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THE SALVATION ARMY

Charitable Intent

Doing the Most Good

PLANNING NEWS AND IDEAS FOR THE PROFESSIONAL ADVISER

Qualified IRA Charitable Distributions Return for 2013

The American Taxpayer Relief Act of 2012 reinstated qualified charitable distributions from IRAs for 2012 and 2013. Taxpayers age 70½ and older can direct custodians to make distributions of up to $100,000 without incurring income tax. Although no income tax charitable deduction is available for amounts given to charity, the distribution can satisfy part or all of the IRA owner's required minimum distribution, resulting in tax savings, even for donors who don't itemize. Transfers must be made by the IRA custodian directly to the charity and may not be used to establish a charitable remainder trust or to fund a charitable gift annuity. Distributions can, however, be used to satisfy existing charitable pledges (Notice 2007-7).

Court Okay with Trustee Receiving More than Beneficiaries

Church of the Little Flower and another organization each got 20% of the annual 5% distribution from a trust established by Erma Donelan. Another charity received the balance. From 2006 to 2010, the 20% organizations received a total of $27,600 each. During that same time, the bank trustee received fees of more than $41,000, in addition to funds the bank earned for investing in certain mutual funds.

Under terms of the trust, the three charitable beneficiaries were to receive their shares outright if trust assets were less than $500,000 at the death of the last income beneficiary. Since assets were about $670,600, the trust continued and was reformed to meet the private foundation rules, in order to lessen taxes.

At the request of Church of the Little Flower, the trial court applied the equitable deviation doctrine and ordered that the trust be dissolved and the assets be distributed outright to the charitable beneficiaries. The bank appealed, claiming that equitable deviation did not apply. Equitable deviation allows a court to "give effect" to the settlor's intent where circumstances not anticipated when the trust was created hinder the purpose of the trust.

The Appellate Court of Illinois noted that the "unforeseen circumstances" alleged by Church of the Little Flower were the collection of fees in excess of distributions to the 20% beneficiaries. However, trustee's fees were inherent in the trust method that Donelan chose for her gift, said the court, adding that Church of the Little Flower did not claim that the fees were unreasonable or a violation of fiduciary responsibility. The value of trust assets has grown over the prior two years, added the court. Applying the equitable deviation doctrine simply because it would be more advantageous to the beneficiaries is "inappropriate," concluded the court, which ordered summary judgment for the bank trustee. ***Church of the Little Flower v. US Bank*, 2012 IL App (4th) 120266**

Gift Timing Not a Pretty Picture

Joseph Williams signed an agreement with Abbey Art Consultants to purchase art at a discount. His plan was to donate the art after more than one year in order to qualify for a charitable deduction at fair market value. The agreement called for Abbey to provide a qualified appraisal of each piece, which was to have a purchase price of no more than 24% of the appraised fair market value. Williams gave Abbey a $3,600 deposit.

In 1997, Williams made a deed of gift to Drexel University. The artwork had an appraised value of $425,625 and a purchase price to Williams of $102,000. In 1999, Williams notified Abbey that he wished to donate approximately $250,000 of the "remaining art" to Florida International University. He sent a check to Abbey for $57,500. In 2000, Williams gave Abbey $21,758 for artwork to be given to Drexel. He claimed a deduction of $98,900 for the gift.

The IRS disallowed a portion of Williams' deductions for 1997, 1999 and 2000. It did not challenge the fact that Williams made the payments to Abbey or that Abbey made the gifts on his behalf. The IRS also did not claim that the appraisals were unreasonable or that Williams failed to comply with substantiation requirements. Instead, the IRS said that Williams did not own the artwork for more than one year prior to the

dates of the gifts. Under Code §170(e), his deduction was limited to his basis, rather than fair market value. Williams claimed that the holding period for the artwork began in 1996 when he and Abbey entered into the agreement.

The Tax Court found that the agreement obligated Abbey to sell, but did not obligate Williams to buy artwork. Therefore, the agreement was an option to purchase art. The holding period did not begin until he exercised the option and committed himself to paying for the artwork. Williams claimed that Abbey had segregated almost $1 million of artwork in its warehouse, but the court said the Williams "did not even profess actual personal knowledge of the timing of Abbey's acquisition of the art." Williams never requested or received an inventory and never inspected the art purportedly purchased and set aside for his contribution program. It's also not clear, said the court, whether Abbey even owned any of the art as of the date of the initial agreement. Williams acquired a present interest only when he agreed to pay Abbey for each batch of appraised art, which occurred within less than a year of the gifts. Williams was not entitled to long-term capital gains treatment on any of his gifts, the court held. ***Williams v. Commissioner*, 101 TCM 1408**

DEBT REDUCTION GIFTS DEDUCTIBLE

Under Code §170(c)(1), contributions to the U.S. are charitable and qualify for a deduction, provided they are made "exclusively for public purposes." A payment to the Treasury to reduce the public debt is considered a public purpose and entitles the donor to a charitable deduction, the IRS has ruled.

Money received by the Treasury to reduce the public debt is placed in a special account to be used to pay at maturity, or to redeem or buy before maturity, an obligation of the government. The Treasury is required to use account funds only for that purpose.

To substantiate a cash gift of up to $250, the donor must have a bank record or written communication from the donee [Code §170(f)(17)]. For gifts of $250 or more, the donor must have a contemporaneous written acknowledgment from the donee, with the amount of cash or description of the gift property, along with a statement that no goods or services were received in return, or a good faith estimate of the value of any goods or services received in return. The Treasury does provide a written acknowledgment that will suffice to substantiate a gift, noted the IRS. **IT&A-GENIN-148142-11**

TRUST CLEAR ON INTENDED BENEFICIARY

At Elaine Hillman's death, 25% of the remaining investments in her trust were to pass to "MIAMI children's hospital foundation, cranial/facial FOUNDATION" to the attention of Dr. Anthony Wolfe. Both Miami Children's Hospital Foundation and Miami Care Foundation claimed to be the intended beneficiary. Dr. Wolfe, who was at the time the trust was executed, and still is, director of the program at Miami Children's Hospital, is also head of Miami Care.

The trial court found that the trust was ambiguous and ruled that Hillman wanted Dr. Wolfe to have the ability to direct and control the assets. The court found Miami Care Foundation to be the intended beneficiary.

The Florida District Court of Appeal found no ambiguity in the trust, saying there was no indication Hillman intended to benefit Miami Care. Although a court may look beyond the face of a will or trust if there is an ambiguity as to the intended beneficiary, the general rule is that a misnomer of a legatee will not defeat a bequest where the intended beneficiary can be identified with certainty, noted the court. The court found no ambiguity in Hillman's trust, adding that Miami Care did not even exist at the time the trust was executed. ***Miami Children's Hospital Foundation, Inc. v. Estate of Hillman*, No. 4D11-2153**

LITTLE RISK TO CHARITABLE DEDUCTIONS

Although taxpayers with adjusted gross incomes over $250,000 (single taxpayers) or $300,000 (joint filers) are now subject to cutbacks in itemized deductions, the reductions should not cause clients to scale back their charitable giving. For most taxpayers at that income level, the full 80% of cutbacks are likely to be absorbed by the deductions for home mortgage interest, real estate taxes, state and local income taxes and miscellaneous itemized deductions – amounts that are generally out of the clients' control. For example, a single client with 2013 AGI of $750,000 would be subject to a maximum cutback in itemized deductions of $15,000 (3% x $500,000). If the client had deductions for home mortgage interest, real estate taxes, state and local income taxes and miscellaneous itemized deductions of at least $15,000, the client could make charitable gifts that would not be subject to any additional cutbacks. For more about itemized deduction cutbacks or qualified charitable distributions from IRAs, please feel free to call us.