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ACC Guidelines for Cantors' Discretionary Fundsⁱ

March 5, 2012

Important Note: These Guidelines are only a suggestion. Each Congregation and Cantor needs to have a tax consultant whose advice will guide them in the implementation of a specific policy.

As required by United States Treasury Regulations and IRS Circular 230, you are advised that this message and any documents attached hereto (unless otherwise expressly stated in such document) are not intended or written to be used, and cannot be used by you or any other person, for the purpose of avoiding penalties that may be imposed under federal tax laws.

Introduction

Most Congregations establish one or more clerical Discretionary Funds where Congregation members or others may be motivated to make a tax deductible charitable contribution. All Discretionary Fund contribution checks should be made out to the Congregation and are, therefore, the property of the Congregation, to be used at the discretion of the Cantor consistent with the Congregation's charitable and tax-exempt status.

In order for Discretionary Fund receipts to qualify as tax deductible charitable contributions, the donor must not receive any *quid pro quo* (something of monetary value) in exchange for the contribution. Receiving a spiritual benefit in exchange is not considered receiving a quid pro quo. Any *quid pro quo* offsets the tax deductibility of such contribution to the extent of its value. [94FED ¶46,382, *Internal Revenue Service: Procedures: Churches and religious organizations*

- Disbursements from the Fund not consistent with the Congregation's charitable and tax exempt status that either directly personally benefit the Cantor or indirectly benefit his/her family or friends is required to be reclassified by the Congregation for income tax purposes as additional income to the Cantor.
- Donations received not consistent with the Congregation's charitable and tax-exempt status such as monies designated to benefit an individual who is not in financial need or a for profit entity would be a violation of the not-for-profit status of the organization and can result in the revocation of the Congregation's tax exempt status. [94FED ¶46,382, *Internal Revenue Service: Procedures: Churches and religious organizations*]

- Finally, certain Fund disbursements could be perceived as benefiting both the Cantor and the Congregation. In such cases, it is highly recommended that the Cantor's employment contract and/or a Board of Directors resolution identify such dual purpose expenditures as ordinary and necessary business expenses and specify that such expenditures, upon proof of proper documentation, be paid by the Congregation as business expenses under an *accountable plan*, consistent with the Congregation's charitable and tax-exempt status. [94FED ¶146,382, Internal Revenue Service: Procedures: Churches and religious organizations]
- Should the Cantor's contract omit any reference to such reimbursements, there may be the appearance of impropriety when the Cantor, in the absence of specific authorization from the Congregation and in the inadvertent omission of in the Cantor's contract, uses discretionary funds, for example, to go to convention or pays his/her dues from the Fund.
- An even more serious issue arises when the Cantor's employment contract specifically states that funds CANNOT be used for dues or convention expenses and the Cantor disburses them anyway from the Fund. In that case, the disbursement would need to be treated by the Congregation as additional income to the Cantor. In this case, the Cantor would still have the right to take an offsetting deduction as an un-reimbursed employee expense on his/her personal income tax return
- The Board of Directors and the Cantor should memorialize guidelines for the operation of the Discretionary Fund, through a Board Resolution or a Discretionary Fund document. The document might *establish a Cantor's Discretionary Fund, the monies received to be used solely at the discretion of the Cantor for charitable purposes consistent with the synagogue's charitable and tax-exempt purposes, to assist individual, educational and community needs that can be met in a confidential manner and whose purpose would bring benefit to the congregation's organizational goals*. Such broad definition would enable the Cantor's Discretionary fund to be used to help individuals in need of financial support or assist community groups who are recognized IRC 501(c)(3) public charitable organizations.
- The Discretionary Fund resolution or document ought to further specify that the Congregation intends to appoint an independent auditor or other individual as they may so designate to periodically review Discretionary Fund transactions and report potential inconsistencies, if any, with the Congregation's charitable and tax-exempt purpose to the Board or a select Board appointed committee for further review.
- For best practices, a Cantor's employment contract ought to contain a clause referencing the intent of the Congregation to *maintain a Cantor's Discretionary Fund as part of its over all charitable funds received from which the Cantor shall have control, to be used consistent with the charitable purposes of the Congregation as approved by the Board of Directors*.
- The board has a fiduciary duty to protect the Congregation's tax-exempt status which requires determining when its contributors are entitled to receive a charitable deduction. [90-1 USTC

[¶50,270 Harold Davis, et ux., Petitioners v. United States]; protect the Cantor by reclassifying, if necessary, certain Discretionary Fund monies as additional income to the Cantor when disbursements are used for non-contractual personal purposes; and returning unrelated business taxable income (UBTI) donations when monies received are for purposes unrelated to the Congregation's charitable and not-for-profit mission.

- Cantors need to be very sensitive to maintain moral and ethical integrity when using these funds.
- When a Cantor's employment contract ends, the Discretionary Fund remains the property of the Congregation. Contributors who receive a *quid pro quo* must be notified by the Congregation of their reduced charitable tax deductible contribution. When Fund monies are determined to be utilized for personal purposes, the Cantor may write a check to reimburse the Fund for the personal usage or, alternatively, have their year-end IRS Form W-2 income be increased by the amount of the personal expenditures and any income withholding and employment taxes deducted from their future net pay.
- Finally, if funds are received for non-exempt unrelated business taxable income (UBTI) purposes, the Congregation must either, return the funds or file IRS Form 990-T and report and pay unrelated business taxable income tax on the received funds. It also risks having the IRS disqualify the Congregation from its not-for-profit status. [94FED ¶146,382, *Internal Revenue Service: Procedures: Churches and religious organizations*]

Listed below are some practical suggestions when establishing a Cantor's Discretionary Fund

1. As the Cantor's Discretionary Fund is under the control of the Cantor but is a fund of the synagogue, there should be a policy that guides the use of the Fund. This policy could be proposed by the Cantor, the Board, or could already be in place. The policy should be approved by both the Cantor and the Board. In addition to the policy stating that the Fund should comply with all relevant tax laws, the policy should specifically mention that the Fund cannot be used for the personal benefit of the Cantor and his/her family.
2. The Fund should be reviewed yearly by an individual, preferably not a member of the synagogue, such as an attorney or accountant or other appropriate person. This individual should be jointly agreed upon by the Cantor and the synagogue President/Board to insure that the Fund is being used in accordance with the prevailing tax laws and the Discretionary Fund policy. Confidentiality is of prime importance and must be maintained by the individual performing the review.
3. In order to keep individual names confidential, the Cantor should annually report only the general categories disbursed by the Fund to the synagogue Board and/or to the synagogue membership through a bulletin article or other appropriate means.
4. The Cantor should have an accountant or a lawyer knowledgeable in tax matters to whom he/she can turn when questions regarding the Fund arise.

5. The checks should be imprinted with the following notation: Cantor's Discretionary Fund, Congregation xxxx, Cantor xxxxx xxxx.
6. All checks deposited into the Fund should be made out to the Fund and not made out to the Cantor personally. (A reminder about this point should regularly be placed in the synagogue bulletin).
7. Even though the Fund can be used for many worthy purposes, caution should be exercised to prevent the Fund from being used as a mere "pass through". If a donor wants to support a particular program in the synagogue it would be better to make the contribution directly to the synagogue, rather than through the Cantor's Discretionary Fund.
8. While these Suggested Guidelines attempt to deal with some of the legal considerations, it is recommended that in the creation of the agreement between the synagogue and the Cantor, that moral and ethical issues should be considered, such as appropriate priorities for disbursing funds.

Categories

It is recommended that the following specific items might be placed in the Cantor's contract and/or – Congregation policy, providing they are agreed upon by the Cantor and the synagogue Board. When making an agreement between the Cantor and the Congregation regarding the use of discretionary funds, the following areas should be considered. This list is only a suggestion and each Congregation and Cantor should structure the policy with the advice of a competent tax advisor. The specific items listed in categories B, C, & D are merely examples and are not to be considered as all-inclusive.

Category A – Generally considered to be appropriate

1. Discretionary Funds disbursed to needy congregants and other individuals in a non-discriminatory manner in furtherance of the synagogue's charitable goals
2. Discretionary Funds disbursed to other 501(C)3 organizations, including the synagogue

Category B – Use of the Fund to supplement customary synagogue expenses. Best practice would suggest that the Fund issue a check to the synagogue and the synagogue then cover the related expenses or reimbursement.

1. For costs covering the honorarium and out-of-pocket expenses of a guest speaker or educational program
2. For costs of visiting Congregation college students. To the extent practicable, the Congregation should receive a check from the Discretionary Fund, then disburse directly for the hotel, transportation, food, etc. Where not practicable, the secondary alternative is to issue an allowable reimbursement payment to the Cantor's Discretionary Fund upon his/her submission of original receipts for expenses incurred.
3. For entertaining the Congregation Board at Cantor's house; providing a holiday venue such as a Rosh HaShanah reception; a Yom Kippur break-the-fast; a dinner honoring a guest lecturer; etc. Best practice is for the synagogue to receive a check from the Discretionary Fund and disburse directly for the expenses incurred. Where not practicable, the secondary alternative is to issue a reimbursement payment to the

Cantor's Discretionary Fund for out-of-pocket expenses upon his/her submission of original receipts.ⁱⁱ

Category C – Items to be used by the Cantor but remain the property of the synagogue when the Cantor leaves. Best practice would suggest that the Cantor's Discretionary Fund issue a check to the synagogue and the synagogue then cover the related expenses or reimbursement.ⁱⁱⁱ

1. Books, CD's, DVD's and other materials used by the Cantor
2. Purchase of a computer, furniture, art work used by the Cantor

Category D – Other items which may be appropriate if approved as employment related expenses by the synagogue Board or delineated as part of a Cantor's contract. Best practice would suggest that the Fund issue a check to the synagogue and the synagogue pay the related expenses directly.

1. Payment of ACC Dues
2. Payment of Convention and other programs (not expenses for spouse/partner/family)
3. Payment for community dinners benefiting a charity (not expense for the spouse/partner unless the Congregation indicates that the spouse/partner's presence is necessary)

Category E – Disbursements for mixed-use expenditures which benefit the Congregation and also include personal benefit to the Cantor

Best practice is to pro rate the cost of personal and business portions by a reasonable allocation method such as by days spent for business divided by total time spent and specific identification of personal expenses for other family members. If the expense is substantially personal, ideally, the Cantor should pay the entire amount and have Congregation reimburse him/her for the business portion under an *accountable plan* where evidence of receipts is required for reimbursement; alternatively (but not best practices) the Congregation may pay the entire cost but add the value of the personal costs paid to the Cantor's year-end income on Form IRS Form W-2.^{iv}

1. Attending an educational conference which benefits the Congregation while spending additional days vacationing and/or bringing other family members along who are not required to participate in the conference.
2. Visiting congregants who live in a different location such as the "sunbelt" during the winter.

ⁱ "Guidelines for Rabbi's Discretionary Funds" (Copyright © 2008 - 2012 Central Conference of American) was used with permission as the template for this document. [<http://ccarnet.org/rabbis-communities/professional-resources/discretionary-fund-guidelines/>].

ⁱⁱ NOTE: As an alternative to best practices, if the Cantor disburses the above referenced items from his/her personal funds (not through the Cantor's discretionary fund), the congregation may reimburse the Cantor directly for employment related ordinary and necessary, contractual or board approved business expenses once original documentation of receipts is received by the Congregation. The IRS defines this method of reimbursement as an accountable plan. Conversely, where a periodic allowance is disbursed and receipts are not documented and/or required, it is considered a non-accountable plan and the allowance payments may be considered additional taxable income to the Cantor. (Jim Donenberg, CPA with Rosenfeld Zweig & Donenberg Ltd.) [94FED ¶46,382, *Internal Revenue Service: Procedures: Churches and religious organizations*]; [*Ministers Audit Technique Guide* (Rev. 6/30/2009), 2009ARD 126-7, (Jul. 1, 2009)] and [*Publication 463 (2008), Travel, Entertainment, Gift, and Car Expenses*].

ⁱⁱⁱ NOTE: As an alternative to best practices, if the Cantor purchases the above referenced items from his/her personal funds (not through the Cantor's Discretionary Fund), the Congregation may reimburse the Cantor directly upon submission of ordinary and necessary business related receipts. Alternatively, the Cantor may purchase these items with personal funds and not request reimbursement in which case they become and remain the Cantor's property. In this case, they may qualify to be deductible unreimbursed out-of-pocket ordinary and necessary business expenses on the Cantor's income tax return for that tax year. (Jim Donenberg, CPA with Rosenfeld Zweig & Donenberg Ltd.) [*Ministers Audit Technique Guide* (Rev. 6/30/2009), 2009ARD 126-7, (Jul. 1, 2009)] and [*Publication 463 (2008), Travel, Entertainment, Gift, and Car Expenses*].

^{iv} [*Ministers Audit Technique Guide* (Rev. 6/30/2009), 2009ARD 126-7, (Jul. 1, 2009)] and [*Publication 463 (2008), Travel, Entertainment, Gift, and Car Expenses*]