the presence of an excess benefit is if the amount paid by the donor to acquire the securities is less than the amount the donor claimed the securities were worth for purposes of any charitable contribution deduction of the donor. In addition, if a DAF distributes securities to the sponsoring organization prior to purchase by the donor, consideration will be given to whether the distribution to the sponsoring organization prior to the purchase was intended to circumvent the disqualified person rule of the provision. If so, such a distribution may be disregarded with the result that the purchase is treated as being made from the DAF and not from the sponsoring organization.

As a factual matter, a person who is a donor to a DAF and, thus, a disqualified person with respect to the fund also may be a service provider with respect to the sponsoring organization. In general, as under present law, the sponsoring organization's transactions with the service provider are not subject to the rules of Section 4958 of the Code unless the service provider is a disqualified person with respect to the sponsoring organization (*e.g.*, if the service provider serves on the board of directors of the sponsoring organization), or unless the transaction is not properly viewed as a transaction with the sponsoring organization but in substance is a transaction with the service provider's DAF. If the transaction is properly viewed as a transaction with the DAF, then the transaction is subject to the general rules of Section 4958 of the Code, and, as described above, if the transaction involves payment of a grant, loan, compensation, or other similar payment, then the transaction is subject to the special automatic excess benefit transaction rules. For example, if a sponsoring organization pays an amount as part of a service contract to a service provider (a bank, for example) who also is a donor to a DAF of the sponsoring organization, and such amounts reasonably are charged uniformly in whole or in part as routine fees to all of the sponsoring organization's DAFs, the transaction generally is considered to be between the sponsoring organization and the service provider in such service provider's capacity as a service provider. The transaction is not considered to be a transaction between a DAF and the service provider even though an amount paid under the contract was charged to a DAF of the service provider.

The new provisions also provide that an investment advisor (as well as persons related to the investment advisor) are treated as a disqualified person under Section 4958 of the Code with respect to the sponsoring organization. Under the provision, the term "investment advisor" means, with respect to any sponsoring organization, any person (other than an employee of the sponsoring organization) compensated by the sponsoring organization for managing the investment of, or providing investment advice with respect to, assets maintained in DAFs (including pools of assets all or part of which are attributed to DAFs) owned by the sponsoring organization. Persons related to the investment advisor include family members and entities (corporations, partnerships, trusts and estates) in which the investment advisor holds a 35% interest.

Excise Taxes

Under the excess benefit provisions, a disqualified person is subject to a penalty of 25% of the excess benefit and is required to disgorge the excess benefit (or face an additional penalty of 200% of the excess benefit). The fund managers are potentially subject to a penalty of 10% (not to exceed $20,000) of the excess benefit. Any amount repaid as a result of correcting an excess benefit transaction must not be held in any DAF. The taxes on excess benefits are subject to abatement under generally applicable present law rules.

Excess Business Holdings

The excess business holdings rules of Section 4943 of the Code now apply to DAFs. In general, a DAF is only allowed to hold 20% of the voting stock in a corporation, reduced by the amount of voting stock held by a disqualified person of a DAF. Furthermore, a DAF is only allowed to hold a 20% profits interest in a partnership or joint venture or the beneficial interested in a trust or similar entity. Ownership of a proprietorship is prohibited if the proprietorship is an unrelated trade or business. If it is established that no such persons have effective control of the corporation, a DAF and such persons together may hold up to 35% rather than 20% of such entities.

The rules only restricts ownership of interests in a "business enterprise," defined as "the active conduct of a trade or business, including any activity which is regularly carried on for the production of income from the sale of goods or the performance of services." A trade or business is a business enterprise, however, only if it is an unrelated trade or business for purposes of Section 513 of the Code (*i.e.*, a business that is not "substantially related" to an exempt purpose). A functionally-related business (*i.e.*, an activity which is related to the exempt purposes of the organization) or a program-related investment is not a business enterprise.

Furthermore, a trade or business is not a business enterprise if 95% or more of its gross income is passive. Passive gross income includes dividends, interest, payments with respect to securities loans, annuities, royalties measured by production or income from the property, rents unless included in unrelated business taxable income, and gains and losses on sales and exchanges of property other than inventory and property held for sale to customers. Income from sales of goods is also passive if the seller does not manufacture, produce, physically receive or deliver, negotiate sales of, or maintain inventories in such goods.

DAFs receiving gifts that result in excess business holdings have five years to dispose of such holdings that are above the permitted amount. The DAF may obtain a five year extension of this grace period upon approval by the IRS. DAFs that currently hold excess business holdings have a longer period under complicated transition rules that applied to private foundations when Section 4943 of the Code was enacted in 1969.

Excise Taxes

The excise tax is equal to 10% of the value of the excess business holdings held during the DAF's applicable taxable year (or face an additional penalty of 200% of the excess business holdings).

Effective Date: The effective date of the excess business holdings rules are effective for taxable years beginning after August 17, 2006.

Treatment of Charitable Contribution Deductions for Maintenance in a DAF

Income Tax Deductions

Contributions to a sponsoring organization for maintenance in a DAF are not eligible for a charitable deduction for income tax purposes if the sponsoring organization is:

- a veterans' organization described in Section 170(c)(3) of the Code;
- a fraternal society described in Section 170(c)(4) of the Code;
- a cemetery company described in Section 170(c)(5) of the Code; or
- a Type III supporting organization (other than a functionally integrated Type III supporting organization).

Gift and Estate Tax Deductions

Contributions to a sponsoring organization for maintenance in a DAF are not eligible for a charitable deduction for gift and estate tax purposes if the sponsoring organization is:

- a veterans' organization described in Section 2522(a)(4) of the Code for gift tax purposes and Section 2055(a)(4) of the Code for estate tax purposes;
- a fraternal society described in Section 2522(a)(3) of the Code for gift tax purposes and Section 2055(a)(3) of the Code for estate tax purposes; or
- a Type III supporting organization (other than a functionally integrated Type III supporting organization).

Additional Substantiation Requirements

In addition to satisfying present-law substantiation requirements under Section 170(f) of the Code, a donor must obtain, with respect to each charitable contribution to a sponsoring organization to be maintained in a DAF, a contemporaneous written acknowledgment from the sponsoring organization providing that the sponsoring organization has exclusive legal control over the assets contributed. Additionally, no charitable contribution deduction is allowed for gifts to DAFs operated by a Type III supporting organization that is not functionally integrated.

Effective Date

The amendments to the Code that relate to charitable contribution take effect after February 13, 2007.

Disclosure Requirements on Returns and Exemption Applications

Effective for taxable years ending after the date of enactment of the Act, a sponsoring organization is required to disclose on its information returns:

- the total number of DAFs it owns;
- the aggregate value of assets held in those funds at the end of the organization's taxable year; and
- the aggregate contributions to and grants made from those funds during the year.

In addition, when seeking recognition of its tax-exempt status, a sponsoring organization must disclose whether it maintains or intends to maintain DAFs. The organization must also provide information regarding its planned operation of such funds, which should include, for example, a description of procedures it intends to use to:

- communicate to donors and donor advisors that assets held in DAFs are the property of the sponsoring organization; and
- ensure that distributions from DAFs do not result in more than incidental benefit to any person.

Effective Date

The disclosure requirements for tax returns are effective for taxable years ending after the effective date of August 17, 2006. The disclosure requirements for tax exemption applications apply to applications filed after the effective date.

SUPPORTING ORGANIZATIONS ("SOs") PROVISIONS

The Act also imposes numerous new rules on SOs. These new rules result in (1) excise taxes on excess benefit transactions and excess business holdings similar to the DAF rules; (2) limitations and prohibitions on grants to certain SOs; (3) payout requirements for certain SOs; and (4) disclosure requirements on information returns.

SO Definitions

The Act distinguishes types of SOs in the new provisions of the Code. A Type I SO is a SO that is operated, supervised, or controlled by one or more Section 509(a)(1) or 509(a)(2) organizations. A Type II SO is a SO that is supervised or controlled in connection with one or more Section 509(a)(1) or 509(a)(2) organizations. A Type III SO is a supporting organization that is operated in connection with a Section 509(a)(1) or (2) organization. The Act also makes a distinction between a functionally integrated Type III SO (*i.e.*, a Type III SO that is not required under regulations prescribed by the Treasury to make payments to supported organizations due to the activities of the organization related to performing the functions of, or carrying out the purposes of, such supported organizations) and other Type III SOs.

Applicable to Only Type III SOs

Responsiveness

Type III SOs must provide to each of its supported organizations information that the IRS will require to ensure that the organization is responsive to the needs or demands of the supported organization.

No foreign supported organization

Type III SOs cannot have a foreign supported organization. However, for Type III SOs that support a foreign organization on the date of enactment, the provision provides that the general rule does not apply until the first day of the third taxable year of the organization beginning after the date of enactment.

Charitable trusts that are Type III SOs

Charitable trusts will no longer qualify as a Type III SO solely because it is a charitable trust under state law, the supported organization is a beneficiary of the trust, and the supported organization has the power to enforce the trust and compel an accounting. For existing trusts the effective date of the Act is August 17, 2007. For all others, the effective date is August 17, 2006.

Payout requirements of Type III SOs

Treasury will issue regulations to require distributions of a percentage of either income or assets of the Type III SO to its supported organizations. The

intent is to require that a “significant amount” is paid to the supported organization(s). There is an exception for functionally integrated Type III SOs.

Applicable to Only Types I and III SOs

Types I and III SOs may not accept any gifts or contributions from any person who directly or indirectly controls the governing body of a supported organization.

Applicable to All SOs

Excess benefit transactions

Persons who are disqualified persons with respect to a SO are also disqualified persons with respect to the supported organizations under the generally applicable excess benefit transaction rules.

Additionally, the Act prohibits automatic excess benefit transaction between SOs and their disqualified persons similar to the DAF automatic excess benefit transactions. Consequently, any grant, loan, compensation, and other similar payment provided by a SO to a substantial contributor, a family member of the substantial contributor, or businesses they control are treated as an automatic excess benefit and subject to excise taxes. SOs may not make loans to any disqualified person (including foundation managers). The Act makes exceptions for substantial contributors or other disqualified persons who are public charities.

The new rules apply to transactions occurring after July 25, 2006. However, in Notice 2006-109, the IRS recognized the difficulty faced by SOs and their disqualified persons that had an existing relationship that would violate these rules. Consequently, the IRS will not consider any payment made pursuant to a written contract that was binding on August 17, 2006 as an excess benefit transaction, provided that (1) such contract was binding at all times after August 17, 2006 and before payment is made, (2) the contract is not modified during such period, and (3) the payment under the contract is made on or before August 17, 2007. Termination of the contract does not constitute a modification for this purpose. Relief was provided with respect to certain arrangements that were not governed by a binding written contract but such relief expired on December 31, 2006.

Excess business holdings

As with DAFs, existing private foundation excess business holdings rule apply to Type III SOs that are not functionally integrated with the supported organization, and to Types II SOs if the supported organization is controlled by the SO's donors. Generally, such SOs voting or profits interests in a business enterprise, when combined with the interests of disqualified persons, may not exceed 20%. The provision is effective for taxable years beginning after August 17, 2006.

For existing holdings, the SO can follow the transition rules for private foundations when Section 4943 of the Code was enacted in 1969.

Distributions to SOs

From private foundations

Grants by private non-operating foundations to certain SOs do not count as qualifying distributions under Section 4942 of the Code. These supporting organizations include: (1) Type III SOs that are not functionally integrated with the supported organization and (2) any Type I, Type II or functionally integrated Type III SOs where a disqualified person of the private foundation directly or indirectly controls the supporting organization or a supported organization of such supporting organizations or the Treasury determines by a rule that a distribution is inappropriate. Furthermore, such grants are taxable expenditures for both private non-operating and private operating foundations under Section 4945 of the Code unless the foundation follows the expenditure responsibility requirements.

From DAFs

Grants from DAFs are prohibited to (1) Type III SOs that are not functionally integrated with the supported organization and (2) any Types I, Type II or functionally integrated Type III SO if the donor or donor advisor controls a supported organization unless the sponsoring organization exercises expenditure responsibility. The Treasury may determine by a rule that other distributions from a DAF are inappropriate.

From retirement plans

Persons who have reached 70 ½ may exclude from income up to $100,000 per year in retirement plan assets if contributed to a qualifying charity. A SO is not a qualifying charity for this purpose.

From donors seeking a charitable contribution deduction

No charitable contribution deduction is allowed for gifts to DAFs operated by a Type III SO that is not functionally integrated. The rule is effective for gifts made after February 13, 2007.

Tax Returns of SOs

Form 990 for all SOs must list the supported organizations, indicate which type of SO it is, and include a certification that it is not controlled directly or indirectly by disqualified persons (other than those disqualified solely by being an organization manager).

Reclassification of Type III SOs

According to IRS Announcement 2006-93, a SO can seek to change its public charity classification from a 509(a)(3) organization to a 509(a)(1) or (a)(2) organization for reasons related to changes made by the Act by submitting a written request for reclassification to the IRS pursuant to Rev. Proc. 2006-4.

Interim Grantor Reliance Standards for Private Foundations and DAFs

In Notice 2006-109, the IRS issued interim reliance standards for private foundation and DAF grantors when determining (1) a SO grantee's type, (2) if it is a Type III SO, whether it is functionally integrated and (3) if it is a Type I, Type II or functionally integrated Type III SO, whether it is controlled. Until further guidance is issued, for purposes of qualifying distributions of a private foundation under Section 4942 of the Code, taxable expenditures of a private foundation under Section 4945 of the Code and taxable distributions of a DAF under Section 4966 of the Code, a grantor, acting in good faith, may rely on information from the IRS Business Master File or the grantee's current IRS determination letter recognizing the grantee as exempt from federal income tax and indicating the grantee's public charity classification in determining whether the grantee is a public charity under section 509(a)(1), (2), or (3).

In addition, in determining whether the grantee is a Type I, Type II, or functionally integrated Type III SO, a grantor, acting in good faith, may rely on written representations from the grantee. To establish that a grantee is a Type I or a Type II SO, a grantor, acting in good faith, may rely on a written representation signed by an officer, director or trustee of the grantee that the grantee is a Type I or Type II SO, provided that:

- the representation describes how the grantee's officers, directors, or trustees are selected, and references any provisions in governing documents that establish a Type I or a Type II relationship between the grantee and its supported organization(s); and

- the grantor collects and reviews copies of governing documents of the grantee (and, if relevant, of the supported organization(s)).

To establish that a grantee is a functionally integrated Type III SO a grantor, acting in good faith, may rely on a written representation signed by an officer, director or trustee of the grantee that the grantee is a functionally integrated Type III SO, provided that:

- the grantee's representation identifies the one or more supported organizations with which the grantee is functionally integrated;

- the grantor collects and reviews copies of governing documents of the grantee (and, if relevant, of the supported organization(s)), and any other documents that set forth the relationship of the grantee to its supported organizations, if such relationship is not reflected in the governing documents; and

- the grantor collects and reviews a written representation signed by an officer, director or trustee of each of the supported organizations with which the grantee represents that it is functionally integrated describing the activities of the grantee and confirming that but for the involvement of the grantee engaging in activities to perform the functions of, or to carry out the purposes of, the supported organization, the supported organization would normally be engaged in those activities itself.

As an alternative to relying on a written representation from a grantee and specified documents as described above, a grantor may rely on a reasoned written opinion of counsel of either the grantor or the grantee concluding that the grantee is a Type I, Type II, or functionally integrated Type III SO. Solely for purposes of a representation or opinion of counsel on which a grantor may rely, an organization will be considered a functionally integrated Type III SO if it would meet the test set forth in Treasury Regulations Section 1.509(a)-4(i)(3)(ii).

The good faith requirement is not satisfied if the collected specified documents are inconsistent with the written representation. In each case, the grantor must verify that the grantee is listed in Publication 78, *Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986*, or obtain a copy of the current IRS determination letter recognizing the grantee as exempt from federal income tax.

To determine whether a disqualified person with respect to a private foundation controls a SO or one of its supported organizations, the control standards established in Treasury Regulation Section 53.4942(a)-3(a)(3) apply. Under these standards, an organization is controlled by one or more disqualified persons with respect to a foundation if any such persons may, by aggregating their votes or positions of authority, require the SO or supported organization to make an expenditure, or prevent the SO or the supported organization from making an expenditure, regardless of the method by which the control is exercised or exercisable.

Similarly, in determining whether a donor or donor advisor or a person related to a donor or donor advisor of any DAF controls a supported organization of the grantee, the control standards established in Treasury Regulation Section 53.4942(a)-3(a)(3) apply. Under these standards, a supported organization is controlled by one or more donor or donor advisors (and any related parties) of any DAF if any such persons may, by aggregating their votes or positions of

authority, require a supported organization to make an expenditure, or prevent a supported organization from making an expenditure, regardless of the method by which the control is exercised or exercisable.

FURTHER STUDY

Treasury is required to further study DAFs and SOs to specifically consider the following:

- deduction for contributions to DAFs and SOs;
- minimum distribution requirements;
- whether donor advisory rights are consistent with treatment as completed gifts; and
- whether the foregoing issues should be considered with respect to other charities or charitable donations

Results of the study must be submitted to Congress by August 17, 2007. In Notice 2007-21, the Treasury and IRS requested comments regarding the study. The comments submitted will be available to the public.

RESOURCES

For the full text of the new legislation, see
http://waysandmeans.house.gov/media/pdf/taxdocs/pensiontextpt1.pdf

For the Joint Committee on Taxation's explanation of the new legislation, see
http://www.house.gov/jct/x-38-06.pdf

For the Council on Foundations' analysis of the new tax legislation, see
http://www.cof.org/Action/content.cfm?ItemNumber=5275&navItemNumber=5276

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