February 9, 2024

Re: REG-142338-07, Taxes on Taxable Distributions From Donor Advised Funds Under Section 4966 | published in Federal Register Vol. 88, No. 218, page 77922 on November 14, 2023, as amended | RIN 1545-BI33

To Whom it May Concern:

Thank you for the opportunity to comment on REG-142338-07, Taxes on Taxable Distributions From Donor Advised Funds Under Section 4966 (the "Proposed Rules").

I am the Chief Executive Officer of Venn Foundation ("Venn"), a 501(c)(3) public charity and Donor Advised Fund ("DAF") sponsoring organization. Venn's mission is to unleash the full power of Program-Related Investments ("PRIs") to advance charitable impact. This mission is furthered by enabling any individual or entity to open a DAF at Venn and to recommend that Venn use DAF dollars to make a PRI. Venn can also pool together recommendations among any number of Venn sponsored DAFs to capitalize a particular PRI, and if the PRI succeeds, Venn allocates a pro rata share of the PRI's return back to the participating DAFs, at which point donors are invited to recommend redeployment into new PRIs or grants. Since 2017, using this model for PRI capitalization, Venn has created DAFs with over 110 philanthropic partners and deployed over $22 million from those DAFs into over 40 diverse PRI frameworks. Accordingly, Venn is very interested in the Proposed Rules.

Specifically, Venn would like to provide comments on two aspects of the Proposed Rules: (1) how to further distinguish distributions from investments, and (2) the applicability date and transition relief.

1. With respect to further distinguishing distributions from investments, the language in the Proposed Rules results in confusion rather than clarity. Venn encourages the Treasury Department and the IRS to consider incorporating the definition of a PRI and related PRI concepts into the final rules to provide consistency and to enable reliance on presently understood language and standards such that there is an increased level of compliance.

2. With respect to the applicability date and transition relief, the proposed retroactive applicability date places an undue burden on many charitable entities. Accordingly, Venn respectfully recommends a future applicability date to enable timely compliance with the final regulations. In addition, Venn encourages the Treasury Department and the IRS to consider grandfathering in certain fund structures that provide significant positive charitable impact on those in greatest need but would be discontinued and the impact lost were the Proposed Rules made final in their current form.

Distinguishing Distributions from Investments

The Treasury Department and the IRS request comments on how to further distinguish distributions from investments. Section III., Explanation of Provisions, 3. Taxable Distributions of the Proposed Rules explains that –

> *The Treasury Department and the IRS would consider investments for this purpose as including both debt and equity instruments held for the purpose of obtaining income or funds, including investments made partly for charitable purposes as described in Notice 2015-62,2015-39 I.R.B. 411. However, an investment would not, for example, include a zero-interest loan, as there is no purpose of, or provision for, obtaining income or funds from the zero-interest loan. The Treasury Department and the IRS anticipate a zero-interest loan would be a distribution.*

In speaking with others in our field, many are finding that this example creates confusion and raises more questions than it answers. For example –

- What about other types of concessionary loan instruments? For example, what if the initial, nominal interest of a loan is set at 1% but with certain conditions, which if met, would result in a portion of the loan principal being forgiven. In other words, the terms provide that the lender may never be paid back in full. Would such an investment count as being held for the purpose of obtaining income or funds?
- What about concessionary equity instruments? For example, what if, from the onset, the holder of the equity instrument views the investment as high risk and believes that it would be lucky to receive back the entire invested amount and does not anticipate any further return?
- When is the purpose regarding obtaining income or funds determined? At the time the instrument is entered into or when the outcome is known?
- Does the reference to "*obtaining income or funds*" include or exclude the aggregate amount initially loaned or invested?

At Venn, we are uncertain what this example means for PRIs. How and where do PRIs fit in?

For private foundations, PRIs are explicitly defined in 26 CFR §53.4944-3 where the concept of *"[no] significant purpose being the production of income or the appreciation of property*" is introduced. In addition, Form 990 recognizes PRIs as a tool available to public charities and in the directions to Form 990, they are described as "*investments made primarily to accomplish the organization's exempt purposes rather than to produce income*" (see Directions to Form 990, Part X Balance Sheet, Line 13). These two are quite consistent with each other: referring to "*significant purpose"* or "*primarily",* and the "*production of income or the appreciation of property"* and "*produce income*".

In contrast, the Proposed Rules remove the consideration of "*significant*" and "*primarily*" and refer to "*no purpose*" (emphasis added). In addition, the Proposed Rules remove "*production of income or the appreciation of property" and "produce income*" and refer to "*obtaining income or funds*" (emphasis added). Are these standards intentionally different? Must the desire for financial returns be insignificant or non-existent? Is there a difference between obtaining and producing? What about funds and appreciation of property? Finally, is the desire or intention measured at the time the instrument is entered into (See Examples 1, 2 and 8 in 26 CFR §53.4944-3(b)) or at a later date (and if later, when)?

Clarity, consistency and common definitions both within and amongst the Proposed Rules, the DAF statutes and regulations (collectively, the "DAF Laws"), and the tax statutes and regulations as a whole would enable all parties – the regulated private foundations and public charities as well as the regulators – to ensure compliance and achieve intended outcomes. With that in mind, Venn questions what value would be created by introducing additional standards in the Proposed Rules and worries that doing so would result in greater confusion. There are many instances in the DAF Laws where private foundation statutes and regulations are cross referenced or incorporated, either to intentionally integrate or exclude a particular item. For example, the private foundation concept of expenditure responsibility for certain grants is incorporated for certain distributions from a DAF.

Venn encourages the Treasury Department and the IRS to consider the benefit of incorporating the definition of a PRI and related PRI standards into the final rules to provide greater clarity, consistency and commonality. Specifically, the incorporation would provide known and familiar standards and support more accurate determinations of whether entering into a particular instrument is a distribution or an investment.

Proposed Applicability Date and Transition Relief

The Proposed Rules provide that they will apply to taxable years ending on or after the date of publication of the decision adopting the rules as final in the Federal Register (*i.e.,* if published on July 1, 2024, the final regulations apply to the entire 2024 tax year). In addition, the Treasury Department and the IRS request comments on any transition relief. Venn is concerned that the Proposed Rules, without broad transition relief, place an undue burden on many charitable entities.

The retroactive effectiveness for the Proposed Rules will impact many, and arguably may have the most significant impact on entities that find that one or more of their funds becomes a DAF upon publication of the final rules. This results in entities having no time to transition into compliance with the final regulations. Indeed, they could be in violation of the final DAF regulations prior to knowing the precise terms of the regulations with which they were supposed to comply. This outcome is unfair. Accordingly, Venn recommends adequate time be given for all to transition into compliance prior to the final rules becoming effective. Venn anticipates it may take some entities up to 18 months to assess whether the final rules apply to them, ascertain what they need to do to comply and then implement the necessary processes and procedures. Venn recommends the final rules apply to taxable years ending on or after the 18-month anniversary of the date of publication of the decision adopting the rules as final in the Federal Register (*i.e.,* if published on July 1, 2024, the final regulations apply to the entire 2026 tax year).

Further, Venn encourages the Treasury Department and IRS to consider grandfathering in certain structures so as to avoid the termination of certain structures that currently provide significant positive charitable impact on those in greatest need.

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In summary, --

1. regarding further distinguishing distributions from investments, Venn respectfully encourages consideration of incorporating the definition of a PRI and related PRI concepts into the final rules to provide greater clarity, consistency and commonality, and with those, increase the level of compliance and achievement of intended outcomes; and

2. regarding the applicability date and transition relief, Venn respectfully recommends a future applicability date in order to assist with timely compliance with the final regulations. In addition, Venn respectfully encourages consideration of grandfathering in certain fund structures to preserve the significant positive charitable impact those structures further.

Sincerely,
VENN FOUNDATION

Jeff Ochs
Chief Executive Officer