

Accelerating Charitable Efforts (ACE) Act

Section-by-Section Summary

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The ACE Act strengthens requirements for charitable contributions to donor advised funds, provides incentives for private foundations to increase their charitable distributions, and closes loopholes to strengthen the 5 percent payout rule, avoid overvaluation of complex assets and preserve the distinction between private foundations and public charities.

SECTION 1: SHORT TITLE

Accelerating Charitable Efforts Act

SECTIONS 2 and 3: DONOR ADVISED FUND PROVISIONS

Current Law

Under current law, deductions for contributions to donor advised funds are allowed immediately without any requirement or incentive that donated funds be distributed to a qualified charity. Current law also allows contributions of non-publicly traded assets to donor advised funds to be deducted based on the appraised value of the asset not the amount of cash that is actually made available for charitable use. Sections 2 and 3 of the bill impose new requirements on donor advised fund contributions to ensure that donations are getting to working charities within a reasonable period of time and that the deductions allowed for non-publicly traded assets reflect their actual value.

Proposals: Sections 2 and 3

In general, the bill changes the timing of the charitable deduction for contributions to donor advised funds, providing that no deduction is allowed until the donation is distributed from the fund in a qualifying distribution. (New Code § 170(f)(19)(A)(i)(II).) Once the donation is so distributed, the donor is allowed a deduction equal to the amount of the qualifying distribution. (New Code § 170(f)(19)(A)(i)(III).) Contributions of noncash assets must be sold before they are distributed to be deductible. (New Code § 170(f)(19)(A)(i)(I).)

The taxpayer must substantiate the contribution with a contemporaneous acknowledgement from the donor advised fund sponsor that states the name of the donor, that a qualifying distribution has been made, the amount of the distribution, and that the deduction may not exceed such amount. (New Code § 170(f)(19)(C).) The sponsor also provides the Secretary of the Treasury with this information.

In general, a qualifying distribution is a distribution to a public charity (other than a donor advised fund at a different sponsor and certain supporting organizations). (New Code § 170(f)(19)(A)(ii).)

Any contributions not distributed in a qualifying distribution within a 50-year period are subject to an excise tax, paid by the donor advised fund sponsor, equal to 50% of the undistributed amount. (New § 4967A(b)(2) of the Code.)

Exceptions

Under the bill, the new timing rule does not apply to contributions to a qualified donor advised fund or to a qualified community foundation donor advised fund. (§2 of the bill and new Code § 170(f)(19)(A)(i).) For these contributions, an immediate deduction is allowed.

A qualified donor advised fund is a donor advised fund that requires the termination of any advisory privileges for any contribution (and earnings on the contribution) within a 15 year period (§2 of the bill and new Code § 170(f)(19)(D)), and where the donor identifies a preferred organization to receive any contributions with respect to which advisory privileges have expired. (§2 of the bill and new Code § 170(f)(18)(C).) Any contribution not distributed in a qualifying distribution within the 15 year period is subject to an excise tax, paid by the donor advised fund sponsor, equal to 50% of the undistributed amount. (§3 of the bill and new §4967A(b)(1) of the Code.)

A qualified community foundation donor advised fund is one that is owned or controlled by a qualified community foundation and that either (1) has a value not exceeding \$1 million (adjusted for inflation, and including all funds advised by the donor at the qualified community foundation) or (2) requires qualifying distributions each year of at least 5% of the value of the fund assets (determined as of the last day of the preceding calendar year). (§2 of the bill and new Code § 170(f)(19)(E).) A qualified community foundation is a § 501(c)(3) organization that is organized and operated for the purpose of understanding and serving the needs of a particular geographic community (no larger than 4 States) by engaging donors and pooling donations to create charitable funds in direct furtherance of those needs. A qualified community foundation must hold at least 25% of total assets outside of donor advised funds. (§2 of the bill and new Code § 170(f)(19)(E)(iv).)

For contributions of non-publicly traded assets to a qualified donor advised fund or a qualified community foundation donor advised fund, a deduction is not allowed until the donor advised fund sponsor sells the asset. The amount of the deduction may not exceed the amount of the gross proceeds from the sale and credited to the donor advised fund. The taxpayer must have substantiation from the donor advised fund sponsor (also provided to the Secretary of the Treasury) that states the sales proceeds, the amount credited to the fund from the sale, and that the deduction may not exceed such amount. (§2 of the bill and new § 170(f)(19)(C)(ii)(III).)

These provisions are effective for contributions made after the date of enactment.

SECTIONS 4, 5, AND 6: PAYOUT TIGHTENERS AND LOOPHOLE CLOSERS

Current Law

Current law requires private foundations to make charitable distributions (“qualifying distributions”) each year equal to roughly 5% of the foundation’s prior end of year investment asset value. Current law allows administrative expenses to count as qualifying distributions, including expenses to fund the compensation or travel of foundation insiders. Current law also allows foundations to count distributions to donor advised funds as qualifying distributions.

Current law defines whether a § 501(c)(3) organization is a public charity or a private foundation. If a § 501(c)(3) organization receives sufficient public support – from individuals, from public charities, or from government – then it can avoid private foundation status. In general, if an individual contributes more than 2% of an organization’s support for a year, the excess does not count as public support. Current law treats support from a donor advised fund as support from a public charity, not as support from an individual.

Proposals

Section 4. Section 4 of the bill provides that payment of the administrative expenses of an insider of the foundation, such as the foundation founder or family member of the founder, do not count as qualifying distributions. This provision is effective for taxable years beginning after December 31, 2021.

Section 5. Section 5 of the bill provides that foundation contributions to a donor advised fund are treated the same as foundation to foundation transfers and so generally do not count as qualifying distributions. However, these transfers will qualify if paid out of the DAF before the end of the taxable year following the contribution year. In addition, private foundations that make contributions to donor advised funds must report the amount of the contribution, the name of the donor advised fund sponsor, and any advice given regarding the contribution. These provisions are effective for distributions made after December 31, 2021 and returns required to be filed after December 31, 2021.

Section 6. Section 6 provides that a § 501(c)(3) organization’s support from donor advised funds is treated as support from one individual, not from a public charity, unless the donor advised fund sponsor identifies the individual donor, in which case the support is treated as coming from that individual. The provision applies to contributions made after the date of enactment.

SECTIONS 7 AND 8: PRIVATE FOUNDATION PAYOUT INCENTIVES

Current Law

Current law imposes an annual tax of 1.39% on the net investment income of private foundations.

Proposals

Section 7. Eliminates this tax in years when a private foundation makes qualifying distributions of 7% or more of the foundation's prior end of year investment asset value (which is more than the 5% required by current law).

Section 8. Eliminates the tax altogether for newly created foundations that are required by their governing instruments to have a duration of no more than 25 years. A recapture tax applies if the foundation later amends its governing documents to allow a longer life.

Sections 7 and 8 are effective for taxable years beginning after the date of enactment.