



DEPARTMENT OF THE ARMY
UNITED STATES ARMY AUDIT AGENCY
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FORT BELVOIR, VIRGINIA 22060

SAAG-GC

1 December 2015

MEMORANDUM FOR Office of Government Ethics, Suite 500, 1201 New York Avenue
NW, Washington, DC 20005-3917

SUBJECT: Comments on Proposed Amendments to 5 C.F.R. Part 2635, Subpart B
(Gift Regulations), RIN # 3209-AA04

1. The following comments are my personal opinions. They do not reflect the official position of the Department of Defense, the U.S. Army, or the Army Audit Agency.
2. Comment: The text of § 2635.203(b)(2) excludes from the definition of “gift” greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, that are intended primarily for presentation. Example 2 to that section explains that a portable music player valued at \$25 does not fall within this exclusion because the item “has a significant independent use as a music player rather than being intended primarily for presentation.” The “significant independent use” test clarifies that both the nature of the item and the intent of the donor are relevant for this exclusion to apply. This test is not expressly stated in the text of the regulation itself.

Recommendation: Add the phrase “and do not have significant independent use” to the end of § 2635.203(b)(2) as follows (proposed addition underlined): “Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended primarily for presentation and do not have significant independent use.”

3. Comment: The text of § 2635.203(b)(5) seems inconsistent with Example 2 to that section. This section excludes from the definition of “gift” rewards and prizes open to the public “unless the employee’s entry into the contest or event is required as part of the employee’s official duties.” Example 2 explains that an employee may not accept a prize for completing an optional conference evaluation “because completing the evaluation was part of the conference and, therefore, incident to the performance of his official duties.” The phrase “incident to the performance of official duties” in Example 2 appears to have a broader scope than “required as part of the employee’s official duties” in the regulation.

Recommendation: Change the text of § 2635.203(b)(5) as follows (proposed addition underlined): “Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee’s entry into the contest or event is required as part of the employee’s official duties or incident to the performance of those duties.”

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4. Comment: The facts for Example 4 to § 2635.203(c) are incomplete. Example 4 concerns a gift of tickets to a baseball game with seating in a luxury skybox and explains: “To determine the market value of the tickets, the employee must add the market value of two of the most expensive publicly available tickets to the game and the market value of any food, parking or other tangible benefits provided in connection with the gift of attendance.”

Recommendation: In the facts of Example 4, explain that the tickets to the skybox do not have a face value printed on them. This additional fact will clarify that the computed value of the tickets must include the cost of both entry to the game and additional tangible benefits received in the luxury box.

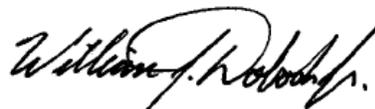
5. Comment: Example 1 to § 2635.204(d)(1) refers to “criteria set forth in § 2635.204(d)(2).” Example 2 to § 2635.204(d)(1) incorporates aspects of the definition of “established program of recognition” first introduced in § 2635.204(d)(2); namely, the regular basis of the awards, the funding of the awards, and the selection of awardees pursuant to written standards.

Recommendation: Place Example 1 and Example 2 to § 2635.204(d)(1) after § 2635.204(d)(2) instead.

6. Comment: In § 2635.206(a)(1), it would be reasonable to allow employees to dispose of a gift of a tangible item with a value of \$100 or less by giving the item to an appropriate charity. This disposition option already exists in § 2635.206(a)(2) for perishable items. Including it in § 2635.206(a)(1) would promote the greater good.

Recommendation: Change the first sentence of § 2635.206(a)(1) as follows (proposed addition underlined): “The employee must promptly return any tangible item to the donor, or pay the donor its market value, or, in the case that the tangible item has a market value not in excess of \$100, the employee may destroy the item or, at the discretion of the employee’s supervisor or the agency designee, give the item to an appropriate charity.”

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