## Gifts of Complex Assets to DAFs and Their Valuation

MICHELLE ZHAO: Hi everyone. I'm Michelle Zhao. I'm a second year student at the law school, and I'll be speaking today about complex asset donations and valuation.

So Paul previously mentioned that DAFs have tax advantages for donors. But another feature of DAFs that makes them particularly attractive to donors is that DAFs are able to receive and process gifts of complex assets, like non-publicly-traded stock or partnership interests, and then deliver them to non-profits that might not otherwise be able to accept the complex assets on their own. So in this way, you can think of DAFs as sort of expanding the pool of donation recipients from just sophisticated recipients, like universities, to include smaller local charities, as well.

The concern here is that donating complex assets might lead to donors receiving deductions for more than those assets are worth. Complex assets are notoriously hard to value and that value can be difficult to confirm. And the way that the charitable donation deduction works is that when a donor claims a deduction for a contribution of a complex asset, the donor submits their own estimate for what the asset was worth. And that figure has to be backed by an independent appraiser, but that's basically the only limit on the claim. So you can see where this might be a really real concern that donors might, you know, find a friendly appraiser and ended up claiming a hefty deduction for a donation that was worth far less than what was claimed.

I do want to note here, though, that this is no different for DAFs than for donations to any public charity. So all donors fill out the same form to claim a charitable donation deduction, and it doesn't matter if that donation went directly to a charity or to a DAF. So this valuation concern, if it were problematic for DAFs, would really be a sector-wide concern. But for three reasons, I actually believe that valuation concerns shouldn't be taking up space in DAF policy conversations.

So, first, the IRS has an internal mechanism that serves as a check on valuation claims. I mentioned before that the donor has to fill out a form signed by an appraiser in order to claim the deduction for the complex asset. Well, if the DAF… or the recipient, sells that asset within three years of receiving it, the DAF has to submit a complementary form stating how much the asset was sold for. And this gets linked to the donor's original filing and allows the IRS to see how much of a difference there was between the claimed value and the actual value. So that's one check.

But you could imagine that if a DAF ends up selling the asset for far less than was claimed, the donor could always say, you know, at the time of the appraisal, the estimated value was what they reported and it's just decreased in value since then. But we'd think if the IRS were suspicious about this, you would expect to see some actions or claims filed by the IRS against those donors. And that's just not the case at all. Of the only handful of cases I was able to find, where the IRS brought against people that substantially involved overvaluation, all of those cases focused more on process checks than on the validity of the claim deduction. So the IRS here was more concerned about whether there was an independent appraisal even attached to the return rather than what the value of that appraisal was.

Lastly, not only is this not a problem that the IRS seems to be rushing to solve, it's just not a huge part of DAF business. After going through the tax filings of the largest DAFs, on average, as a median, complex assets account for just 5% of the total value of all contributions. So, clearly, complex asset donations aren't this huge stockpile of donations, and they're not the driving force of DAF contributions.

So, in conclusion, there's no evidence that overvaluation concerns are especially egregious for DAFs, and while there's absolutely room to consider fixes, those fixes should be industry-wide and not DAF-specific. And when it comes to DAF public policy, valuation shouldn't be driving that conversation.