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THE SALVATION ARMY

Charitable Intent

DOING THE MOST GOOD

PLANNING NEWS AND IDEAS FOR THE PROFESSIONAL ADVISER

TRUSTEE, NOT DECEDENT, MADE GIFT TO CHARITY

Helen Trombetta established a qualified personal residence trust (QPRT) that was to last for 180 months, although she retained the right to reduce the term. If she were still living when the trust terminated, the trust property was to be distributed in equal shares to her children. If she died before the trust ended, the property was to be distributed under the terms of her will.

In 2005, Trombetta was diagnosed with cancer. She amended the QPRT, making the month during which she died the last month preceding the termination date. She also amended her will to create a charitable remainder trust. A formula clause was used to have a trust term and payout that would yield a charitable deduction of approximately $250,000. Trombetta's estate was the sole beneficiary of the charitable remainder trust.

Trombetta died in September 2006. A five-year, 19.9105% charitable remainder trust was established. The trustee of the QPRT transferred the home to the trust. When the trust ended in 2011, $344,000 was distributed to charity. In 2010, Trombetta's estate sought a refund of estate taxes paid for the $250,000 value of the charitable remainder. The IRS disallowed the deduction, saying that the QPRT ended before Trombetta's death and she therefore did not possess the right to direct the property to the remainder trust.

Under Reg. §20.2055-1(a), to be eligible for an estate tax charitable deduction, a transfer must be made during the decedent's lifetime or by will. Deductions are not permitted for amounts passing to charity by the actions of a personal representative [*Estate of Engelman v. Commissioner*, 121 T.C. 54 (2003)].

The Tax Court agreed with the IRS, noting that, as amended, the QPRT terminated prior to Trombetta's death and the property should have been distributed to her children, rather than under her will. The transfer of the home to the charitable remainder trust was done by the trustee, so Trombetta's estate was not entitled to the deduction. ***Estate of Trombetta v. Commissioner,*** **T.C. Memo. 2013-234**

COMPANY PAYS, DIRECTOR DEDUCTS

After selling the shares of his company to an employee stock ownership plan, Larry Zavadil remained on as an unpaid board member. The company maintained an expense account for Zavadil, from which he made numerous charitable contributions. He would reimburse the company for all non-business expenses at the end of each month.

Zavadil claimed charitable deductions of $576,827 and $535,731 respectively on his 2004 and 2005 income tax returns. The IRS disallowed a portion of these deductions, saying they were paid by the company, not Zavadil. Therefore, according to the IRS, the company, not Zavadil, bore the economic burden of the cash gifts, since there was no showing of a formal agency relationship between Zavadil and the company.

The Tax Court disagreed, noting that Zavadil regularly reimbursed the company for the charitable gifts. A written agreement is not required to establish an agency relationship, said the court. By agreeing to advance the contributed amounts, the company was acting as Zavadil's agent, entitling him to claim the charitable deductions. Zavadil, not the company, bore the economic burden of the gifts, the court found. ***Zavadil v. Commissioner,*** **T.C. Memo. 2013-222**

COURT FINDS LITTLE TO LOVE IN DONORS' LETTERS

Kingsley and Anthonia Ofoegbu claimed charitable deductions in 2007 and 2008 for gifts made to their church. The couple obtained acknowledgment letters dated in early 2008 and 2009 for the prior years' gifts. The IRS disallowed the gifts, noting that neither letter included a statement that no goods or services were provided to the couple in exchange for their contributions.

In October 2011, the church issued revised letters, including the quid pro quo statements. The IRS continued to deny the deductions, on the grounds that the substantiation letters were not "contemporaneous."

For contributions of $250 or more, donors are required to obtain a contemporaneous written acknowledgment in order to claim a charitable deduction [Code §170(f)(8)(A)]. The letter must state the amount of the gift and indicate either that no goods or services were provided by the charity in return, or include a good faith estimate of the value of any goods or services. To be contemporaneous, the letter must be obtained by the earlier of the date the tax return claiming the deduction is filed, or the due date (with extensions) for filing the return [Code §170(f)(8)(C)].

The first letters from the church did not contain mandatory quid pro quo language, and the revised letters were not contemporaneous. Therefore, said the Tax Court, the couple failed to strictly or substantially comply with the substantiation requirements and were not entitled to the deductions. ***Ofoegbu v. Commissioner,*** **T.C. Summary Op. 2013-79**

BEQUEST GOES TO THE DOGS . . . AND CATS

One month prior to Wendell Miles' death in 2010, he executed a preprinted will form in which he provided bequests to four charities. He left all his real property to the "Colville human[e] Society." Because there was no organization by that name, the executor petitioned the court to allow the real property to pass to another charity through the residue.

The court held a hearing, at which both the Colville Valley Animal Sanctuary (CVAS) and the Dog Patch Group, represented by Joyce Tasker, claimed an interest in the bequest. The trial court found that between 2008 and 2010, Dog Patch had taken in no animals and recorded no adoptions. In 2010, CVAS had sheltered 202 cats and 103 dogs, adopting out 114 and 102 of these animals respectively. The organization also trapped and spayed or neutered 21 cats and was involved in numerous public and fundraising events in the community.

The court ruled that Miles clearly intended to leave his real property to an organization that protected and cared for animals, and that CVAS was a close approximation of the name included in the will. Tasker appealed the ruling, but CVAS challenged her standing.

The Court of Appeals of the State of Washington said that the aggrieved party was Dog Patch, but the organization was not even mentioned in Tasker's appeal. Because she is not an aggrieved party, Tasker has no standing to appeal, said the court. Tasker argued that she was acting on behalf of Dog Patch, but the court noted that Dog Patch is required to assert its own right to the bequest as a result of its corporate status. Under state law, a corporation can act only through its agents and must be represented by an attorney, the court said in dismissing Tasker's appeal. ***In re Estate of Miles,* No. 30331-4-III**

FOREIGN ORGANIZATION NOT QUALIFIED

Charitable deductions generally are available for gifts to or for the use of organizations "created or organized in the United States" [Code §170(c)(2)(A)]. The IRS disallowed the $9,000 deduction claimed by Pauline Golit, saying that the Nigerian church to which she gave the funds was not created or organized within the U.S.

The Tax Court agreed, saying that Golit failed to show that the church was a qualified organization within the meaning of Code §170(c), and she therefore was not entitled to the deduction. ***Golit v. Commissioner,* T.C. Memo. 2013-191**

WHAT'S IT WORTH? BETTER FIND OUT

After retiring in 2008, Cynthia Webb-Haskett donated her professional wardrobe to the thrift shop at the local humane society. She prepared a list of donated items of clothing and obtained a receipt signed by a thrift shop employee. Webb-Haskett and her husband claimed a charitable deduction of $8,000. Of that amount, the couple made gifts by cash or checks of $1,250. They estimated the value of clothing and household goods contributed to be about $10,000. The IRS allowed deductions of $1,050 for the cash gifts and $3,600 for noncash gifts.

For noncash gifts in excess of $500, taxpayers must maintain a written record showing how the items were obtained, along with the cost or adjusted basis of the property [Reg. §1.170A-13(b)(3)]. For noncash gifts in excess of $5,000, the taxpayer must obtain a qualified appraisal and attach an appraisal summary to the return. In determining whether a taxpayer's noncash gifts exceed $500 or $5,000, all similar items of property are treated as one property [Reg. §1.170A-13(c)(1)(i)].

The Tax Court agreed with the IRS that the couple failed to maintain the required written records for their gifts. They also failed to obtain a qualified appraisal, said the court, noting that the donee or an employee of the donee cannot serve as a qualified appraiser [Reg. §1.170A-13(c)(5)(iv)(C)]. Therefore, ruled the court, the deductions were limited to the amount allowed by the IRS. ***Haskett v. Commissioner,* T.C. Summ. Op. 2013-76**

"HIDDEN" GIFTS HELP ACHIEVE CHARITABLE GOALS

They say you can't have your cake and eat it, too, but with some gifts to charity, donors can claim a current income tax charitable deduction without completely parting with the assets. This may be especially attractive to donors who plan to leave assets to The Salvation Army at death but may not be concerned with future estate tax savings. One way clients can benefit is by "accelerating" bequests by giving a remainder interest in a home or farm. They can retain the right to occupy the property for life or receive the rental income from the land. Or, the Army can be given an undivided interest in a vacation home or vacant land. The donor is entitled to an income tax charitable deduction. While the Army is theoretically entitled to use the property for a portion of each year, our real benefit is when the property is sold and we receive a share of the sale proceeds. To learn more about "hidden" gifts, feel free to contact our office.