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THE SALVATION ARMY

Charitable Intent

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PLANNING NEWS AND IDEAS FOR THE PROFESSIONAL ADVISER

NO CUTTING CORNERS ON SUBSTANTIATION

Randall Schrimsher executed an agreement granting a facade easement to the Alabama Historical Commission. The agreement indicated that Schrimsher gave the easement "in consideration of the sum of TEN DOLLARS, plus other good and valuable consideration." The document also stated that it reflected "the entire agreement of the parties."

Schrimsher claimed a charitable deduction of $705,000, based on an appraisal. However, the Form 8283 omitted various required items and was not signed or dated by the donor, the appraiser or any representative of the charity. No written appraisal was attached to the tax return.

The IRS disallowed the deduction on the grounds that Schrimsher had failed to substantiate the gift and failed to establish the value of $705,000.

The Tax Court noted that Code §170(f)(8)(A) requires a contemporaneous written acknowledgment from the charity for gifts of $250 or more. It must include the amount of cash given or a description of property other than cash and must indicate whether the charity provided any goods or services in exchange for the transfer. If goods or services are received by the donor, the charity must provide a good faith estimate of the value of the benefits.

Schrimsher argued that the written document, as the "entire agreement," satisfied the requirement that the donee indicate the value of any goods or services received. The court found that insufficient, saying that the agreement did not indicate that no goods or services were provided. Therefore, the agreement did not satisfy the substantiation requirements of Code §§170(f)(8)(B)(ii) and (iii). The court said the failure to obtain a contemporaneous written acknowledgment made it unnecessary to address the issue of the valuation of the easement.

Schrimsher v. Commissioner, T.C. Memo. 2011-71

FELINE PHILANTHROPIST NEEDED A NOTE

The IRS disallowed the $12,000 Jan Van Dusen claimed as a charitable contribution in 2004 for unreimbursed expenses for her work with Fix Our Ferals (FOF). Van Dusen served as a temporary foster care provider for 70 to 80 feral cats that were trapped and neutered prior to release back to the wild.

The Tax Court found that Van Dusen was working on behalf of FOF when she performed the services and that her work was in furtherance of the organization's mission. The expenses included cat food, cleaning supplies, extra water to clean cat bedding, extra electricity to operate a special ventilation system, veterinary bills and cleaning supplies.

Because Van Dusen had seven cats of her own and did not have separate bills for the items she purchased or paid for, the court said she was entitled to deduct 90% of veterinary expenses, pet supplies and cleaning supplies. She was entitled to deduct 50% of the expenses for laundry and dish detergent and household utility bills, although the court admitted that the foster cat activities probably accounted for more than 50% of those items.

Van Dusen was entitled to the deduction, but only to the extent the expenses were properly substantiated [Reg. §1.170A-13(f)(1)]. The court said that the unreimbursed expenses of less than $250 could be substantiated in a manner similar to cash gifts of less than $250. Instead of a canceled check, she could provide receipts for purchases and veterinary bills. However, for expenses of more than $250, donors are required to obtain a contemporaneous written substantiation of volunteer service from the charity that also indicates that no goods or services were provided by the charity, or makes a good faith estimate of the value of any goods or services provided [Code §170(f)(8)(a)]. Because Van Dusen had no acknowledgment from FOF, she was not entitled to deduct those expenses where the value exceeded $250, the court ruled.

Van Dusen v. Commissioner, 136 TC No. 25

FORM 990 CAN'T REPLACE RECEIPT

A donor discovered that he had failed to obtain the contemporaneous written acknowledgment needed to claim a charitable deduction of more than $250. Code §170(f)(8)(A) requires that the donor have the letter from the charity by the earlier of the date the return is filed or the due date of the return for the year of the gift.

Because there was no way to correct the lack of an acknowledgment, the IRS was asked whether the donee organization could file an amended Form 990, attaching a statement that includes the information required under Code §170(f)(8)(B).

Code §170(f)(8)(D) provides that a contemporaneous written acknowledgment is not required if charity files a return, "on such form and in accordance with such regulations" as the IRS prescribes. Although authorized to establish regulations allowing charities to satisfy the substantiation requirements by filing a return with the required information, the IRS and Treasury "have decided not to implement this suggestion at this time." Because the IRS has not provided for donee reporting as an alternative to donors obtaining acknowledgments, the charitable deduction cannot be salvaged by having the charitable recipient file an amended Form 990.

(Ltr. Rul. 201120022)

FORMULA CLAUSE GETS TAX COURT OK

John and Karolyn Hendrix were owners of closely held JHHC stock. In connection with a switch from C to S corporation status, the couple had an appraisal conducted. They wished to give some of the shares to their three daughters and some to charity. They established a donor advised fund with the Greater Houston Community Foundation to which each spouse contributed shares equal to $50,000. They also transferred JHHC stock to a generation-skipping trust and to trusts for their daughters.

The Foundation's attorney worked with the couple's advisers on an agreement that irrevocably assigned shares based on a formula under which any remaining portion of the assigned shares would pass to the donor advised fund at the Foundation. The Hendrix's appraiser placed the value of the stock at $36.66 per share. An appraiser retained by the Foundation agreed with that value. The couple claimed a $100,000 charitable contribution.

The IRS claimed that the formula clauses were invalid because they were not reached at arm's length and are contrary to public policy. The IRS also said the value of the stock is $48.60 and that the charitable deduction is limited to $66,285, based on the number of shares transferred to the Foundation.

The Tax Court found the value of the shares to be $36.66 and said the burden of proof as to the validity of the formula clause was on the IRS. Courts are free to disregard the form of a transaction where there is collusion or the agreement is not at arm's length, but the Foundation exercised due diligence in negotiating the terms of the agreement, was represented by independent counsel, conducted its own appraisal and had a fiduciary duty to ensure it received the number of shares to which it was entitled under the formula clause. Furthermore, said the court, the use of a formula clause does not frustrate any national or state policy. To the contrary, said the court, the formula clause supports the fundamental public policy of encouraging gifts to charity.

Hendrix v. Commissioner, T.C. Memo. 2011-133

▲ TAX PLANNING POINTER

Several courts have upheld the use of formula clauses despite IRS arguments that they violate public policy. The IRS complains that it has no incentive to audit transfers if an increased value of assets merely results in a larger charitable deduction [*Estate of Christiansen v. Commissioner*, U.S. Court of Appeals (8th Cir.) No. 08-3844; *Estate of Petter v. Commissioner*, T.C. Memo. 2009-280].

STOCK GIFTS: LOTS TO APPRECIATE

The recent ups and downs in the stock market may have left clients with major gains (or losses) to consider in their year-end planning. A charitable gift of appreciated stock, bonds or mutual fund shares is a tax-wise way to boost itemized deductions, often at greatly reduced cost to the taxpayer. For example, a taxpayer in a 33% bracket saves $330 in taxes on a gift of stock worth $1,000. If the stock was originally purchased for $500, the donor also avoids $75 of capital gains tax that would be owed if the stock were sold. Total tax savings: $405. We would be happy to answer questions about stock transfers or any other questions you have about gifts of appreciated property. What if the value of a client's stock has dropped? The sale of the stock, followed by a gift of the sale proceeds to The Salvation Army, yields two deductions – one for the capital loss and one for the charitable gift.