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THE SALVATION ARMY

Charitable Intent

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PLANNING NEWS AND IDEAS FOR THE PROFESSIONAL ADVISER

COURT FINDS CHARITABLE INTENT IN BARGAIN SALE

Bob Davis, who owned numerous parcels of real estate in Waco, TX, became acquainted with Donald Perry, president of Sears Methodist Retirement Systems (SMRS). SMRS was interested in building a retirement community in the area. Davis was willing to sell a parcel for construction of the facility, but SMRS could not afford the $3 million to $4 million that Davis was asking.

Perry raised the topic of a bargain sale, saying SMRS could pay no more than $2 million, with Davis entitled to a charitable deduction for the difference between the bargain sale price and the fair market value. After meeting with his accountants, Davis agreed to the bargain sale, on the condition that the land appraised for $4.1 million or more.

Shortly after the sale closed in 2005, Perry sent Davis a letter thanking him for his gift in the form of the sale for $2 million of land appraised at $4.1 million. Davis claimed the $2.1 million charitable contribution, which the IRS denied entirely. In addition to claiming that Davis failed to substantiate his contribution, the IRS said he lacked charitable intent when he sold the property to SMRS because he "desired the tax benefits flowing from a charitable contribution." The Tax Court ruled that Davis believed he was selling the land to SMRS for less than fair market value and that he intended to transfer the excess value as a charitable contribution. The fact that Davis and Perry discussed the tax benefits of a bargain sale does not mean that charitable intent was lacking, the court added.

The court also found the letter from Perry thanking Davis for the bargain sale met the requirements of a contemporaneous written acknowledgment [Code §170(f)(8)], because Davis did not receive any goods or services other than the $2 million paid for the property. ***Davis v. Commissioner*, T.C. Memo. 2015-88**

THREE STRIKES AND DONOR IS OUT

James Isaacs donated four trilobite fossils to the California Academy of Sciences (CAS) in late 2006, for which he claimed a charitable deduction of $136,500. The following year, he contributed eight more fossils, claiming a charitable deduction of $109,800. He included a Form 8283 with each year's return, along with letters from CAS acknowledging the donations, but neither letter indicated whether goods or services had been provided in return for the gifts.

Both Forms 8283 bore the signature of Jeffrey Marshall as appraiser. Marshall testified that he didn't recall signing the forms and did not write or even recognize the letters bearing his signature that purported to be his appraisals. The Tax Court accepted Marshall as an expert in the valuation of fossils, but would not admit the letters into evidence.

Because Isaacs' deductions exceeded $5,000, he was required to satisfy several substantiation rules:

- For all contributions of $250 or more, the donor must obtain a contemporaneous written acknowledgment from the donee. This must include a description of the property and must state that either no goods or services were provided in exchange for the gift or include a good faith estimate of the value of any quid pro quo [Code §170(f)(8)(B)].
- For noncash contributions in excess of $500, the donor must maintain reliable written records that include the approximate date and manner of acquiring the gift property, a reasonably detailed description of the property, the cost or other basis, the property's fair market value at the time of the gift and the method by which fair market value was determined [Reg. §§1.170A-13(b)(2)(ii)(B), (C) and (D)].
- For noncash gifts valued at $5,000 or more, the donor must meet the requirements above, plus obtain a qualified appraisal [Code §170(f)(11)(C)].

The court ruled that Isaacs failed to satisfy any of the criteria, noting that he could not prove that the fossils had been properly appraised. Even if he had obtained a qualified appraisal, he lacked records describing when and how he acquired the fossils. Finally, said the court, even if he had met both those requirements, the letters he received from CAS were not contemporaneous written acknowledgments because they failed to state that no goods or services were provided. ***Isaacs v. Commissioner*, T.C. Memo. 2015-121**

COURT RESOLVES WILL CONFLICT

Barbara Yetka-Eisenberg left half the residue of her estate to fund a charitable remainder unitrust, naming her brother, sister and cousin as income beneficiaries. The first part of her will provided that the unitrust was to pay the lesser of trust income or 5% of the trust's fair market value annually. In a later savings clause, designed to ensure that the unitrust qualified for an estate tax charitable deduction, the will provided that "in no event" was the unitrust amount to be less than 5%.

The New York Surrogate's Court was asked to construe the trust in light of the inconsistent language. In general, when two will clauses cannot be reconciled, the one that is posterior in position is considered to indicate the testator's intent. However, the court said that treating the language of the savings clause as the testator's intent would be contrary to the general scope of Yetka-Eisenberg's will.

The definition of the unitrust amount provided earlier in the will meets the requirements for a qualified charitable remainder unitrust and details how the unitrust amount is to be calculated and to whom distributions will be made. The conflicting provisions in the savings clause, which were the result of a drafting error, would not even be triggered, the court found. ***Testament of Yetka-Eisenberg*, Kings County Dkt. No. 2011-4050B**

IRS FINDS SUBSTANCE TRUMPS FORM

The managing partner of a partnership entered into an agreement to assign his membership interest to a charity. One day after the assignment, a corporation with no assets or equity and wholly owned by the donor purchased charity's units in exchange for a promissory note. The note provided that the principal amount was to be paid on or before the expiration of 20 years.

Under Rev. Rul. 68-174 (1968-1 C.B. 81), a promissory note is merely a promise to pay at some future date and is not deductible as a contribution under Code §170. The donor claimed a charitable deduction for the value of the units transferred to the charity.

The IRS found that within one day of the donor's assignment, the charity held no rights to the units, just a note. Had the donor contributed a note directly to the charity, no deduction would be allowed. The substance of the transaction, said the IRS, was that charity received the donor's promise to make payments through the corporation, in an amount and at the time the donor determined for the next 20 years. Recasting the transaction, the IRS said the donor transferred the units to the corporation. Therefore, the corporation is entitled to treat payments under the note as charitable contributions when they are actually made. **CCA Memorandum 201507018**

LET THE IRS KNOW

Donors establishing split-interest gifts such as charitable remainder trusts, charitable lead trusts, charitable gift annuities and remainder interests in homes and farms can elect to value the charitable deduction by using the §7520 rate for the month of the transfer or either of the two months prior to the transfer [Reg. §25.7520-2(a)(2)]. In general, higher §7520 rates yield larger deductions for remainder trusts and gift annuities, while lower §7520 rates provide a larger deduction for lead trusts and remainder interests in homes and farms.

A donor who created two charitable lead annuity trusts filed gift tax returns reporting the transfers, relying on his attorney and CPA to prepare and file the required prior-month election. Reg. §25.7520-2(b)(2) provides that a donor making a prior-month election must attach a statement to the relevant tax return identifying the month to be used. The election also may be made on an amended return filed within 24 months after the later of the date the original return was filed or the due date for filing the return.

The donor learned, after the filing period had elapsed, that the prior-month election was not included with the return and asked the IRS to grant an extension of time under Code §301.9100-3(a). The IRS may grant an extension where it finds the taxpayer acted reasonably and in good faith and the interests of the government will not be prejudiced. The IRS found the taxpayer had met these criteria and granted a 120-day extension to file an amended return making a prior-month election. **Letter Ruling 201518007**

HELPING YOU HELP YOUR CLIENTS

Long before selling a business or valuable assets, a smart client will meet with his or her advisers to discuss potential tax consequences and the best way to structure a sale. This can be an ideal time for advisers to offer ideas for incorporating charitable giving into the arrangement. Clients are often unaware of options such as charitable remainder trusts or charitable gift annuities that could help reduce or defer capital gains tax. These clients probably have favorite charities that they have supported for many years and would appreciate knowing how they can "do good" for themselves and worthwhile organizations. The Salvation Army is available to assist advisers in presenting charitable options that will meet their clients' goals. Please feel free to call if we can be of assistance.