

RELEASE IN FULL

MEMORANDUM FOR THE SECRETARY OF STATE

Date: July 2, 2012
From: Robert Russo
CC: Ambassador Capricia Marshall, Chief of Protocol
Re: Gift Rules for Gifts from Foreign Private Sources

I. BACKGROUND

YOU asked me to check and confirm if the gift rules apply the same \$20 limit on gifts from foreign private sources that they apply to gifts from domestic private sources.

Below please find a review of the relevant statute and regulations pertaining to gifts from private and government sources.

II. RELEVANT AUTHORITY

The Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R § 2635) contains a general prohibition on the acceptance of gifts, “an employee shall not, directly or indirectly, solicit or accept a gift: (1) From a prohibited source; or (2) Given because of the employee's official position....,” subject to several exceptions.

5 C.F.R § 2635.204(a) provides the exception for gifts of \$20 or less:

Gifts of \$20 or less. An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year....

Another common exception we use is found in 5 C.F.R § 2635.204(b):

Gifts based on a personal relationship. An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

5 C.F.R § 2635.204(i) provides the exception that applies to gifts from foreign *government* sources via reference to the Foreign Gifts and Decorations Act:

Gifts accepted under specific statutory authority. The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item, receipt of which is specifically authorized by statute. Gifts which may be received by an employee under the authority of specific statutes include, but are not limited to:

(1) [Not Applicable]

(2) Gifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations or procedures implementing that Act.

The Foreign Gifts and Decorations Act's rules only apply to gifts from foreign *government* sources, as the term "gift" itself is defined in 5 U.S.C. 7342(a)(3) as "...a tangible or intangible present (other than a decoration) tendered by, or received from, a *foreign government*." [emphasis added] The statute provides the same general prohibition on accepting gifts as the Standards of Ethical Conduct does, but has a higher monetary exception, \$100 as of January 1, 1981 indexed for inflation every three years (presently \$350), and allows an additional exception for when it appears that refusing a gift "would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States." 5 U.S.C. 7342 (c)(1)(B). Thus, foreign government source gifts are always accepted and retained as they easily fall within at least one of these two exceptions, and most often within both.

III. WHAT ABOUT FOREIGN PRIVATE SOURCE GIFTS?

Neither the Foreign Gifts and Decorations Act nor the Standards of Ethical Conduct for Employees of the Executive Branch, or any other written authority, explicitly addresses the question of what rules apply to gifts from foreign private sources.

To answer this question, the previous Senior Ethics Counsel to the Department, Chip Brooks, advised that the \$20 exception found in the Standards of Ethical

Conduct should apply to gifts from foreign private sources, not the much higher monetary exception or “offense or embarrassment” exception found in the Foreign Gifts and Decorations Act (his replacement agrees), reasoning that these statutory exceptions only apply to gifts from foreign government sources, and the definition of “foreign government” in the statute, provided below, does not include foreign private sources.

5 U.S.C. 7342(a)(2) “foreign government” means—

- (A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;
- (B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and
- (C) any agent or representative of any such unit or such organization, while acting as such;

We have logged every gift you have received during your tenure as Secretary of State. The Office of the Chief of Protocol’s Gifts Unit receives most gifts, both government and private source. After screening, the Gifts Unit passes gifts from private sources (both foreign and domestic) to me for logging and proper disposition in accordance with the Standards of Ethics Conduct for Employees of the Executive Branch. The Gifts Unit handles the disposition of all foreign government gifts in accordance with the Foreign Gifts and Decorations Act.

IV. CONCLUSION

The major divide with respect to gifts, per L and the relevant statutory and regulatory authority, is not whether an individual gift is from a foreign or domestic source, but rather whether the gift is from a private source (both foreign and domestic) or a foreign government source.

The \$20 limit found in the Standards of Ethical Conduct for Employees of the Executive Branch applies to all private source gifts, and the \$350 limit, and “offense or embarrassment” exception, found in the Foreign Gifts and Decorations Act applies to all foreign government source gifts.