

FAI Q&A Session #5
September 18, 2007
Visitors Center Multi-Purpose Room #153

Attendance: 13

TOPIC: What is a Gift?

FAI presenters were Mike Dickerson (513-4303) and Susan Holton (515-7375).

SESSION GOALS:

1. Participants will understand the various reasons some items processed as gifts are questioned and require additional support.
2. Participants will recognize unusual items as they process those items and will provide support upfront rather than after-the-fact.
3. Participants will recognize that just because additional information is requested does not mean the funds cannot be deposited to the foundation.

WHY NOW? You never asked for this information before!

1. Associated entity requirements: All University-related foundations entered into an operating agreement with the NC State University during fiscal year 2005-2006. This agreement was a requirement from UNCGA to formalize the relationship between NC State and the associated entities (foundations). As a result of the UNCGA requirements, coupled with audit findings at other UNC system institutions (see #2 below), FAI has re-evaluated processes and procedures in an effort to clarify, and ensure compliance.
2. State auditor findings at other UNC system schools identified problems with university funds being misdirected, which is considered a misappropriation of state funds. As a result, we have been informed that State of North Carolina auditors will likely devote additional effort to review for similar problems at all system schools.
3. Additional information has come to our attention about certain items previously processed as gifts that now make us realize those items should have been processed differently, most likely as other income

GIFT (CHARITABLE CONTRIBUTION) DEFINITIONS:

1. **1994 3-D Memo**: Personal (e.g., cash, securities, books, equipment) or real property provided by a donor without expectation of tangible or economic (except tax) benefit.

Note that the terminology “grant” or “grants” may vary from entity to entity. Some external foundations will only make grants to 501(c)(3) non-profits entities, but those grants meet the University’s definition of a gift as there is no expectation of a deliverable

and use of University resources is not required. The specific terms of each grant must be reviewed to determine if it can be processed as a gift.

http://www.fis.ncsu.edu/foundations_accounting/governance/documents/gifts-grants-contracts.pdf

2. **Non-Profit Law Blog:** A *gift* is a transfer that (1) is voluntary, and (2) is motivated by a "detached and disinterested generosity." *Commissioner v. Duberstein*, 363 U.S. 278, 285 (1960). "Where consideration in the form of substantial privileges or benefits is received in connection with payments by patrons of fund-raising activities, there is a presumption that the payments are not gifts." Rev. Rul. 86-63.

http://www.nonprofitlawblog.com/home/2005/06/charitable_givi.html

3. **The N.C. Agricultural Foundation, Inc.:** A GIFT is an irrevocable transfer of personal property (e.g., cash, securities, books, equipment) or real property by a donor, either outright or through a planned/deferred gift vehicle (e.g., charitable gift annuity, retained life estate, charitable remainder trust or life insurance), for the charitable purpose designated by the donor and without expectation of a tangible or economic benefit to the donor except tax benefits and life income in the case of planned/deferred gifts. A gift to the University or a foundation implies no responsibility to provide the donor a product, service, technical or scientific report(s), or intellectual property rights. Providing stewardship activities to the donor such as the names of recipients of scholarships, awards, appointing the donor to membership on advisory committees, etc. or providing a proposed budget or a summary of how the funds were expended, does not prevent the contribution from being considered a gift. The donor may specify the use of the funds or the gift may be unrestricted for use in meeting needs identified by the University, college/school, or related support organization.

(Based on National Association of College and University Business Officers Guidelines. Taken from NC State's "Definitions of Gifts, Grants, Contracts, Cooperative Agreement, Deliverables, and Performance and Process for Request and Receipt of External Funds")

http://www.cals.ncsu.edu/advancement/define_gift.htm

REMEMBER THE TAX CONSEQUENCES:

Gifts = **Charitable Contributions** = Federal & State Tax Deductions for Donors

If other income is mistakenly processed as a gift, when the donor receives a gift acknowledgement with reference to the tax deduction for their gift, this is confusing and misleading. When the other income error is reversed in ADVANCE, corrections to donor acknowledgements (receipts) are not automatically provided. This is up to the individual development offices to contact donors and explain the mistake.

THINGS TO LOOK FOR?

1. **Odd amounts** –Since FAI began questioning odd amounts batched as gifts through ADVANCE (for example, \$12,397.25) we have found that a vast majority (90%+) of the items questioned turned out not to be a gift. If you were a donor and wanted to make a

gift to the NC State Foundation, would you write a check for \$12,300 or \$12,397.25? Odd amounts should be scrutinized more closely to make sure they are processed correctly. Just because an amount is “odd” does not necessarily mean that it is not a gift, however. For example, gifts of marketable securities are almost always odd amounts. Additionally, “grants” can frequently be odd amounts.

2. **Checks with memo annotations “for services rendered”, and checks for royalties, commissions or proceeds, reimbursements for travel, etc.** – Need we say more? These are typically other income receipts and should not be processed as a gift.
3. **Gift checks from a county, municipality or other governmental unit** – A 1983 Department of Justice ruling cites the prohibition of the use of “public money” as gifts, unless the gift is specifically authorized by the North Carolina General Assembly or will benefit the public, not particular persons, interests or private entities

KEEP IN MIND: FAI may question other “gifts” that do not fall into one of these 3 categories. But these are the easiest ones you can learn to identify and question first.

TWO QUESTIONS TO ASK BEFORE PREPARING A GIFT TRANSMITTAL FORM:

1. Is this a gift? Or is this other income?
2. What entity should receive these funds?

Also, be aware that FAI only receives the gift checks and not the transmittal forms. If you attached supporting documentation to the transmittal form, this does not mean FAI will receive it. It’s a good idea to request that a copy be provided to FAI or to fax the supporting documentation directly to FAI. That way we can be on the lookout for the gift check.

CLOSING POINTS:

- Please don’t get frustrated with FAI staff when they call to ask about a gift. They are just doing their job and trying to keep the foundations out of trouble.
- There are potential tax, audit, and accounting issues that require the proper classification of monies received.
- Just because FAI questions an item processed as a gift does not mean the funds cannot stay in the foundation, or that the item is not a gift. The items mentioned during the session were intended to help identify questionable items that may need to be scrutinized more frequently.