



FREQUENTLY ASKED QUESTIONS ABOUT MAKING A DONOR-ADVISED FUND GIFT TO THE BOSTON SYMPHONY ORCHESTRA

With the enactment of the Pension Protection Act of 2006, the provisions of the Internal Revenue Code that govern donor-advised funds (DAFs) were significantly revised and expanded. In an effort to clarify these new provisions, the Boston Symphony Orchestra offers this document that summarizes the updated BSO policy regarding acceptance of grants recommended through DAFs. This document is intended as a guideline regarding the BSO's policies; donor-advisors should consult their DAF managers, tax advisors, and legal counsel for definitive tax treatment.

Additional questions about making a gift to the BSO through a DAF should be directed to individual gift officers or to Jennifer Roosa Williams at jrwilliams@bso.org or 617-638-9445.

1. What is a donor-advised fund (DAF)?

A donor-advised fund (DAF) is a charitable giving vehicle set up under the tax umbrella of a public charity which acts as sponsor to many funds. DAFs are generally an easy-to-establish, low-cost, flexible vehicle for charitable giving as an alternative to direct giving or the creation of a private foundation. The donor receives the maximum tax deduction at the time a gift is made to the DAF.

A donor or his or her designees ("donor-advisors") can exercise the privilege of making nonbinding grant and investment recommendations to the sponsoring charity of the DAF. The sponsoring charity is the legal owner of the DAF, and therefore the donor-advisor's recommendations can be advisory only.

2. Can a donor-advisor receive benefits from a charity he/she recommends to receive a grant made by their donor-advised fund?

The Pension Protection Act of 2006 (PPA) clearly states that the donor-advisor cannot receive "more than incidental benefit" from the recommended DAF grant to the charity.

Although there is no specific definition of "incidental benefit" included in the PPA, the Congressional Joint Committee on Taxation indicates that it includes any grant that, if made directly to the recipient charity, would result in a reduced charitable deduction (by the value of benefits cost) for the donor making the gift.

Since the original contribution to the DAF provided the maximum tax deduction, the donor-advisor cannot receive any benefits that would change the value of the tax deduction. However, the donor-advisor can receive benefits that have insubstantial or no fair market value.

3. What benefits will I receive if I make an annual fund donation to the BSO through my DAF?

In all new membership benefit lists and communications, the BSO clearly indicates those annual fund membership benefits which have insubstantial or no fair market value. Beyond the explicitly stated membership benefits, the BSO recognizes the special place of all donors in the BSO family, and as such, holds special recognition, stewardship, and cultivation events to honor donors.

4. Can I use my DAF to pay the charitable portion of a membership contribution and then personally pay for the value of benefits? Can I personally pay for membership benefits on an à la carte basis?

No. Though Congress and the IRS have not provided clear guidance on the issue of bifurcating, or splitting, gifts from DAFs, most sponsoring organizations do not permit donor-advisors to bifurcate gifts as doing so could potentially be viewed as resulting in more than incidental benefit. **The BSO has adopted a policy of not allowing bifurcation.** Similarly, BSO policy also prohibits a donor from personally paying for benefits even when an amount received from a DAF meets the full amount of the membership level.

5. Can I personally pay for the non-tax deductible portion of a fundraising event ticket and use my DAF to pay the charitable contribution portion of the ticket?

No. Like bifurcation of membership benefits, common practice and BSO policy do not allow for this. **The BSO does not accept DAF payments for any portion of a fundraising event ticket,** though a DAF can be used for a straight contribution to the event (when the donor-advisor is either not planning to attend or personally pays full price to attend).

Please note: private family foundations are NOT the same as donor-advised funds. For elevated events (opening night galas), private family foundations may pay for all benefits at any level.

6. Are there any penalties for recommending a distribution from a DAF that results in “more than incidental benefit?”

Yes. The PPA imposes an excise tax on any donor, donor-advisor, or family member of a donor or donor-advisor who recommends a distribution from a DAF that results in “more than incidental benefit.” Furthermore, this excise tax is also imposed upon any manager of a sponsoring organization who knowingly approves a distribution that would result in “more than incidental benefit.”

Most sponsoring organizations require both the donor-advisor and the recipient charity to sign an agreement to adhere to these benefit restrictions.

7. Can I make a pledge to the BSO if I intend to use my DAF to fulfill the pledge?

You may not enter into a legally-binding pledge with the intention of paying that pledge through your DAF as this results in an impermissible benefit. You may, however, sign a letter of intent so that the BSO can acknowledge your giving plans and provide the appropriate recognition to you. The BSO has developed a model letter of intent that can be customized to your particular giving situation or purpose.

8. Can I use my DAF to make a payment to my existing pledge?

No. However, if you wish to use a DAF distribution to fulfill a pre-existing pledge, a discussion with a Development gift officer will be necessary to determine the appropriate course of action. Please contact Emily Reeves to realign the giving intentions.