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THE SALVATION ARMY

Charitable Intent

PLANNING NEWS AND IDEAS FOR THE PROFESSIONAL ADVISER

CONTRACT STRONGER THAN AESTHETICS

The Reed Foundation contributed $2.5 million toward the completion of the Franklin D. Roosevelt Four Freedoms Park in New York. Under the gift agreement, the LLC that was raising the funds committed to carve the Foundation's name in a granite tablet in a specified location. Shortly before the park was dedicated, the LLC informed the Foundation's officers that due to "aesthetic" concerns, the recognition would not be placed as agreed. Instead, the LLC proposed to move it to the opposite end of the park with the names of other donors. The Foundation sued for specific performance.

The LLC argued that placing the recognition where the gift agreement specified would damage "the aesthetic purity of the space," adding that this was a situation that "cries out for equitable relief, not tipping on the side of a selfish private interest."

The Supreme Court, Appellate Division noted that the gift agreement provided for equitable relief in the form of specific performance. "Aesthetic considerations extraneous to a contract cannot trump its terms," said the court. The LLC should have voiced any concerns about the recognition when the contract was negotiated, not after it had accepted and spent the Foundation's money. Moreover, said the court, a donor's desire for recognition "is not a selfish one." ***In re The Reed Foundation v. Franklin D. Roosevelt Four Freedoms Park, LLC,* 2013 NY Slip Op 3191**

LESSON: GET IT IN WRITING

Roland Arnall made three contributions of $180,000 each to Chabad of California prior to his death in 2008. Chabad, claiming that these were installments against an oral pledge of $18 million that Arnall made for the construction of a new community center, sought to enforce the pledge against the estate. The trial court refused, noting the lack of evidence of any promise to donate $18 million.

Chabad appealed, arguing that Arnall's wife had suppressed the spreadsheets on which Arnall had recorded the payments, along with notes about the purpose of each payment. The withholding of the spreadsheets supports the "reasonable inference" that Arnall made the pledge, Chabad claimed. The trial court entered judgment for Arnall's wife, saying Chabad had failed to prove the existence of a promise to contribute the money.

The Court of Appeals of California agreed, saying that, even if the trial court had found intentional concealment on Mrs. Arnall's part, the court was not required to conclude that the missing evidence necessarily supported the claim that a promise had been made. ***Chabad of California, Inc. v. Arnall,* B234059**

NOTE TO SELF: YOU MADE A GIFT

Jolene Villareale was a co-founder of NDM Ferret Rescue & Sanctuary. In 2006, she was NDM's president, responsible for managing the organization's finances and bank accounts. She made 44 contributions to NDM in 2006, most done electronically by transferring funds from her personal account into NDM's account. Of the contributions, 27 were for amounts less than $250 (total $2,393) and 17 were for amounts of $250 or more (total $7,629). She claimed a charitable deduction of $10,022.

The IRS disallowed the deduction for gifts of $250 or more, saying Villareale lacked contemporaneous written acknowledgments. Villareale's bank statements were sufficient to substantiate the gifts of less than $250 [Reg. §1.170A-13(a)(1)], but those for $250 or more required an acknowledgment from the donee indicating the date and amount of the contribution, along with a statement that no goods or services were received in return for the transfer, or a good faith estimate of the value of any goods or services [Code §170(f)(8)(B)].

Villareale argued that as president of NDM she would have been issuing the statements to herself. The Tax Court noted that while Villareale might not have needed the contemporaneous written acknowledgments to help determine the deductible amount of her gifts, the IRS needed the information

to determine whether she was entitled to the deductions she claimed. ***Villareale v. Commissioner,* T.C. Memo. 2013-74**

QUID PRO QUO NEGATES DEDUCTION

James Pollard wanted to build a second home on land he owned in Boulder County, Colorado, but because the parcel was slightly smaller than 70 acres, he needed county approval. The county's land use staff recommended that the request be denied, but added that if permission were granted, it should be conditioned on the granting of a conservation easement over the property to limit the use to agriculture.

Pollard granted the easement and claimed a charitable deduction of $1,049,850, based on an appraisal of the before and after values of the parcel. The IRS disallowed the deduction, claiming that it was part of a quid pro quo arrangement in which Pollard received a subdivision exemption in return for the easement.

The Tax Court agreed with the IRS, saying that the subdivision exemption was "a substantial benefit" to Pollard. In *Hernandez v. Commissioner* (490 U.S. 680), the Supreme Court said that a charitable contribution is a transfer of money or property "without adequate consideration." The consideration need not be financial, noted the court. The county would not have been inclined to grant Pollard's exemption request had he not granted the easement. Therefore, said the court, he did not convey the easement for "detached and disinterested motives but rather to secure a personal benefit." The easement was not a charitable contribution and Pollard was not entitled to a charitable deduction. ***Pollard v. Commissioner,* T.C. Memo. 2013-38**

PETAL PUSHING NOT CHARITABLE

Zagfly, a California corporation, was established to allow customers to direct the proceeds of their purchases to charity. The company planned to operate an internet-based business selling flowers, but hoped to eventually expand its offering to include travel reservations. The company expected to earn sales commissions of about 10% to 20% of the purchase price of the flowers it would sell at market rates. Customers purchasing flowers through Zagfly would be able to designate a charity to receive all the profits from the sale. The company hoped to cover its operating expenses with donations, allowing more contributions to flow to the designated charities.

The IRS ruled that Zagfly did not qualify as an exempt organization under Code §501(a), since it would not operate exclusively for an exempt purpose as required by Code §501(c)(3). Zagfly acknowledged that it would be engaging in an activity that others engage in for a profit, but argued that its primary motive was charitable, by directing its profits to other charitable organizations.

The Tax Court agreed with the IRS that Zagfly's primary activity was a commercial one. An organization is not operated exclusively for an exempt purpose if more than an insubstantial part of its activities is not in furtherance of an exempt purpose [Reg. §1.501(c)(3)-1(e)(1)]. The court said that Zagfly's primary activity was not a charitable one, but a commercial activity that amounted to an unrelated trade or business. ***Zagfly v. Commissioner,* T.C. Memo. 2013-29**

APPRECIATION: GIVING AND GETTING

Charitable gifts of appreciated assets have always been a smart move, tax-wise. The donor receives a charitable deduction equal to the fair market value of investments held more than one year, while also avoiding the capital gains tax that would be due on a sale. These gifts make even more sense now, with increased capital gains tax rates for high-income clients (20% for those with taxable income over $400,000 for single taxpayers, $450,000 for joint filers) and the 3.8% net investment income tax affecting clients with adjusted gross income in excess of $200,000 (single taxpayers) or $250,000 (joint filers). Another smart move for clients over age 70½ who must take required minimum distributions from IRAs prior to year's end: have the IRA custodian make the distribution directly to charity and avoid the ordinary income tax that would normally be due on the distribution. These qualified charitable distributions (QCD) are available through the end of 2013. Clients may give up to $100,000 to charity without owing any tax. Call us for more details about gifts of appreciated assets or QCDs.