

**WHAT'S NEW IN PLANNED GIVING AND WHY  
PRESENTED TO THE TAMPA BAY PLANNED GIVING COUNCIL**

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**BY**

**LINDA SUZZANNE GRIFFIN, J.D., LL.M., C.P.A.  
LINDA SUZZANNE GRIFFIN, P.A.  
1455 COURT STREET  
CLEARWATER, FL 33756  
727.449.9800  
lawyergrif@aol.com**

## I. RECENT DEVELOPMENTS IN CHARITABLE GIFTING

### A. Charitable Split Dollar "Legacy Trust"

- (1) The Plan
  - a. Client gives money to charity.
  - b. Understanding that charity will invest money in cash value insurance on client.
  - c. An Irrevocable Life Insurance Trust created.
  - d. Charity enters split-dollar arrangement with trust.
  - e. Trust states a smaller portion paid to charity and a larger portion paid to client's family.
  - f. Client takes income tax deduction for amount paid to charity which uses the amount to pay the premium. Family gets benefits of trust; charity gets contribution.
- (2) HR 1180 signed on December 17, 1999; effective date February 8, 1999; amended Section 170 of the Code that no income tax deduction allowed.
- (3) Return preparer penalty, promoter penalty, and penalty for aiding and abetting the understatement of tax liability.
- (4) Charity's tax exempt status challenged.

### B. Accelerated Short-Term Charitable Remainder Trusts ("CRT")

- (1) The Plan
  - a. Client owns stock with value of \$1 million, basis \$10,000.
  - b. Stock transferred to a 2 year Charitable Remainder Unitrust ("CRUT") with an 80% payout.
  - c. No income in year 1 and no distributions.
  - d. Year 2 stock sold and \$800,000 to client.
  - e. \$800,000 treated as tax-free principal for year 1 because no income in year 1.
  - f. Year 2, \$160,000 (80% x \$200,000) is distributed as capital gains.
- (2) Proposed Regulations and Taxpayer Relief Act of 1997
  - a. Annuity cannot be greater than 50%.
  - b. The remainder must be at least 10%.
  - c. Payout must be made by close of year.

- (3) New Plan
  - a. CRUT has 49% payout.
  - b. Meets minimum 10%.
  - c. Trustee borrows funds to make payout in year one.
- (4) Proposed Regulations October 18, 1999
  - a. Trustee treated as sold pro-rata portion of stock to make payment.
  - b. “Any transaction that has the purpose or effect of circumventing this rule will be disregarded.” Prop.Reg. §1.664(a)8.

C. Charitable Lead Trust (“CLT”)

- (1) The Plan
  - a. Transfer \$5 million to CLT.
  - b. CLT must be for 20 years or for life of individual.
  - c. Use life of individual whose life expectancy is 20 years but likely to die in 2 or 3 years.
  - d. Proposed regulations on April 5, 2000. Taxpayers use individual’s life who is “seriously” not “terminally” ill. Payment made to ill individual for use of life.
  - e. Proposed regulations provide only donor, donor’s spouse and lineal ancestors of all of the remainder beneficiaries can be used as measuring lives.
- (2) PLR 199929021 CLT has three trustees. The three trustees could not agree. Service agreed CLT could be partitioned into 3 separate trusts.

D. Charitable Bequest of Nonqualified Stock Options

- (1) PLR 2000012076 individual contributed nonqualified stock options to charity.
- (2) Charity reports the IRD and not the individual.

E. Charitable Deductions

- (1) Estate of Alward v. Commissioner, TC Memo 1999-262. No deduction allowed to a cemetery association because no relation to specific church or governmental body.
- (2) Estate of Cavett v. Commissioner, TC Memo 2000-91. No deduction for contribution to Masonic and fraternal organizations. No evidence gifts to be used exclusively for charitable purposes.

F. Charitable Remainder Annuity Trust (“CRAT”)

(1) Estate of Atkinson, 115 TC No. 3 (2000)

- a. Taxpayer transfers stock worth \$4 million to CRAT with an independent trustee.
- b. CRAT - 5% FMV payable to taxpayer annually.
- c. No payments were made to taxpayer before death and amounts receivable were included in taxpayer’s estate.
- d. 5% successor annuity distributed to individuals only if the individuals paid estate taxes.
- e. One beneficiary would not pay estate taxes.
- f. Settlement with court order requiring estate taxes to be paid from other assets.
- g. Other assets were insufficient and CRAT paid estate taxes.
- h. Deduction denied and CRAT disqualified because no annuity payments were made and estate taxes paid out of CRAT.

(2) The trust must be administered in accordance with the terms of the trust.

- a. If annuitant not cashing checks, then trustee should send certified checks.
- b. Do not rely on court order for payment of taxes.

**II. UPDATE ON 10% MINIMUM RATE FOR CHARITABLE REMAINDER TRUSTS**

- A. Minimum remainder interest (“MRI”) of ten percent (10%) should be calculated using AFR in the month CRAT or CRUT is created.
- B. While Section 7520 of the Internal Revenue Code (the “Code”) says you can use two (2) preceding months in computing income estate or gift tax charitable deductions, the Section says nothing about the 10% MRI. Furthermore, Section 664(d)(2)(D) of the Code states .... “at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.”
- C. The MRI must be met for each additional contribution.
- D. If flunk MRI, then trust may be declared void or reformed or amended to meet the 10% MRI.
- E. Determine whether trustee can determine void ab initio or amended or reformed in trust document. Documents should include language but consider if capital gain property has already been sold.

- F. Amendment proceeding to commence after within 90 days of filing date, plus extensions of estate tax return, or if no estate tax return, then the due date plus extensions.
- G. If additional contribution does not meet 10%, then additional contribution “shall be treated as a separate trust under regulations...” 664(d)(4) of the Code.
- H. Provide in document that trustee has power to create separate trusts. See PLR 200022014.
- I. MRI is measured on each transfer.
- J. See Teitell, “Letter Ruling Approves Reformation to Save Tax Benefits,” Trusts and Estates, October 2000.

**III. UPDATE ON USING CHARITABLE GIFTING WITH THE CHARITABLE FAMILY LIMITED PARTNERSHIP (CFLP)**

A. Benefits

- (1) Philanthropic value can be taught over several generations.
- (2) Control over assets.
- (3) Current income tax deduction.
- (4) Gifts of limited partnership interests are gifts of present interest.
- (5) Smaller discounts will create larger charitable deductions, i.e., a limitation on assignability would be less restrictive.
- (6) \$1 million assets - 25% discount - \$750,000 charitable deduction compared with 6% CRUT of \$242,000 deduction for couple, age 60.

B. Income Taxation

- (1) Donee must have dominion of partnership interest.
- (2) Donee must have control of partnership interest.

C. Excess Benefit Transaction

- (1) Section 4958 of Code imposes excise taxes.
- (2) If donee is reasonable size charity, and donor is not actively involved, then should not be a problem.

D. Unrelated Business Income Tax (“UBIT”)

- (1) Section 511-513 imposes tax on income from trade or business, the conduct of which is not substantially related to the activities of charity
- (2) Exemptions.
  - a. Investment income, such as dividends, interest, royalties, capital gains, real estate and rents, are all excluded.
  - b. Cash flow may be sufficient to pay tax.

E. See Brickner, “Family Limited Partnership and Charities: The Newest Planning Technique,” Trusts and Estates, October 2000.

F. Abuses

- (1) The Plan
  - a. Client gives highly appreciated assets to FLP.
  - b. Client remains general partner (GP) and retains management fee.
  - c. Charitable deduction for FLP limited partnership interests to charity.
  - d. Charitable gifts carry “put” enabling charity to force buy-back of limited partnership interest at a significant discount.
  - e. Remaining limited partnership interests given to children.
  - f. FLP sells assets and avoids capital gains tax on the percentage owned by the charity because gain is attributable to charitable partner.
  - g. Nominal distributions from partnership for several years.
  - h. Charity “cash out” at a discount (selling their limited partnership interests).
  - i. Family members are managers and receive large compensation.
- (2) Internal Revenue Service is giving serious scrutiny to these “charflips.”
  - a. Could direct audits of taxpayers and charities.
  - b. Could issue regulatory notice.
  - c. Gift of partial interest not made in form allowed by Code and, therefore, invalid charitable gifts.

#### IV. IRA - CHARITABLE GIFTING

- A. Deduction for charitable gift.
- B. Charity as a beneficiary under minimum distribution rules.
  - (1) Designated beneficiary (“DB”) must be individual.
  - (2) Charity not a DB.
  - (3) If charity is named as beneficiary with other individuals, then no DB unless charity has separate account (fraction or percentage should be okay) - dollar amount not okay because would not share in investment gains and losses since dollar amount remains constant.
  - (4) Naming a CRT as beneficiary - can only use own life expectancy since charity not DB.
- C. Careful as to designated beneficiary.
- D. Consider separate accounts for making charity a beneficiary.

#### V. GIFT DISCLOSURE

- A. Section 6501(c)(9) of the Code provides that the three (3) year gift tax statute of limitations does not run on a gift made after December 31, 1996, unless and until the gift is “adequately disclosed on a gift tax return”.
- B. November 18, 1999 final regulations issued applicable to gifts made after December 31, 1996 for which a gift tax return is filed after December 3, 1999.
- C. Two safe harbors:
  - (1) Appraisal Safe Harbor
  - (2) Description Safe Harbor
- D. Information needed, common to both:
  - (1) Description of the transferred property.
  - (2) Description of any consideration received.

- (3) Identity of the transferor and transferee and their relationship.
  - (4) If the gift is in trust, then the identification number of the trust and a copy of the trust instrument.
  - (5) Identification of any position taken contrary to any proposed temporary or final treasury regulations or revenue rulings published at the time of the transfer.
- E. Appraisal Safe Harbor. Donor also submits an appraisal which contains certain information.
- F. Description Safe Harbor. Donor also submits a detailed description of the method used to determine the fair market value.