
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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THE IRS'S DIRTY DOZEN

The IRS announced to the Great Lakes Area Tax Exempt Council in July, its current key initiatives and tax compliance issues. Following is the list:

1. Consumer credit counseling
2. Political intervention
3. IRC Section 527 Organizations
4. Inurement/intermediate sanctions compliance project (including excessive compensation initiative)
5. Anti-terrorism (foreign grants and distributions)
6. Producer-owned reinsurance companies (PORC)
7. I.R.C. Section 509(a)(3) supporting organizations (promoter referrals)
8. Housing and urban development
9. Donor advised funds
10. Community Foundations
11. Disaster Relief
12. Private Foundations

These give us some idea of how the IRS will allocate its funds and staff in the compliance area.

ANNUAL EXCLUSION GIFTS & THE SO-CALLED "CRUMMEY" POWERS

Gifts in trusts are treated as being made to the beneficiaries of the trust for purposes of applying the annual exclusion. See Internal Revenue Code (IRC) Section 2513. If the trust beneficiary does not have a right of present enjoyment in the transferred property, the annual exclusion will be denied. However, the courts and the IRS have long agreed that a temporary right of withdrawal of trust property on the part of a beneficiary may serve to create the necessary present interest to qualify for the annual exclusion. See Crummey v. Commissioner, 397 F. 2d 82 (9th Cir. 1968); REV RUL 75-405, 1973-2CB321. Congress now wishes to curtail the use of Crummey powers. There are three proposals being considered.

Under the first proposal, the holder of a Crummey power will not be treated as the donee with respect to an amount transferred into trust unless the holder is also a direct, non-contingent beneficiary of the trust. This would prevent taxpayers from claiming multiple annual exemptions in connection with gifts that are intended and arranged to accrue only to a single person.

The second proposal would provide that powers to demand the distribution of trust property are taken into account only if they cannot lapse during the holder's lifetime. This would eliminate Crummey powers as a tax-planning tool.

Under the third proposal, powers to demand the distribution of trust property are taken into account only if there is no arrangement or understanding to the effect that the powers will not be exercised; and there exists at the time of the creation of the powers a meaningful possibility that they will be exercised. This would result in a case-by-case analysis that would have the effect of eliminating Crummey powers as a planning tool in most cases.

The first proposal is suggested to be effective for transfers made after the date of enactment. This would mean that there would be no “grandfathering” regarding future contribution to existing trusts for holders who do not have a direct, non-contingent interest in the trust. The second and third proposals are suggested to be effective for transfers made to trusts that are established after the date of enactment. Thus, previously existing trusts would not be affected. These proposals were made in the Joint Committee on Taxation report entitled “Options to Improve Tax Compliance and Reform Tax Expenditures” on January 27, 2005. The report is available on their website: www.house.gov/jct

IRS PRIORITY GUIDANCE PLAN.

Each year the IRS establishes priorities for issuing guidance to taxpayers. Some of these are of interest to gift planners. Following are some of the subjects on which the IRS plans to issue written guidance on or before June 30, 2006:

- Sample Charitable Lead Trust provisions
- Donee reporting of automobile donations
- Regulations on revocation of exempt status
- IRC Section 529 Qualified Tuition Programs
- Contributions of qualified vehicles

The IRS often does not manage to meet all of its goals. Their Priority Guidance Plan is a wish list and some of the items may not be completed until after June 30, 2006.

LAWSUITS AGAINST FAITH-BASED ORGANIZATIONS

There seems to be a sharp increase in lawsuits against faith-based organizations that receive government funding. The American Civil Liberties Union (ACLU) and Americans United for Separation of Church and State (AUSCS) have filed various suits against such organizations as “Silver Ring Thing” which is a faith-based, abstinence only program that encourages youth to abstain from sexual activity until they are married; and “Firm Foundation” which is a faith-based organization which uses government funding in a job training program for prison inmates, and which includes religious instruction. You

can find more information on this subject at the website for Gammon and Grange, P.C. which you can sign up for free. They have a memo entitled “Charitable Choice: Government Funding to Religious Social Service Providers”. There is a charge for the memo. The website is: www.gandglaw.com

HURRICANE KATRINA TAX BILL

The House and Senate reached a compromise and passed the Katrina Tax Bill. Among other things, it includes a so-called “indirect” IRA rollover. Usually donors are limited to deducting no more than fifty (50%) percent of their contribution base (adjusted gross income in the year of contribution without regard to a net operating loss that is generated in a subsequent tax year and then carried back, on an amended tax return, into the contribution year) for cash contributions to public charities. Contributions exceeding the fifty (50%) percent limit can be carried forward into five succeeding tax years. The new law provides that a “qualifying contribution” will not be subject to the fifty (50%) percent limitation to the extent that the gifts exceed the donor’s “other” charitable contributions. A qualifying contribution is one that is made in cash; made to a public charity as described in IRC Section 170(b)(1)(A), excluding gifts to supporting organizations described in IRC Section 509(a)(3) or to a segregated fund or account (donor advised fund) with respect to which the donor or donor’s designee has advisory privileges as to distributions or investments; and is made during the period beginning on August 28, 2005 and ending on December 31, 2005.

Other contributions (i.e., those that are not “qualifying contributions” under the above definition) are those that are made before August 28, 2005, including carryovers of excess contributions from prior years; gifts to supporting organizations or donor advised funds; non-cash gifts; and gifts to private non-operating foundations. There are a number of examples in the Joint Committee on Taxation’s technical explanation of the Act. That report can be found on their website at: www.house.gov/jct

The wonderful thing about this piece of legislation is that the “qualifying contributions” are not limited to gifts from individuals to organizations or uses related to Hurricane Katrina, unless the gift is made by a corporation. Any public charity and the donors that support them can benefit from this enactment.

The one hundred (100%) percent limitation allows the donor to make a withdrawal from his/her IRA, which will add to their contribution base enabling them to deduct gifts from the withdrawals on a dollar-for-dollar basis.

One limitation contained in the act is that the ten (10%) percent penalty for early withdrawals by persons under age 59½ is eliminated, but only for individuals who live within the Hurricane Katrina disaster zone. So, otherwise, the gifts should only be made by persons over age 59½ . By increasing the percentage limitation to 100% during the period between August 28, 2005 and December 31, 2005, the taxpayer can fully deduct any “qualifying contribution” made from an IRA withdrawal, or otherwise.

There is one caveat. Christopher R. Hoyt, a University of Missouri, Kansas City law professor says that larger gifts can have federal tax consequences of approximately one (1%) percent for married couples with adjusted gross income over \$145,950.00 and state tax consequences at any income level. The problem is that by making contributions from IRA withdrawals causes the income to increase and thus the three (3%) percent penalty will affect the other itemized deductions, even if the charitable deduction is not affected. This is the three (3%) percent reduction required by IRC Section 68.

BRIEFS

- Previously, the Postal Service issued a ruling that “personal information” other than a recipient’s name and address may not be included at the discounted Non-Profit Standard Mail” rates. They created an exception if three requirements are met: (a) the mailing contains explicit advertising for a product or service for sale or lease, or an explicit solicitation for a donation; (b) all of the personal information is directly related to the advertising or solicitation; and (c) the exclusive reason for inclusion of all of the personal information is to support the advertising or solicitation in the mailing. They define the phrase “solicitation for a donation” to mean a request for any kind of support, cash or otherwise, of the sender’s non-profit purpose. The solicitation must contain some kind of request for the recipient to support the non-profit’s purposes. You can obtain more information about this from the U.S. Postal Service. Their website is: www.usps.com
- It is expected that the IRS will increase the annual exclusion to \$12,000.00 a year per donee for the calendar year 2006.
- The Internal Revenue Service has issued new sample Charitable Remainder Unitrust (CRUT) forms. These forms are much more sophisticated than in the past and include extensive annotations and alternative provisions. As always, the forms must be used with caution. There is no mention of the new waiver requirements of Revenue Procedure 2005-24. See the summer edition of this newsletter. Note that the form provides as a default that the final payment will be pro-rated. Most drafters provide that the final payment will be the last regular payment made before the beneficiary’s death. You will also want to consider including a spendthrift provision if the beneficiary is not also the donor. The IRS forms also provide for the charitable remainder beneficiary to be a private foundation. If such a clause is contained in the trust, the donor’s percentage limitation will be lower for contributions made to the trust. Ordinarily, you will want to limit the charitable remainder beneficiary to those described in IRC Section 170(b)(1)(A), 170(c), 2055(a) and 2522(a).

- A consortium, including Independent Sector and Day, Barry and Howard Foundation, have prepared a Handbook on Counter-terrorism Measures: What U.S. Non-profits and Grant Makers Need to Know. You can obtain this handbook free by going to Day, Barry and Howard Foundation's website at: www.dbhfoundation.org and clicking on publications.
- Harvey Berger, National Director of Grant Thorton's Not-for-Profit Tax Services, has said that exempt organizations run the risk of incurring unwanted income tax and penalties relating to excess benefits for executives if they have not built a case that their cellular phone usage falls within IRS guidelines. More information on this can only be obtained by going to a website for which you have to pay. If you are interested in more information on this subject, please send me an e-mail at: kellerd@buckeye-access.com
- The IRS has again determined that the termination of a Charitable Remainder Trust (CRT) is not self-dealing nor does it constitute a termination of foundation status by the alternate beneficiary. The case involved the sale of stock in a closely held company that was part of a CRT. The trustee felt that the trust was only needed to provide management of the closely held stock and that once that stock was sold, the purpose of the trust no longer existed. The trustee wanted to terminate the trust at that point and distribute the remainder interest to the charitable beneficiaries. See Private Letter Ruling 200525014. This kind of early termination can be enormously helpful to the charity, and is a good planning opportunity for community foundations.

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 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

“What should we do then?” the crowd asked. John answered, “The man with two tunics should share with him who has none, and the one who has food should do the same.”

Luke 3:10-11.