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THE SALVATION ARMY

Charitable Intent

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PLANNING NEWS AND IDEAS FOR THE PROFESSIONAL ADVISER

CHARITABLE PORTIONS PASS TAX FREE

Bernard Baltic's will, executed about two weeks before his death, left his entire estate to his living trust. The will provided that estate taxes were to be paid from the residuary estate or out of assets received by the executor from the trustee. Baltic's executor sought to apportion taxes among all the beneficiaries, including several charities. The probate court granted the charities' motion for summary judgment, finding that the Ohio apportionment statute applied to Baltic's will and trust.

Under state apportionment rules, tax is to be apportioned equitably among all beneficiaries as determined for estate tax purposes. Ohio law also specifically provides that taxes shall not be apportioned against an interest for which a charitable deduction is allowed. These rules apply unless a contrary apportionment method is clearly expressed in the will.

Although Baltic's will allowed the executor to request that the trustee pay all or part of the taxes, his trust expressly provided that no payment "shall be made from any property of the trust estate which would be excluded from my gross estate for federal estate tax purposes."

The Court of Appeals of Ohio affirmed the probate court's ruling, noting that while Baltic's will failed to clearly and unambiguously direct how taxes were to be paid, his trust was clear how taxes were *not* to be paid. Taxes were not to be paid from the charitable bequests, which is consistent with state apportionment laws that presume testators intend to minimize taxes, said the court.

***In Re: Estate of Bernard Baltic*, 2010 Ohio 5141**

TRUST NOT AMENDED, SO CHARITIES BENEFIT

Timothy Herlehy helped his 89-year-old great-aunt, Marie Bistersky, move her living trust from one trustee to another. She told him the original trust officer was not acting in her best interests and her trust no longer reflected her wishes.

Once the trust was moved, Herlehy discovered that 90% of the assets were invested in stock, which he considered too risky for someone her age. The trust was worth approximately $1.2 million in 2001. At Bistersky's death, Herlehy and several other individuals were to receive specific bequests, with the balance passing to five charities. Herlehy arranged for an attorney to meet with Bistersky. He told her that, given the size of the trust, the largest share would pass to the charities. She told the attorney that was not her intent. She primarily wanted to benefit the individuals, with the charities receiving only a "leftover" portion, but the attorney said he received no instructions to draft a trust amendment.

The new trustee had Brian McNamara conduct an analysis of Bistersky's investments in order to recommend a reallocation. On McNamara's investment form, he noted that the assets would eventually pass to Bistersky's nephews.

Bistersky died in August 2002, without having amended her trust. Under its terms, about $300,000 in specific bequests were made to family and friends, while the residue of the trust – $950,000 – passed to the charities. Herlehy filed suit for a construction of the trust and claimed unjust enrichment against the charities. He said that the new trustee was aware of Bistersky's wishes but failed to have a valid amendment made.

The trial court granted the trustee's motion to dismiss, on the grounds the trustee had no duty to amend the trust. The court also granted the charities' motion for summary judgment, saying there were no valid amendments to the trust and the charities were therefore entitled to their residuary bequests.

The Illinois Court of Appeals said that, under state law and the rules of professional conduct, the trustee could not draft legal documents and could not even direct Bistersky's attorney to do so. The investment form prepared by McNamara was not a valid amendment to the trust because McNamara was not an attorney and would be in violation of the consumer fraud act if he had drafted an amendment. The court ruled that there was no unjust enrichment on the part of the charities, because Bistersky's trust "unambiguously" entitled the charities to the residue.

***Herlehy v. Bistersky Trust*, No. 05 CH 15199**

COURT TO DONOR: PAY UP

Trustees of the Paul and Irene Bogoni Foundation asked a court to declare that the charitable pledge made to St. Bonaventure University's library expansion project was subject to certain conditions and restrictions not contained in the written agreement. St. Bonaventure counterclaimed, asking the court to find that the Foundation owed $900,000 still outstanding on the pledge. The court dismissed the Foundation's complaint and granted summary judgment for the University.

The Supreme Court of the State of New York agreed, noting that St. Bonaventure acted in reliance on the Foundation's pledge when securing additional pledges and undertaking construction. Under New York law, charitable pledges are enforceable because they constitute an offer of a unilateral contract that, when accepted by charity by incurring a liability in reliance thereon, becomes a binding obligation. The Foundation was not entitled to use parol evidence to show conditions not contained in the written pledge, the court ruled.

***The Paul and Irene Bogoni Foundation v. St. Bonaventure University*, 2010 NY Slip Op 08801**

NO TRUST, NO GROUNDS FOR INJUNCTION

Loretto High School, a girls' school run by the Institute of the Blessed Virgin Mary (IBVM), undertook a capital campaign in 1999, to accommodate its growing enrollment. Less than ten years later, enrollment had dropped and IBVM sought to sell the campus. Proceeds from the sale would pay off construction loans, debts and provide for retired members of the religious order.

Several donors to the capital campaign sought a restraining order, claiming that the proceeds should be used to provide high school education for women attending Catholic schools in the area. They said that any other use would be an improper diversion of donor-restricted charitable funds under California law. The trial court denied the donors' motion for a preliminary injunction.

Under state law, no assets of a religious corporation are impressed with a trust unless (1) the assets were received with an express commitment by the board to hold the assets in trust, (2) the governing instrument of a superior religious body expressly provided for a trust or (3) the donor expressly imposed a trust in writing at the time of the donation. The donors claimed that the Catholic church imposes a trust on donations given for a specific purpose.

The Court of Appeals of the State of California found that while church law requires offerings given for a certain purpose to be used only for that purpose, it does not expressly create a trust and speaks only to the initial application of the funds. Church law does not expressly restrict the use of proceeds of the property acquired with the initial offerings. The court said that donors could have restricted their gifts beyond the initial application, but did not do that. There was no improper diversion of the proceeds, since the donated funds were, in fact, used to expand the school, as represented.

***Anderson v. Loretto High School*, C062514**

TRUST'S DEDUCTION LIMITED TO BASIS

The trustee of a complex trust was given discretion to "distribute to charity such amounts from the gross income of the trust" as appropriate to help the trust carry out its charitable mission. The trustee donated three parcels of real property to three different charities. The land had been purchased in prior years using gross income. The trust claimed a charitable deduction for the fair market value of the parcels.

Under Code §642(c)(1), trusts are allowed an unlimited deduction from gross income for any amounts of gross income paid to charity, pursuant to the terms of the trust. This deduction is in lieu of a charitable deduction under Code §170.

The IRS ruled that the trust's deduction was limited to its basis in the parcels, saying the trust is not entitled to a deduction for fair market value when the parcels were purchased from accumulated gross income.

Letter Ruling 201042023

CHARITABLE DEDUCTIONS TO OFFSET TAX ON ROTH CONVERSION

Clients who converted from traditional to Roth IRAs last year generally will be facing additional income tax this year and next on the switch. One way to offset the tax is by boosting charitable deductions. For example, a donor may wish to accelerate several years worth of gifts into 2011 and 2012. Clients may also be interested in gifts that generate a charitable deduction while allowing them to retain payments for life for their transfers. Charitable remainder trusts and charitable gift annuities can be funded with appreciated assets, with favorable tax results. The Salvation Army's Office of Planned Giving would be happy to provide information on these options and to run computations on gifts, including projections on the tax consequences of clients' contributions. Feel free to contact our office.