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# NEW HOPE CHRISTIAN COMMUNITY FOUNDATION

**Fall**  
2007

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A newsletter about charitable gift planning and  
exempt organizations for professional advisors.

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### **2007 YEAR-END TAX PLANNING**

This is the last chance for donors to make a tax-free IRA charitable rollover. Unless congress extends the deadline, this opportunity will expire on December 31, 2007. Until that date, a donor who is over age 70-½ on the date of the rollover can give up to \$100,000.00 this year to a charity from their IRA(s). The distribution has to go directly to a public charity, and cannot be made to a donor-advised fund, supporting organization or a private foundation. These transactions take awhile, so don't wait. For more information, see the Fall, 2006 edition of this newsletter.

Another year-end planning idea is to have donors/clients review their investment portfolio for significantly appreciated assets. These highly appreciated assets are excellent sources for charitable giving.

Finally, donors/clients who customarily receive large year-end bonuses may want to use that as a source for charitable gifts. If the donor/client is not prepared to choose all of the charities before the end of the year for such gifts, they can make the contribution to a donor-advised fund and get the tax deduction in 2007, while postponing the distribution decision to 2008 or later

### **GIFT ANNUITY WITH A FLEXIBLE STARTING DATE**

We have long been able to create gift annuities that start on a fixed date in the future that is more than one year from the date the donor transfers the funding to a charity. With Private Letter Ruling (PLR) 200742610, the IRS approved the flexible starting date annuity that permits the donor to choose a starting date within a range of time. For example, the donor could choose to start the annuity between attaining age 55 and 60. Of course, the value of the annuity varies depending upon the actual age that the donor chooses to begin payment. For such valuation purposes, the IRS requires that the highest possible value of the annuity agreement be used based on the mortality tables in Internal Revenue Code (IRC) Section 7520, Reg. Section 20.2031-7, using the interest rates found in IRC Section 7520. See also PLR 9743054 and PLR 9017071 and PLR 200449033. The donor may also set a target date. If the donor does not start the annuity at the target date, the annuity eventually paid will have to be paid at an annuity rate that will produce the same charitable deduction, as the original target date would have. The donors are not taxed until the annuity payments actually start.

### **IRS PRIORITY GUIDANCE PLAN FOR 2007-2008**

Each year the Department of Treasury and Internal Revenue Service issue a list of areas in which they will give priority to issuing guidance or rulings. Among the items that the Treasury and IRS will give priority to in terms of guidance in the area of tax-exempt organizations are:

- a. Final regulations under IRC Section 501(c)(3) and 4958 on revocation standards for organizations that engage in excess benefit transactions.
- b. Proposed regulations on new requirements for supporting organizations.
- c. Regulations on the e-Postcard notification requirement for entities currently not required to file any of the various 990 forms.
- d. Regulations to implement revised Form 990.
- e. Proposed regulations under Section 170(f)(12) regarding contributions of qualified vehicles.
- f. Regulations under Section 170 on revisions to substantiation and reporting requirements for charitable contributions.
- g. Revenue ruling on the division of charitable remainder trusts under Section 664.
- h. Guidance under Section 642(c) on the ordering rules for charitable payments made by a charitable lead trust.
- i. Revenue procedure under Section 2522 providing sample inter vivos charitable lead unitrusts.

To see the entire list and obtain additional information, go to: [www.irs.gov/charities](http://www.irs.gov/charities) , then click on “published guidance” in the left hand column.

### **APPLICATION FOR EXEMPTION PROCEDURES UPDATED**

The IRS issued updated procedures concerning the request, issuance and appeal of determination letters in Rev. Proc. 2007-52. As a member of the IRS Great Lakes Tax Exempt Council, I had an opportunity to discuss this with Marvin Friedlander, Chief, EO Technical Branch (the second highest ranking official in the IRS concerning exempt organizations). He stated that the procedures will now be updated annually. This has not been the case in the past. The procedures call for all applications to be substantially completed. The purpose of the organization must be specific in the articles of incorporation. The IRS will either approve or deny the application. The IRS may request additional information and if the applicant does not respond thereto, it will be treated as a failure to exhaust administrative remedies. This means that you cannot make an appeal. He also said that they would make significant improvements in the process of requests for expedited service. Presently they are almost always denied. New procedures will be developed containing specific requirements to be met, in the hope of granting more of such requests. If the IRS determines to deny the application, they will issue a letter of proposed adverse determination. An appeal can be made from the proposed adverse determination. A copy of the proposed adverse determination letter may be requested by

the applicant's home state, pursuant to recent changes in the law. He also noted that Regs. Section 301 limits what can be withheld from the public. Accordingly, do not put information in an application that you do not want made public.

A new office has been created under the Examinations Office and it is called the Operations Office. This office has the specific role of reviewing the Form 990 of any organization that was granted an exemption when the IRS was somewhat uncertain, but granted the exemption anyway. It was unclear as to exactly how this determination is made and how it is to be noted in the file for future follow up. However, this is the brainchild of Steven Miller, the highest-ranking official in the IRS concerning exempt organizations.

### **COMMUNITY BENEFIT STANDARD**

At the recent meeting of the IRS Great Lakes Tax Exempt Council, I had a one-on-one conversation with Renee' Wells, who is in charge of compliance in the Great Lakes area. We discussed her presentation on the Community Benefits Standard relative to hospitals. The IRS is looking at denying or withdrawing exemptions for hospitals that do not provide some kind of community benefit. The difficulty, of course, is in defining community benefit. The standard is currently articulated in Rev. Rul. 69-545. However, based on research that the IRS is undertaking at the present time, it is expected that the rule will be revised. The importance of this issue to exempt organizations is that in Ms. Wells' opinion the IRS is going in the direction of requiring a community benefit from all exempt organizations. What this means is that, ultimately, all exempt organizations will have to prove to the IRS that they offer something other than what a for-profit organization performing the same services offers. In other words, if your exempt organization is providing a service that is also provided by for-profit organizations, you must show why yours should be exempt from income tax when theirs is not. This requires showing that the exempt organization provides something to the community that is not provided by the for-profit entities, such as free or deeply discounted service.

### **IRA AND LIFE INSURANCE COMBINATION**

In PLR 200741016, the IRS determined that using a combination of an IRA and life insurance is not a prohibited transaction that would cause the IRA involved to be disqualified, and that the investment in life insurance by the charity would not be a prohibited investment in life insurance. Basically, the scheme involves an IRA lending money to a specific charity. The charity takes a portion of that money to pay a premium on a policy on the donor's life. The loan is secured by a promissory note with security agreement and by a collateral assignment on the policy. The note has a balloon payment at the earlier of 20 years or death of the insured. The charity must pay interest on the loan. The charity then retains a portion of the loan estimated to be necessary for paying the interest and the balance becomes an immediate and unrestricted source of funds to the

charity for its purposes. When the donor dies, the charity receives the entire death benefit of the life insurance, pays off the principal of the loan, and retains any excess for its charitable purposes. You must determine if your state's law concerning what is an insurable interest would permit or defeat this transaction. This is not a gift and there is no charitable deduction for this transaction.

### **BRIEFS**

- Smaller, exempt organizations should not forget the new e-Postcard filing requirement that is effective for tax years ending on December 31, 2007. If you are on a calendar year, the e-Postcard is due May 15, 2008. For more information, see IRS TD 9366; 72 F.R. 64147-64150, issued November 15, 2007. For a list of frequently asked questions about the new e-Postcard, please send me an e-mail. Failure to file this form can lead to loss of exemption.
- The IRS has issued proposed regulations under the Pension Protection Act of 2006 for Type 3 Supporting Organizations. In general, most organizations are trying to avoid this classification. However, there are circumstances under which a Type 3 Supporting Organization is a good alternative to a private foundation. If you want more information, please send me an e-mail.
- The IRS has issued revised editions of some helpful publications. Publication 1771 concerning the substantiation and disclosure requirements for charitable contributions was revised in May, 2007. In June, 2007, a revised version of Publication 4221-PC was issued. This is the compliance guide for Section 501(c)(3) public charities. There is also a new compliance guide for private foundations—the number of which is 4221-PF.

**NOTE THAT A PRIVATE LETTER RULING IS NOT A PRECEDENT AND CAN ONLY BE RELIED ON BY THE TAXPAYER TO WHOM IT IS ISSUED. THEY ARE HOWEVER AN INDICATION OF WHAT THE IRS IS THINKING.**

To find cases, statutes and rules cited in this newsletter, try the following free websites:

[www.findlaw.com](http://www.findlaw.com)  
[www.firstgov.gov](http://www.firstgov.gov)  
[www.access.gpo.gov](http://www.access.gpo.gov)  
[www.irs.gov](http://www.irs.gov)  
[www.law.cornell.edu](http://www.law.cornell.edu)  
[www.taxlinks.com](http://www.taxlinks.com)

[www.legalbitstream.com](http://www.legalbitstream.com) (for private letter rulings, just enter the number and not the letters "PLR").

For prior newsletter editions, go to [www.nhccf.com](http://www.nhccf.com) and click on "News + Events." Close to the bottom of the page you will find "Professional Advisors – Newsletters & Resources." There you will find the prior editions and a cumulative index for prior years.

There were no needy persons among them. For from time to time those who owned lands or houses sold them, brought the money from the sales and put it at the apostle's feet, and it was distributed to anyone as he had need.

Acts 4:34-35