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PLANNING NEWS AND IDEAS FOR THE PROFESSIONAL ADVISER

TRUST'S DEDUCTION LIMITED TO BASIS

The trustee of the Green Dynasty Trust sought a tax refund for taxes paid in 2004. The trust, which was established to allow distributions of gross income to charity, increased the deduction claimed from $20.5 million to $29.6 million for gifts of parcels of land held more than one year. The IRS said the deduction was limited to the trust's basis in the parcels, not the fair market value, and disallowed the refund. The U.S. District Court (WD OK) held that the trust was entitled to the larger deduction, noting that under Code §642, deductions are "without limitation" (*Green v. U.S.*, 2015-2 USTC ¶50,549). The IRS appealed, arguing that the deduction allowed under Code §642(c)(1) refers to charitable gifts made from a trust's gross income.

The U.S. Court of Appeals found the phrase "any amount of the gross income" in Code §642(c)(1) to be ambiguous. The IRS has interpreted that section to mean that a deduction is allowed for an amount paid during the taxable year in respect of gross income received in a previous taxable year, but only if no deduction was previously allowed [Reg. §1.642(c)-1]. The court said it must defer to a regulation that "reasonably interprets an ambiguous statute."

Nothing in the regulation touches on whether real property purchased with gross income can be treated as the equivalent of gross income. Because the IRS has consistently held the position that the deduction is limited to the adjusted basis in donated real property, that is the most reasonable interpretation of the statutory language, said the court, adding that unless and until Congress makes clear that it intended for the deduction to extend to unrealized gains associated with real property originally purchased with gross income, the court cannot construe the deduction in that manner. ***Green v. U.S.*, 2018-1 USTC ¶50,126**

DEDUCTING THE PIECES

Registry Group, a partnership, owned property on which a house was located. The partnership donated the house to Pine Valley Bible Camp with the understanding that volunteers would disassemble the structure and move the materials to the camp. James Platts, one of the two partners, claimed a $176,255 charitable deduction on his 2001 income tax return, based on an appraisal of the intact house. The IRS disallowed the deduction.

The Tax Court noted several deficiencies with Platts' deduction. First, he claimed the deduction in 2001, although the gift was made in 2000. Under Code §170(a)(1), a charitable gift may be deducted only in the year it is made. Second, Platts claimed a deduction for what was purportedly 100% of the appraised value of the home, although he was only a 50% partner.

The court also found fault with the appraisal, noting that the valuation date was 1999. A qualified appraisal may be made no earlier than 60 days prior to the date of the contribution [Reg. §1.170A-13(c)(3)(i)(A)]. The actual letter from the appraiser was dated Nov. 8, 2002, although Reg. §1.170A-13(c)(3)(iv)(B) requires the appraisal be received by the donor by the due date of the tax return on which the deduction is claimed (with extensions). The court concluded the appraisal was received too late to qualify. The court also said the appraisal was "not relevant," since it valued an intact structure, not the parts retrieved from dismantling the home. Platts was not entitled to a deduction, the court concluded. ***Platts v. Comm'r.*, T.C. Memo. 2018-31**

STATE ENTITLED TO KNOW DONORS' NAMES

Non-profit organizations soliciting funds in New York must file their federal Form 990 annually with the state attorney general. Citizens United, a 501(c)(4) organization, and Citizens United Foundation, exempt under 501(c)(3), filed the forms annually, but did not include Schedule B, listing donors' names, addresses and gift amounts. The attorney general notified the organizations that failure to include the donor lists could result in fines or revocation of their right to solicit funds in the state.

Both organizations challenged the requirement on the grounds it was an unconstitutional prior restraint on their speech. The U.S. District Court (SD NY) found the requirement did not violate the groups' First Amendment rights (*Citizens United v. Schneiderman*, 203 F. Supp. 3d 397).

The organizations appealed, saying the disclosure requirements "intimidate potential donors," thereby undermining the groups' ability to engage in free speech. The attorney general countered that the disclosures are necessary to protect the public from fraud and self-dealing by tax-exempt organizations. Collecting donor information helps facilitate "investigative efficiency," "obtain a complete picture" of charities' operations and "flag suspicious activity."

The U.S. Court of Appeals (2d Cir.) acknowledged that law enforcement officials have been known to abuse their power and confidential information may "spring a leak," but that risk alone does not create a constitutional problem and disclosure is not "an evil." The small amount of "speech chilling" created by the disclosure requirement is "more than commensurate with the government's goals," the court said. The organizations already provide this information to the IRS, and have not shown there is more to fear by having donors' identities known to the attorney general than to the IRS. The court concluded that the regulations were "well within" the attorney general's powers. ***Citizens United v. Schneiderman*, Docket No. 16-3310**

TRANSFER WAS A SALE, NOT A GIFT

Shriners Hospital for Children was named the residuary beneficiary of L. G. Foster's 2008 will. In 2012, Foster executed a codicil naming Frederick Romo the executor and directing Romo to sell Foster's home and distribute the proceeds to Shriners if he still owned the house at his death.

The following year, when he began experiencing medical problems, Foster told Romo he wanted to donate his residence to his church for use as a parsonage. When the church declined to accept the home as a parsonage, Foster decided to sell the home and donate the proceeds instead. He was admitted to a nursing home before the house could be listed for sale. Foster had his attorney prepare a durable power of attorney giving Romo the authority to sell his real estate "upon such terms and conditions" as Romo deemed appropriate.

Foster told Romo to complete the sale and donation of the proceeds to the church so he didn't need to execute a new will. However, the power of attorney did not authorize Romo to make a charitable gift of the home. Instead, Romo sold the residence to the church for $10, to which Foster agreed.

Following Foster's death a month later, Shriners Hospital filed suit arguing that the sale for $10 was not a good-faith purchase for value and that Romo lacked the authority to make a gift of the residence. The circuit court granted summary judgment for the church, finding that Romo had the legal authority to sell the real estate under any terms he deemed appropriate. Shriners Hospital appealed the decision.

The Arkansas Court of Appeals affirmed the circuit court, noting that while Foster could have accomplished the transfer of his residence to the church in other manners, there was nothing inappropriate with the way it was done. Lacking evidence of accident, mistake or fraud, the mere inadequacy of consideration is not sufficient to set aside a deed. Romo's sale was within the letter and the spirit of his authority, the court found. ***Shriners Hospital for Children v. First United Methodist Church of Ozark*, 2018 Ark. App. 216**

CHARITY AND SPECIAL NEEDS TRUSTS: A GREAT COMBINATION

Parents of disabled children often create special needs trusts designed to provide extra funds without jeopardizing governmental benefits to which the children would otherwise be entitled. The parents may also wish to assist charity with whatever funds are not needed for the child's care. It's possible to do both by combining charitable remainder trusts and special needs trusts. In general, a charitable remainder trust that pays income to a noncharitable trust must be a term-of-years trust lasting no more than 20 years [Reg. §§1.664-2(a)(5), 1.664-3(a)(5)]. However, a charitable remainder trust may pay to a separate trust for the life of an individual where the beneficiary is incompetent (Rev. Rul. 76-270) or is "financially disabled," as defined in Code §6511(h)(2)(A) (Rev. Rul. 2002-20). Our office would be pleased to work with you to assist clients who may wish to provide for both charity and dependent family members.