United States
Office of Government Ethics
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DO-07-003

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick
Director

SUBJECT: Valuation of Gifts of Admission to an Event in a Skybox or Private Suite

It has come to our attention that agencies may be giving varying advice about how to determine the value of gifts of attendance to events in skyboxes or private suites. Correctly valuing gifts is critical to determining whether an employee may accept a gift from an outside source and, for employees required to file financial disclosure reports (SF 278 and OGE Form 450), if the gift must be reported and at what value. We hope the following explanation clarifies how to value a gift of attendance to an event in a skybox or private suite.

Generally, a Federal employee may not accept gifts from "prohibited sources,"[1] or gifts given because of his official position.[2] See 5 C.F.R. § 2635.201. There are a number of exceptions and exclusions to this general prohibition,

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[1] Prohibited sources of gifts include persons and entities which seek official action by the employee's agency, do business or seek to do business with that agency, are regulated by the agency, or have interests that can be substantially affected by the employee's official activities (as well as any organization the majority of whose members are prohibited sources). See 5 C.F.R. § 2635.203(d).

[2] A gift is given because of an employee's official position if the donor would not have given the gift if the employee had not held a position with the Federal Government. See 5 C.F.R. § 2635.203(e).

including an exception for individual items with a value of less than $20 per occasion and a total of $50 from a source in one calendar year. 5 C.F.R. § 2635.204(a). Because of this exception based on the value of the gift, an employee's ability to correctly value the gift of admission to an event is critical.

If an employee is required to file a financial disclosure report, he also must apply a second set of rules that govern which gifts of tickets he must report and how he must value them for reporting purposes. The rules governing the *acceptance* of gifts are not identical to the rules governing the *reporting* of gifts. Sometimes an employee may be permitted under an exception in the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) to accept a gift that is not required to be reported under financial disclosure rules (e.g., a book from an agency contractor valued at $15.) Conversely, an employee may have to report a gift even though it is not prohibited under the Standards of Conduct because it is not from a prohibited source or given because of official position (e.g. tickets valued at $350 to a football game, given by a college friend).

A filer must report each gift received that is worth at least $122 when the total value of all such gifts from one source exceeds $305 in a calendar year.[3] 5 U.S.C. app. § 102(a)(2)(A) and § 107(a)(1); 5 C.F.R. § 2634.907(g)(1) and (3). The filer is required to accurately identify the source of the gift, the value of the gift, and a brief description of the gift. See 5 U.S.C. app. § 102(a)(2)(A); 5 C.F.R. § 2634.304(a); 5 C.F.R. § 2634.907(g)(1). The definition of "gift" excludes, among other things, "food and beverages which are not consumed in connection with overnight lodging." 5 U.S.C. app. § 109(5)(D).

For both acceptance and reporting purposes, numerous questions have arisen about how to value a gift of tickets that cannot be purchased by the general public, such as those

[3] These threshold amounts are adjusted periodically for inflation.

in a sky box or other private suite.[4] To determine the value of gifts from outside sources, employees are required to use "market value," which is defined in the gift regulations as "the retail cost the employee would incur to purchase the gift." 5 C.F.R. § 2635.203(c). Generally, the value of admission to an event entitling the holder to food and entertainment is the face value of the ticket. Id. However, with a sky box or private suite, there is no publicly available ticket to use to determine market value. The gift regulations provide that where an employee cannot ascertain the market value of a gift, he "may estimate its market value by reference to the retail cost of similar items of like quality." Id.

The Office of Government Ethics consistently has advised that a gift of attendance in a skybox or private suite is determined by adding the market value of the most expensive publicly available ticket to the event to the market value of the food, parking and other tangible benefits provided in connection with the gift of attendance. Assume, for example, that an employee is offered free admission for two to a private suite at an arena to view a music concert. The most expensive ticket available to the public at retail for that event is $150. However, in addition to the value of entrance to the event, attendance in the private suite comes with food and beverages provided during the concert valued at $50 per person[5] and a parking pass with a market value of $25. Thus, the total value of the gift to the employee is $425: $300 for the admission for two, plus $100 for the food and beverages for two, plus $25 for the parking pass.

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[4] Skyboxes or other private suites generally are leased on a yearly basis, therefore separate tickets to attend a single event in a sky box or private suite cannot be purchased from the venue.

[5] An employee may determine the value of the food and beverages he has received as part of his attendance by dividing the cost of the food and beverages bill for the suite by the number of attendees in the suite or he may estimate the value by using the prices listed in the venue's skybox/private suite catering menus for the items provided.

Financial disclosure filers are subject to essentially the same valuation requirements, but may subtract the value of the food and beverages consumed at the event from the amount reported.[6] 5 U.S.C. app. § 109(5)(D) and 5 C.F.R. § 2634.304(e)(note). Thus, in the example above, the filer would be required to report $325 as a gift of admission to the event on his SF 278 or OGE Form 450. He would arrive at the reportable value of the gift of admission to the event by adding the $300 value for the two admissions and the $25 value for the parking pass.

We caution that each tangible benefit included in the gift of free admission is not a separate gift that may be excluded from the filer's report based on its individual market value.[7] Thus, the parking pass in the above example is

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[6] There is an apparent inconsistency between Example 3 to 5 C.F.R. § 2634.304(d) and the Note to 5 C.F.R. § 2634.304(e) in the method for valuing tickets to events that include food and beverages not consumed in connection with overnight lodging for reporting purposes. Those consumables are excluded from the definition of "gift" for report purposes under 5 U.S.C. app. § 109(5)(D). The Note provides the correct method for valuation. The reportable value of a ticket to an event is the market value of the ticket minus the value of food and beverages not consumed in connection with overnight lodging. Example 3 may be read to suggest that the entire value of the ticket need not be reported even though it is (intended) to exceed the required monetary reporting threshold because of the food and beverages reporting exclusion. This would be true only if the value of the food and beverages consumed was equal to the full market value of the ticket to the event. There also is a mathematical error in Example 3 to 5 C.F.R. § 2634.304(d) (two tickets valued at $150 each do not exceed the $305 threshold as suggested in the example). The value of the two tickets should have been adjusted at the same time as the $305 threshold so that the total would exceed the $305 threshold. This will be corrected in the next revision of the Standards.

[7] Likewise, a group of tickets received by a filer for one event is a single gift for reporting purposes. The individual tickets cannot be divided up as separate gifts for determining whether the reporting threshold has been met.

part of the value of the free admission to the event that must be reported. It may not be treated as a separate gift, and in this case, is not exempt from reporting as a gift valued at less than $122.[8]

We understand that some venues may prepare skybox or private suite tickets that include a purported "face value." An employee may not rely on the price stated as the correct fair market value if the tickets to attend the event in the skybox or private suite are not available for purchase by the general public at that "face value" amount. Rather, the employee must determine the fair market value of the total gift of free attendance by adding the value of all tangible benefits received with the admission to the value of the highest priced publicly available ticket to the event. See 5 C.F.R. § 2635.203(c).

[8] This threshold amount is adjusted periodically for inflation.