
NEW HOPE CHRISTIAN COMMUNITY FOUNDATION

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

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IRS “DIRTY DOZEN”

Annually, the IRS publishes a list of what they believe to be the worst tax scams affecting American taxpayers and issue a warning for people not to fall for these schemes. Number 10 on the list was abuse of charitable organizations and charitable deductions. One of their major concerns is taxpayers transferring assets or income to tax-exempt supporting organizations or donor-advised funds while maintaining impermissible control over the assets or income. The IRS, at the request of Congress, continues to look at supporting organizations and donor advised funds and whether or not they should even be permitted recipients of deductible contributions.

Overvaluation of donated property is another major issue.

Finally, the IRS is again looking at taxpayers taking tuition payments to private religious schools as charitable contributions to a religious organization.

IRA CHARITABLE ROLLOVER

Congress authorized direct contributions from IRAs to charities for individuals over age 70-½ and in amounts up to \$100,000.00 in the Pension Protection Act of 2006. The deduction is limited to contributions to public charities and expires on December 31, 2007. See the Fall 2006 edition of this newsletter.

Now the IRS has issued guidance to answer some of the questions that the legislation has raised.

Sometimes the donor likes to deliver the check to the charity. The IRS has clarified that a check from the IRA trustee can be delivered by the donor to the charity.

These direct payments from IRAs are not includible in the income of the IRA owner. Accordingly, they are not deductible under IRC Section 170. The IRS has now clarified that the IRA rollover contribution that is excluded from income will not be taken into account for purposes of the adjusted gross income ceilings for charitable gifts. And, even though the IRA charitable rollover is not deductible under IRC Section 170, the substantiation requirements found in IRC Section 170(f)(8) must be met.

If a taxpayer has more than one IRA, their total IRA charitable rollover contributions are limited to a maximum of \$100,000.00. In other words, it is not \$100,000.00 per IRA.

If for some reason a direct rollover from an IRA to a charity does not meet the requirements of the new act (found in IRC Section 408(d)(8)), the amount of the rollover contribution will be treated as a distribution to the IRA owner that is includible in his or her gross income, and then a contribution from the IRA owner to the charity that is subject to the usual IRC Section 170 rules.

A charitable distribution from an IRA is not subject to withholding.

IRA trustees and custodians will not be held liable for making a direct rollover distribution to a charity if they rely upon reasonable representations made by the IRA owner.

**CHARITABLE REMAINDER UNITRUST (CRUT) DONATION OF INCOME
INTEREST TO CHARITY IS DEDUCTIBLE**

The IRS has ruled several times that a holder of an income interest in a CRUT may donate that interest to the charity during their lifetime, receive a tax deduction, and terminate the trust, whereupon the remainder interest would also pass to the charity. In Ltr. Rul. 200630006, the IRS again ruled favorably upon this arrangement. The difference in this case was that the donor and donor's spouse as well as their sons and daughter had the right to change the charitable beneficiary. Consequently, it was necessary to make the designated charitable beneficiary irrevocable. If the charitable remainder beneficiary could still be changed, there would be no completed gift under Regs. §25.2511-2(c). Accordingly, all parties who had the right to change the charitable beneficiary irrevocably released that power.

FORM 990 FILING REQUIREMENT FOR SMALLER ORGANIZATIONS

In the past, organizations that had gross receipts less than \$25,000 did not have to file a Form 990. This continues to be the case. However, such organizations will be required to file a new form, called 990-N. This is an electronic form and the filing requirement will cover tax periods beginning after December 31, 2006. The Form 990-N will be due on the 15th day of the fifth month after the organization's fiscal year ends, and no extensions will be granted. There is no financial penalty for late filing or failure to file annually. However, organizations that do not file for three consecutive years will lose their tax exemptions. This new rule does not apply to churches, integrated auxiliaries of churches or conventions or associations of churches; nor does it apply to any organization covered by a group return. If the organization is required to file Form 990 or 990-EZ or 990-PF, then Form 990-N is not required. For more information, go to www.irs.gov/charities/article/0,,id=169250,00.html and www.irs.gov/pub/irs-tege/epostcard_faqs_final.pdf

GOOD GOVERNANCE PRACTICES/IRS

We have reported in the past about IRS efforts to establish good governance practices for Section 501(c)(3) organizations. They have now issued some guidelines. Currently, the IRS has no authority to require that organizations follow good governance practices. Nonetheless, this is the future and you should be ready for it. For a draft of what the IRS considers good governance practices go to: www.irs.gov/charities/charitable/article/0,,id=167626,00.html

CHARITABLE REMAINDER ANNUITY TRUST (CRAT) NOT PROPERLY ADMINISTERED RESULTS IN COLLECTION ACTION AGAINST ESTATE

In Estate of Atkinson v. Commissioner, 115 T.C. 26 (2000), affd. 209 F.3d 1290 (11th Cir. 2002) the court found that an estate was not entitled to an estate tax deduction for contributions from a CRAT to a charity because the CRAT failed to make any annuity payments during the life of the income beneficiaries and because the trust's corpus was improperly invaded to pay death taxes. The IRS then attempted to collect additional taxes from the estate in the case of Estate of Melvine B. Atkinson, et al. v. Commissioner; T.C. Memo. 2007-89; No. 2865-05L. The tax court found that the IRS's determination to proceed with collection by levy of the estate taxes was not an abuse of discretion and that the IRS may proceed with the collection.

This is just another case that demonstrates a properly drafted charitable remainder trust is only part of a successful transaction. The trust must also be properly administered.

TRUST DISTRIBUTION TO CHARITY DOES NOT CREATE SPLIT-INTEREST TRUST

Split-interest trusts, such as charitable remainder unitrusts and charitable remainder annuity trusts are governed by IRC Section 4947(a)(2) and are subject to the prohibition of self-dealing under Section 4941. In Ltr. Rul. 200714025, the IRS determined that a non-charitable trust that makes a discretionary distribution to charity will not be treated as a Section 4947(a)(2) split-interest trust and therefore will not be subject to the prohibition of self-dealing under Section 4941. However, bear in mind that a discretionary distribution to a charity from a trust that is not a split-interest trust is not deductible by the trust as a charitable contribution. If you want the beneficiary to obtain the charitable deduction, the trust should distribute the funds to the beneficiary first who can then make the charitable contribution. Or, make provision for mandatory distribution to the charity from the income of the trust. See Goldsby, Jr. et ux v. Commissioner; T.C. Memo. 2006-274; No. 8232-05 (Dec. 2006).

BRIEFS

- We have often talked about reformation of charitable remainder trusts in order to meet the requirements of Section 664. Such a trust can also be reformed under Section 2055(e)(3). See PLR 20062205 and 200622013.
- For three major cases involving the duty of a trustee to diversify investments in a charitable remainder trust, or any trust for that matter, see Fifth Third Bank and Elizabeth Gamble Reagan v. Firststar Bank, N.A., Ohio App. 1 Dist., 2006; and Americans for the Arts, The Poetry Foundation, and Lilly Endowment, Inc. v. Ruth Lilly Charitable Remainder Annuity Trust Number One, National City Bank of Indiana, Trustee, and Ruth Lilly Charitable Remainder Annuity Trust Number Two, National City Bank of Indiana, Trustee, 855 N.E. 2d 592 (Ct. App. Ind. 2006); and Estate of Rowe, 712 N.Y.S. 2d 662 (N.Y. App. Div. 2000).
- For those U.S. charities that make grants to foreign organizations, you must comply with anti-terrorist regulations. On September 29, 2006, the IRS updated guidelines entitled Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-based charities. Please contact us for more information.
- For a look at what not to do with a charitable remainder trust, see IRS ILM 200628026, wherein the creator of the trust transferred debt-encumbered property to the trust in violation of the grantor trust rules and treated the trust as his personal checking account.
- Many charities are entitled to a refund of the federal telephone tax. The refund is due many non-profits, including churches and small tax-exempt organizations that don't usually file an annual return with the IRS. For more information, go to www.irs.gov and click on "telephone excise tax refund" on the homepage.

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

www.findlaw.com

www.firstgov.gov

www.access.gpo.gov

www.irs.gov

www.law.cornell.edu

www.taxlinks.com

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

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