Gift Planning Now

A Newsletter for Berkeley's Donor Advisors

Summer 2014

Deficient Appraisal Sinks Deduction

Ben Alli contributed a 34-unit apartment building to charity in 2008, claiming a $499,000 charitable deduction. At the time of the gift, only six units were occupied, with the remainder in need of substantial repair work. The donee organization, which had secured a buyer prior to accepting the building, received only $60,000 for the property. The IRS disallowed Alli's deduction, in part due to the lack of a "qualified appraisal."

Reg. §1.170A-13(c)(2) requires that a donor claiming a deduction for a noncash gift in excess of $5,000 obtain a qualified appraisal. The appraisal must be made no earlier than 60 days prior to the date of the gift and no later than the due date of the return. It must also contain specific information, including a description of the property, among other things, the date of the gift, the credentials and tax identification number of the appraiser, a statement that the appraisal was done for income tax purposes, the appraised fair market value of the property and the method of valuing the property. If more than one appraisal is used, each must comply with the requirements.

Alli produced two appraisals. One, prepared in 1999, said the building had gross rental potential of about $390,000. The second, prepared approximately five months before the date of the gift and intended to be an update of the earlier appraisal, concluded that, with extensive renovations, the property would have a value of about $530,000.

The Tax Court noted that neither appraisal was performed within two months prior to the gift and both suffered from "a number of material deficiencies." The donor argued that he had substantially complied with the appraisal requirements, but

the court found "entire categories of information" missing. The court denied the deduction, noting that strict compliance cannot be excused where a substantive requirement of the qualified appraisal regulations is not satisfied (*Alli v. Comm'r.*, T.C. Memo. 2014-15).

The Impact of Giving – in Human Terms

Earlier this year, we announced that 281,855 donors had stepped forward to raise a record $3.13 billion. Please visit **campaign.berkeley.edu** for more than 40 new stories and videos that highlight the broad impact of their generosity. Read about scholarships and fellowships that keep the dream of a Berkeley education alive, endowed faculty chairs that secure the excellence – and future – of our esteemed professors, and new research initiatives and facilities that aim to improve the human condition.

Former Executor Doesn't Have Standing

Sonia Sobol executed a living trust and pour-over will that left the bulk of her $22 million estate to a charitable foundation in the name of her late son. The foundation would support medical research and education, and the building of a hospital in Israel. Sobol's long-time attorney, Jay Rose, was the successor trustee and had a power of attorney for healthcare decisions.

In August 2012, Sobol amended her trust, removing Rose and naming three successor co-trustees: a long-time friend and business associate, a friend and colleague of her late son, and Terry Shaylin, an attorney who had assisted Sobol in a matter involving her business. The following month she executed a codicil to her will naming the three as her co-executors, in place of Rose. No other changes were made to the trust or will. Sobol died in December 2012.

Rose challenged the appointment of the three by the probate court, claiming Sobol lacked testamentary capacity to make the changes and that there was undue influence and personal benefit by Shaylin. The probate court agreed with the estate that Rose lacked standing.

The District Court of Appeal in California upheld the probate court's decision. Despite testimony from Sobol's doctor, rabbi and several long-time friends regarding Sobol's concerns about Shaylin, the court found that Rose was not an "interested person" under state law. The court rejected the argument that the change of executors would thwart Sobol's wishes. Rose's only legal interest was in receiving fees for services, which is insufficient under state law

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UC Berkeley Planning Pointer:

Beginning the Charitable Conversation

Sometimes advisors are not sure how to start the charitable conversation with particular clients. The following questions developed by Ken Nopar* can help begin the conversation:

1. Are you currently involved with any non-profit organizations? (Are you a donor, volunteer or board member?)

2. Do you typically support the same organizations every year, or does it vary from year to year?

3. How do you decide which non-profits to support?

4. Do you give the same amount every year? Upon what does it depend?

5. What have you contributed in the past? Do you give using cash, checks, appreciated stock or other noncash assets?

6. Do you make gifts to donate primarily during your lifetime, at death, or for years after your death?

7. Have you named any charitable beneficiaries in your estate documents?

8. Do you have any charitable vehicles in place, such as a private foundation, donor advised fund or charitable trust?

9. Which donations have provided you with the greatest satisfaction or regret?

10. Would you prefer to give anonymously or publicly?

In addition, we hope you will consider the Office of Gift Planning here at UC Berkeley a resource for these conversations.

**Planned Giving Today*, Vol. 25, number 3, "Five Lists That Can Help For-profit Advisors," March 2014, Ken Nopar to make him an interested person. The court found no evidence that the co-executors would contravene Sobol's testamentary intentions. In addition, noted the court, the attorney general has notice of the probate proceedings and "is obligated to protect the interests of charitable trust beneficiaries" (*In re Estate of Sobol*, B250306).

Failure to Fund Subtrusts Leaves Successor Trustee to Piece Together Estate Puzzle, Including Charitable Gifts

Elwood Olsen survived his wife, Grace Olsen, who died in 1998. As successor trustee of Grace's trust, Elwood was to create three subtrusts from the assets held in her living trust – two marital trusts and a family trust. By the end of 2000, the value of assets in Grace's trust was approximately $2.7 million.

After Elwood's death in 2008, his successor trustee discovered that none of the three subtrusts were ever created. In 2002, Elwood made a charitable contribution to Morningside College of nearly $250,000 from the assets of Grace's trust. In 2004 he made an additional gift to Morningside of $831,000, again from the assets of Grace's trust. He also made a withdrawal from Grace's trust of approximately $394,000 that he deposited into one of his accounts. Elwood amended his living trust in 2007 to delete his bequests to Morningside, saying he had "taken care" of the bequests with lifetime gifts.

The executor of Elwood's estate did not include any of Grace's remaining trust assets in Elwood's gross estate. The IRS determined a deficiency of $482,000 in federal estate tax for Elwood's estate, finding that a portion of the remaining assets in Grace's trust were attributable to the marital trusts and thus includable in Elwood's estate. The estate argued that the marital trusts should be considered depleted by reason of the charitable contributions to Morningside, leaving the balance of Grace's trust assets to fund the family trust, none of which is includable in Elwood's estate or subject to estate tax.

The Tax Court agreed with the IRS that withdrawals for the charitable gifts came from the family trust as Grace's trust gave Elwood the power to appoint principal of the family trust to charitable organizations. It agreed, however, with the estate that the $394,000 withdrawal came from the marital trusts. Thus, the Court found that as of Elwood's death, $608,000 was left in the marital trusts and therefore includable in Elwood's gross estate (*Est. of Olsen vs Comm'r.*, T.C. Memo. 2014-58).

Tax Planning Pointer

Donors who purchase tickets to charitable fund-raising events generally are entitled to deduct the difference between the fair market value of what is received (e.g., golfing greens fees, dinner) and the ticket price. What if the donor does not attend the event? The deduction is still limited to the difference, unless the donor properly rejects the benefits in advance, either through a check-off box on the solicitation or by refusing the tickets (Rev. Rul. 67-246, 1976-2 C.B. 106).

Numbers Tell the Gift Annuity Story

The American Council on Gift Annuities recently released the results of its survey of member charities, showing that the average age of gift annuitants has dropped to its lowest level in nearly 20 years. Previously, the average age had been climbing slowly, from 77 years in 1994 and 1999, to 78 years in 2004 and 79 years in 2009. According to the 2013 survey, the average age dropped to 75.

At the same time that the average age of annuitants has dropped, the percentage of the initial contribution remaining for charities at the end of the annuity has declined. In 1999, the amount remaining for charity – the residuum – was 98%. In the most recent survey, that figure had declined to 64%. Charitable gift annuity recommended rates are designed to produce a residuum of at least 50%.

Women continue to make up the bulk of gift annuity donors. Of the 5,752 annuitants represented by respondents to the survey, 57% were female. At the same time, both deferred gift annuities and flexible deferred gift annuities increased in popularity. A **deferred gift annuity** is one in which payments begin one year or more after the date of the gift. In a **flexible deferred gift annuity**, the donor does not have to designate a precise date when payments will begin. Instead, a range is provided, allowing the donor to begin payments earlier – at a lower annuity rate – or later – with higher payments. The charitable deduction, which is determined at the time the annuity is arranged, is the same, regardless of when payments begin.

The vast majority of charities issuing gift annuities – 63.8% – found there was no difference in annual giving by donors who arranged gift annuities. Only 5.59% reported a decrease in annual gifts by gift annuity donors. The same is true with bequests through estates of gift annuitants. The survey found that 54% of gift annuitants were likely to include a gift to charity in their estate plans. Another 45% found gift annuities were likely to have no effect on a donor's likelihood of making estate gifts, while only 1% said gift annuity donors were likely to remove a charitable gift from an estate plan.

Responding charities reported more than $3.15 billion in total gift annuity assets. The vast majority of gift annuities were funded with either cash or stocks and bonds. Of the responding charities, 62% said their minimum required to fund a gift annuity is between $10,000 and $24,000. Nine percent require $25,000 or more. The minimum age for an immediate payment gift annuitant is 60 at 29% of the charities, and 65 for 30% of the charities, although for deferred gift annuities, 32% of organizations accept gifts from donors as young as 50 and 36% do so for persons age 55 or older.

The responding charities reported nearly 95,000 charitable gift annuity contracts in force during 2013, with 13% of the organizations reporting ten or fewer gift annuities and one charity reporting 9,385 contracts. While 70% of the charities reported having $1 million or more in gift annuity assets under management, one organization had $98 million. The average of all charities was $7,771,428.

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