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PLANNING NEWS AND IDEAS FOR THE PROFESSIONAL ADVISER

EARLIER WILL GETS RESURRECTED

Virginia Murphy executed several wills in the years prior to her death in 2006 at age 107. In each will, she included a bequest to the Northwestern University medical school, although the exact amount changed over the years, and to her cousin, Jackie Rocke. Over the final years of her life, the wills began to include increasingly larger bequests to her attorney, his legal assistant and her accountant. In the final will, executed in 1994, the medical school was to receive $500,000, Rocke was to receive $400,000 and the residue of the $12 million estate was to be divided in equal shares by Murphy's advisers.

The Probate Court held a hearing on the 1994 will in which it found that the advisers had exerted undue influence over Murphy as her mental capacity declined. The residuary clause was declared void, with the court ordering that the residue instead pass by intestate succession. Rocke objected, noting that because Murphy had no children or siblings, her estate would pass to heirs she never knew and with whom she had no connection. The Probate Court found that the revocation clause in the 1994 will revoked all prior wills.

The District Court of Appeals of Florida affirmed the Probate Court's finding regarding the undue influence by Murphy's advisers, but invoked the doctrine of dependent relative revocation as to Murphy's will. The doctrine holds that where a testator makes a new will revoking a former valid one and it later appears that the new one is invalid, the old will may be re-established on the ground that the revocation was dependent upon the validity of the new will. It is assumed that the testator would prefer an earlier will to intestacy. The series of wills over a number of years demonstrated Murphy's preference that her estate not pass by intestacy, the court found.

The court noted the similarities between Murphy's 1994 will and her prior wills, once the effect of the undue influence was taken into account. Rocke and the medical school appear in all six of Murphy's wills, with none of the intestate heirs mentioned. The court held that intestacy would "usurp the repeated testamentary dispositions" that Murphy had demonstrated for the individuals and charities she sought to support. The court found that Murphy's 1992 will, leaving the residue to Rocke, contained the last untainted residuary disposition and should be admitted to probate. ***In re Estate of Murphy*, No. 2D14-4107**

CHARITABLE PURPOSE HINDERED BY LOW RETURNS

At his death in 1999, Leon Chamberlin left bequests to establish endowments at three churches in the amounts of $217,000, $460,000 and $260,000. Income from the endowments was to be used for maintenance of the physical property of the churches. Chamberlin also restricted the churches to investing the funds only in insured bank accounts and government securities.

The churches petitioned, asking that they be allowed to invest in accordance with the state's Prudent Investor Act, saying that the return on the investments has been negligible, due to the low interest rate climate. The Surrogate's Court denied the request to remove the investment restrictions, finding no unforeseen change in circumstances since Chamberlin's death.

The Appellate Division of the Supreme Court of New York reversed, noting that equitable deviation applies where circumstances have so changed as to "render impractical or impossible a literal compliance with the terms of a disposition." The court can make changes that most effectively accomplish the general purposes of the decedent's bequest. Chamberlin wanted each church to have a fund that would generate income for maintenance costs. As a result of low returns, the investment restriction frustrates the purpose of the trusts, said the court, noting that the churches did not seek to alter the charitable purpose or disposition of the funds, but simply allow a wider range of investment options. ***In re Chamberlin*, 2016 NY Slip Op. 87**

TESTATOR KNEW BUT DIDN'T CARE ABOUT EXTRA TAX

In addition to an outright bequest to a college, Mitzi Olson created testamentary charitable remainder unitrusts for each of her two children, naming the school as the remainder beneficiary. Her will provided that the federal and state estate taxes that would be due on her $18 million estate were to be paid from the residue prior to funding the unitrusts. The will acknowledged that the tax allocation plan she chose might not save the most taxes, but she added that "it completely and accurately reflects my personal wishes regarding the distribution of my estate."

The college's attorney wrote to the estate representative that estate taxes should not be paid out of the residue, arguing that because of the tax-exempt status of the unitrusts, more money would be available for the unitrusts, resulting in a larger remainder for the college. This would also have reduced the special bequests passing to Olson's family and friends.

The district court determined that language in the will was unambiguous in directing that taxes be paid from the residue before the unitrusts were funded. The Minnesota Court of Appeals agreed, saying that the personal representative was directed to satisfy the specific bequests, pay estate taxes from the remaining assets and then, "if any assets remain," fund the charitable remainder trusts. From language in the will, Olson clearly knew taxes could be reduced by putting more into the unitrusts, but she "rejected this option," said the court, adding that the unitrusts were to be funded "only if a residue remains after payments of these items." ***In the Matter of the Estate of: Mitzi M. Olson*, A15-0539**

TRUST WILL AVOID TAX ON IRD FOR CHARITABLE DISTRIBUTION

A decedent named his revocable living trust as the sole beneficiary of several IRAs. The trust provided that the IRAs were to be distributed to a foundation. The trust proposes to receive lump sum distributions of cash from each of the IRAs and then pay the cash to the foundation in the same year.

Under Code §691(a)(1), income in respect of a decedent is to be included in gross income for the taxable year received. Code §642(c)(1) allows an unlimited deduction in computing taxable income for any amounts paid for charitable purposes pursuant to the terms of the governing instrument.

The IRS ruled that the trust will be entitled to a deduction equal to the amount of IRD included in the trust's gross income as a result of the distribution of the IRAs. **Letter Ruling 201611002**

WHEN IS A COIN NOT A COIN?

A qualified appraisal is generally required when donors make noncash charitable gifts in excess of $5,000 [Code §170(f)(11)]. There is an exception for gifts of "readily valued property," such as publicly traded securities [Code §170(f)(11)(A)(ii)(I)]. The IRS was asked whether a gift of a coin or a coin collection fell within the exception.

The IRS ruled that the exception does not apply unless the value claimed by the donor for the coins does not exceed the face amount and the coins are acceptable as legal tender. However, if the deduction claimed exceeds the face amount of the coins, there is a "potential valuation issue," for which an appraisal is required. **IRS Chief Counsel Advice 201608012**

GETTING MORE FOR CLIENTS' MONEY

The American Council on Gift Annuities voted in April to maintain current recommended rates. Donors at all levels of income and net-worth have discovered how charitable gift annuities allow them to make gifts while providing fixed payments for life, for themselves or others. Most gift annuities are funded with cash or appreciated securities, which can minimize capital gains taxes and create large deductions. Gift annuities also enable donors to address a wide range of estate planning concerns. For example: Retirement plan assets can be left to charity at death, contingent on the issuance of a gift annuity to a loved one, with no immediate tax on the income in respect of a decedent; deferred gift annuities can be used to establish "retirement plans" for children; or gift annuities can be arranged when a client sells a home after retirement, allowing the donor to receive annuity payments during life after downsizing or moving to a retirement community. Because gift annuities can be arranged in smaller amounts than required with some other charitable techniques, they appeal to clients who want to help but don't feel they can part with assets. We would be happy to discuss how a gift annuity might address your clients' particular charitable objectives.