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Overview of Congressional Gift Rules

Extensive recent publicity concerning alleged violations of the congressional “gift rules” by House Majority Leader Tom DeLay has prompted many of our clients to request guidance concerning congressional gift rule compliance. As a service to our clients, we are therefore providing this brief overview of those rules.

Ordinarily, legal liability for violating congressional gift rules runs to the Member of Congress or the staffer who solicits or accepts the gift, rather than to the individual, corporation, or trade association who provides the gift. Nonetheless, as recent events have underscored, violations of the rules threaten to generate significant adverse publicity for the gift-provider. Many Members of Congress and staffers are exercising heightened caution regarding these rules and expect lobbyists, corporations, and trade associations to be familiar with the rules.

The Gift Ban

The general rule is that congressional employees (Members and staff) are prohibited from accepting anything of value. “Anything of value” means what it says—anything. There are exceptions to this gift ban, however. Some of the most commonly used exceptions are summarized below.

As a general matter, congressional employees are also prohibited from soliciting a gift. In other words, a gift which would be permissible under one of the exceptions to the gift ban becomes impermissible if it is solicited by a Member or staffer. For example, a Member may not solicit a corporation to sponsor a reception in his or her honor, even if the reception is otherwise permissible under the rules. Congressional employees generally are permitted to solicit contributions to charities and campaign committees, except that they may not solicit charitable contributions from registered lobbyists and foreign agents.

You must never give a gift to a congressional employee in exchange for any official action, even if the gift is otherwise permissible under the gift rules. To do so would be to commit the crime of bribery. Likewise, you must never give a congressional employee a gift as a “thank you” for official action. That would be an “illegal gratuity,” also a crime. As a compliance safeguard, we recommend that you never send a “thank you” note along with a gift of any kind to a congressional employee.

Commonly Used Exceptions to the Gift Ban

There are many nuanced exceptions to the gift ban, and use of those exceptions will often depend upon the specific facts and circumstances. The Senate and House Ethics Committees have issued hundreds of pages of manuals and advisory memoranda detailing these exceptions. Below we summarize a handful of the most common ones.

\$50 and \$100 Limits

You may give a congressional employee a gift worth less than \$50 (not more than \$49.99). The cumulative value of all gifts that you, your company, and your company's employees give a particular congressional employee per calendar year must be less than \$100 (not more than \$99.99). In some circumstances, gifts given by your company's outside consultants might also count toward the annual \$100 limit (for example, if they submit the cost of the gifts for reimbursement by the company). While gift givers are not legally required to track gift giving, as a practical matter, the only way to ensure that you do not exceed the annual \$100 limit—causing a Member or staffer not to be in compliance with the rules—is to keep track of all congressional gift-giving activities by your company, its employees, and, in appropriate cases, your company's outside consultants.

- A gift's value is based on its fair market value. Taxes and gratuities do not count in this valuation.
- A congressional employee generally may not “buy down” a gift's value by paying that part of the gift's value that exceeds \$49.99. If a gift costs \$50 or more, the employee must either reimburse you for the entire cost of the gift or must decline the entire gift.
- Gifts worth less than \$10 (not more than \$9.99) generally do not count against the \$100 annual limit. However, it will be deemed a violation of the rules if gifts of less than \$10 in value are repeatedly and regularly given to the same individual (for example, a weekly bagel and coffee breakfast).

Food Sent to Members' Offices for Staff

If you send food (such as pizzas) to a Senator's office, the total cost of the food sent is considered a gift to the Senator, no matter who is in the office at the time the food is received, and even if, as is usually the case, the food is shared by many members of the Senator's staff. Therefore, the food must cost less than \$50 and will count against the Senator's annual limit of less than \$100 from a single source.

On the other hand, if you send food to a House Member's office, the food is considered a gift only to the individual recipients who eat it. Thus, each staff member may accept food with a value of up to \$49.99, so long as (1) you do not have a direct interest in the legislation or other official business on which the staff member is working at the time, (2) the staff member learns your identity and the dollar value of the food provided (so that he or she can comply with the \$100 annual limit for any one source), and (3) the House Member and his or her staff did not solicit the gift.

Receptions

A congressional employee may accept food and beverages of nominal value at a reception, so long as they are not offered as part of a meal. The Senate Ethics Committee has determined that for Senate participants this exception applies to “stand up” receptions at which hors d'oeuvres or a continental breakfast are served. The House Ethics Committee has not distinguished between “stand up” or “sit down” receptions, but likewise maintains that no meal may be provided and only nominal value food, such as hors d'oeuvres, bagels, and the like, may be served.

Widely Attended Events

A corporation or trade association may pay for a congressional employee's free attendance at a "widely-attended event" if it is the sponsor of the event and attendance at the event is related to the employee's official duties. A corporation or trade association "sponsors" an event only if it is primarily responsible for organizing the event. It does not become an event sponsor merely by buying tickets or contributing a sufficient amount to receive the honorary title of "sponsor."

- Attendance is related to a congressional employee's official duties where (1) the employee will participate by speaking or performing a ceremonial role or (2) the employee determines that attendance at the event is appropriate to the performance of his or her official duties or representative function.
- An event is "widely attended" when (1) attendance is expected to include at least 25 individuals from outside Congress and (2) attendance at the event is open to individuals from throughout a given industry or profession, or those in attendance represent a range of persons interested in a given matter. An event attended by representatives of a single company likely is not a widely attended event.
- The sponsor of a widely-attended event may pay for (1) any entrance or registration fees, (2) local transportation, and (3) food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. If the sponsor pays for entertainment collateral to the event or food or refreshments not provided in a group setting with substantially all other attendees, the cost of the collateral entertainment, food, or refreshments must comply with the \$50 and \$100 limits.
- If the sponsor of a widely attended event invites a House employee, it may also pay for an accompanying individual (such as a staff member, spouse, child, or other individual). If the sponsor invites a Senate employee, it may only pay for an accompanying individual if others will be similarly accompanied or such attendance is "appropriate to assist in the representation of the Senate." No congressional employee may solicit an invitation for an accompanying individual.
- The sponsor of a widely attended event may pay the non-local travel costs for a congressional employee to attend the event if the travel is considered "officially connected travel," as discussed below. Special rules, which are also discussed below, apply to the travel expenses of accompanying individuals.
- The House Ethics Committee provides that even if a corporation or trade association does not sponsor an event, it may ask the sponsor to invite particular congressional employees and seat them at its table, so long as the sponsor issues the invitation and retains control of seating arrangements.

Travel

A corporation or trade association may pay for a congressional employee's "officially connected travel," but only if the corporation or trade association is the sponsor of, or has a close connection to, the event. Under House rules, the entity that pays for travel must have a "direct and immediate relationship with the event or location being visited." Under Senate rules, the entity must (1) be a member in good standing of the sponsoring organization; (2) share directors, officers, or trustees with

the sponsoring organization; or (3) have a direct corporate or financial relationship with the sponsoring organization.

- “Officially connected travel” includes fact-finding trips and other meetings and speaking engagements connected with the employee’s duties, but does not include activities that are substantially recreational in nature. Such trips must normally take place at least 35 miles from a Member of Congress’s district office.
- A registered lobbyist or foreign agent must not pay for congressional travel, even if the lobbyist or agent intends to seek reimbursement from a corporate or trade association client or employer. Under the federal Lobbying Disclosure Act (LDA), a registered lobbyist is an individual who is listed as a “lobbyist” on an LDA registration or report. The company or trade association that is listed as the “registrant” or “client” is not a “registered lobbyist.”
- For employees of the Senate, the length of the trip is limited to 3 days exclusive of travel time within the United States, and 7 days exclusive of travel time outside of the United States. For employees of the House, the length of the trip is limited to 4 days exclusive of the return trip only within the United States and 7 days exclusive of all non-local travel time outside of the United States.
- If a corporation or trade association pays for a congressional employee’s officially connected travel, it also may pay the travel expenses of the employee’s accompanying spouse or child, but it may not pay the travel expenses of any other person (such as a fiancé). Under the Senate rules, the attendance of the spouse or child must be “appropriate to assist in the representation of the Senate.”

“Personal Friendship”

You may provide a gift to a congressional employee who qualifies as a “personal friend” under the rules. There is some risk to this exception, however, because the standard for personal friendship is fuzzy at best. There should be a history of mutual gift giving between you and the congressional employee, and you must not seek reimbursement or a tax deduction for the value of the gift. If you give the same or similar gifts to other congressional employees, you are less likely to be deemed to be giving the gift on the basis of personal friendship.

- If a gift based on personal friendship is worth \$250 or more, the House or Senate Ethics Committee must approve the gift in advance of the congressional employee’s acceptance of it.

“Personal Hospitality”

You may provide a congressional employee with “personal hospitality” such as food, lodging, and entertainment provided by you at your residence. If you provide personal hospitality, you must pay for it yourself and may not seek reimbursement or a tax deduction for the cost. Personal hospitality must be provided for a non-business purpose and is intended to allow for socializing with congressional employees in your home.

- If the gift of personal hospitality is worth \$250 or more, the House or Senate Ethics Committee must approve the gift in advance.

- The personal hospitality exception to the gift ban does not apply to registered lobbyists and foreign agents, however. Therefore, no registered lobbyist or foreign agent may provide a gift of personal hospitality to any congressional employee.

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This overview is intended to be a summary of the most commonly invoked congressional gift rules and exceptions. It is not intended to be comprehensive, nor is it intended as legal advice, which may often turn on specific facts. Readers should seek legal advice before acting with regard to any of the subjects addressed above.

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