

Advisor Update

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A professional advisor resource courtesy of Advocate Charitable Foundation

***Advocate Health Care's Planned Giving Team Joins the 21st Century:
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To expedite the dissemination of court rulings and other timely information, *Advisor Update* will become an e-newsletter starting in Spring 2007. This is the last issue of this publication that you will receive in the mail. To be added to our online distribution list, please send your email address to Marilyn.Schaffer@advocatehealth.com. We look forward to hearing from you!

■ Latest Rulings From the Courts and the IRS

IRS Denies Request to Modify NIMCRUT to Standard CRUT Based on Change in Circumstances, Letter Ruling 200649027

In these facts, the trustees (who were also the income beneficiaries) of a net income with makeup charitable remainder unitrust (NIMCRUT) received court approval to reform the NIMCRUT to a standard charitable remainder trust (CRUT) subject to an IRS determination that such modification would not disqualify the trust. The request was based on two arguments: 1) the attorney who drafted the document failed to fully compare the benefits and downsides of a NIMCRUT to a CRUT, and 2) investment market downturns dramatically reduced the trust's accounting income, frustrating the trust's goal of providing "suitable annual income" to the beneficiaries. The IRS denied the request, stating only a request based on scrivener's error would avoid disqualification, and ruling the proposed change based on the reasons cited would disqualify the trust as a charitable remainder trust.

Revocable Trust's Partial Assignment of IRAs to Satisfy Pecuniary Bequest Treated as Sale or Exchange and Taxed as Gross Income, ILM 200644020 (November 3, 2006)

In these facts, the decedent died with an IRA which named his revocable trust as beneficiary. The trust's testamentary provisions directed \$100,000 to be distributed to three charities and the balance to the decedent's children. The trustee used a portion of the IRA to make the charitable distributions, creating an IRA for each charity in the size directed by the trust's dispositive provisions. (The trustee had the discretion to make distributions in cash or in kind, or both.) The IRS ruled the trust's use of a portion of the IRA to satisfy its pecuniary bequests caused the payments to be treated as a sale or exchange and the income in respect of a decedent (IRD) associated with the transfers to be included in the trust's gross income. Further, the trust received no charitable deduction for the distributions since the trust did not direct or require the charitable payments to be made from income.

IRS Clarifies Rules for Lifetime Tax-Free Transfers from IRA to Charity under Pension Protection Act of 2006, Notice 2007-7; 2007-5 IRB 1

As reported in the last newsletter, the Pension Protection Act of 2006 allows a taxpayer age 70 ½ to make a lifetime tax-free distribution from an IRA to qualified public charities (QPCs) in amounts up to \$100,000 in 2006 and 2007. Notice 2007-7 uses a Q & A format to answer questions raised by taxpayers and their advisors about the transfers. It confirms that under the new law, donors may use the transfers to QPCs to satisfy personal charitable pledges, may make transfers from IRA assets that include inherited amounts, may use SEP IRAs or SIMPLE IRAs to make the transfers so long as employer contributions were not made during the tax year of the transfer, and may personally deliver the IRA check to the charitable recipient so long as the check is made payable to the charity (not the taxpayer). The notice further clarifies that lifetime transfers to qualified charitable recipients are not subject to withholding because an owner making such a request is deemed to elect out of withholding.

IRS Publishes Expedited Process to Convert Supporting Organizations to Public Charities As a Result of Pension Protection Act of 2006 Changes, Announcement 2006-93 (November 7, 2006)

Many hospitals, universities, and other public charities use separately organized supporting organizations (SOs) to serve as the charity's fundraising arm and/or to hold the charity's endowed assets. Many SOs are now considering converting to public charity status because of the Pension Protection Act's creation of new SO penalties and SO donor contribution limits, coupled with the real

possibility of future legislative changes. This announcement provides an expedited conversion process that requires submission of a written request for classification (pursuant to Rev. Proc. 2006-4) and either: 1) pages one, two, three and the signature page from the most recently filed Form 990/990-EZ or 2) Form 8734, Support Schedule for Advance Ruling Period. The request must have the words "509(a)(3) Pension Protection Act" at the top. No user fee is required. IRS Technical Branch Manager Marin Friedlander noted in late 2006 that over 70 charities had already been approved for the upgrade and that many of those approvals had taken less than four weeks.

Checklist for Charitable Deductions Focuses on Changes in the Law for 2006, "Recent Tax Law Changes May Affect People Giving to Charity: IRS Offers Tips for Year-End Donations," IR-2006-192 (December 14, 2006)

2006 tax law changes affect not only complicated gift forms such as supporting organizations, private foundations, donor advised funds, and partial interest gifts of tangible property, but simple gifts such as vehicles, clothing, and cash gifts of \$250 or less. This easy-to-read 2006 tax checklist is a great refresher and available on the IRS website at www.irs.gov/newsroom/article/0,,id=164997,00.html.

IRS Publishes Interim Guidance for Supporting Organizations and Donor Advised Funds under the Pension Protection Act of 2006, Notice 2006-109; 2006-51-IRB 1

Although the Treasury plans to issue regulations under the new Pension Protection Act of 2006, this interim guidance provides valuable direction to planners, private foundation managers, supporting organization managers, and donor advised fund sponsors related to distributions and taxes associated with inappropriate distributions. The Notice includes guidance for private foundations on determining whether a supporting organization is a Type I, II, or functionally integrated Type III (permissible grant recipients) and how donors determine whether supporting organizations or donor advised funds are controlled by disqualified persons. The full text of the notice is available on the IRS website.

Other IRS Guidance of Interest to Planners:

- Appraisal Requirements for Noncash Gifts - Notice 2006-96; 2006-46 IRB 1
- Recordkeeping Requirements for Payroll Deduction Gifts - Notice 2006-110; 2006-51 IRB 1

■ **Legislative Developments**

President Bush Signs Tax Relief and Health Care Act of 2006 Extending Tax Provisions and Changing UBIT Impact on Charitable Remainder Trusts, Public Law 109-432; 120 Stat. 2922 (December 20, 2006)

On December 20, 2006, President Bush signed The Tax Relief and Health Care Act of 2006 (The Act) extending a number of expired tax benefits such as deductions for state and local sales taxes, deductions for tuition and higher education expenses, and Gulf Coast tax credits. The Act also changed the tax treatment of unrelated business taxable income (UBIT) for charitable remainder trusts on or after January 1, 2007. In the past, if a charitable remainder trust had any UBIT, the trust lost its tax-exempt status for the year. Under the new IRC §664(c), UBIT does not cause the trust to lose its tax-exempt status, but it must pay a 100% excise tax on the UBIT amount. The text of the bill is available at www.thomas.loc.gov using the bill number (H.R. 6111) or the Public Law number (109-432).

■ **Charitable Planning in Practice**

Using Charitable Gifts to Fund Retirement – A Checklist of Options

With life expectancy now at 77.9 years, and rising, one of the most common roadblocks to charitable planning is the donor's need for retirement income. The fear of running out of resources cuts across all wealth groups, centering on increased life expectancy, the rising cost of medication and medical care, and the diminishment of government benefits. Fortunately, there are many charitable giving options that allow donors to address this concern, many of which provide pre-gift and post-gift flexibility. On the following page is a checklist of eight options for clients who have charitable giving interests coupled with an interest in protecting retirement income. (Table A)

New Advocate Annuity Program Offers Increased Flexibility, Control for Financial Advisors

Financial advisors whose clients establish gift annuities of \$500,000 or more can continue to manage those funds for their clients under a new program at Advocate Charitable Foundation. The program was the brainchild of Gerald Horwitz, Chairman and CEO of Horwitz & Associates in Riverwoods, Illinois, who recently oversaw the establishment of a sizeable gift annuity benefiting Advocate Lutheran General Hospital in Park Ridge. "Our donors typically have a long-term, high-trust relationship with one of our hospitals, and they also have a long-term, high-trust relationship with their financial advisor. They should not have to choose between the two," says Marilyn Schaffer, Advocate's director of gift planning. "We are eager to explore creative ways to partner with advisors to help their clients achieve their philanthropic goals."

To discuss this and other opportunities in greater detail, contact Marilyn at 847-384-3424.

Table A: Checklist of Charitable Giving Options

Gift Option	Benefits in Retirement	Flexible Features
Charitable gift annuity (CGA)	A CGA pays a set annuity to one or two persons for life, guaranteed by the charity's general assets; a portion of the income is tax free, depending upon age at issuance and character of the property used to fund the gift.	If the annuitant no longer needs the income, he may relinquish annuity rights, accelerating the gift of the remainder to charity and creating a charitable gift in the year of release.
Series of charitable gift annuities	Executing a new CGA each year gives the annuitant a series of contracts, generally with increasingly higher annuity amounts.	Single annuities can be released if not needed, creating a charitable gift equal to the value of the released annuity stream.
Series of deferred charitable gift annuities	If the client is in his 40's or 50's, is interested in building retirement income, and has maximized annual deferrals to a 401(k) or other retirement plan, he can create a series of deferred CGAs. This creates an income tax deduction during the donor's high wage earning years and defers the income stream to retirement.	For greatest flexibility, stagger the start dates of the deferred annuities so that income increases over retirement.
One or more flexible deferred charitable gift annuities	A flexible deferred CGA allows the annuitant to select the date on which payments begin. The payment schedule is set out by year in the annuity contract, with the annuity amount increasing each year that the right to income is deferred.	A flexible deferred gift annuity provides the annuitant control of when and how much annuity income he receives and may be appropriate for donors who have no set retirement date in mind.
Charitable remainder trust	A charitable remainder annuity trust (set amount) or unitrust (set percentage of annual trust value) is more flexible than a charitable gift annuity, allowing the donor to select the payout amount and the number of non-charitable and charitable beneficiaries (so long as minimum charitable thresholds are met).	The donor may use a wide variety of funding assets, allowing the trust to be structured to fit the donor's assets and planning needs. For example, using a vacation home to fund the trust may not only avoid capital gains taxes on the sale of the property, but turn a negative cash flow (for payment of insurance, taxes, maintenance, homeowners fees, etc.) into a positive cash flow (annual trust payment).
Retained life interest in home or farm	A client who plans to leave a home (including vacation home) or farm to charity at death should consider making that gift during life, reserving a life interest. This gift generates a current income tax deduction for the remainder value of the home or farm.	If the client decides to leave the home for a retirement home, the lifetime/remainder interests may be severed. The charity can buy out the interest, giving the donor cash to move, can exchange the life interest for a charitable gift annuity to generate retirement income. Or the two may jointly sell the property and divide the proceeds in accordance with the life/remainder interests.
Bargain sale of home	Is your client downsizing and moving to a retirement home? Consider a bargain sale of the home to a charity, with the sales portion equal to the amount needed for the smaller retirement home.	A bargain sale allows the donor to receive immediate cash to make the move.
Lifetime withdrawal from IRA to make charitable gift	Under the Pension Protection Act of 2006, donors age 70 ½ may make up to \$100,000 in tax free transfers from their IRAs to qualified public charities in 2007. This may be an effective option for donors who do not need retirement income for the year and may get a better tax result by using the minimum required distribution amount to make a charitable gift.	The option may also be appropriate for individuals who have most of their assets inside IRAs, donors who have exceeded the 50% AGI limits, donors who do not want to gross up income for Social Security purposes, and non-itemizers.

■ Items of Interest to Planners

IRS Issues Proposed Regulations That Would Treat Private Annuities Like Commercial Annuities, IR-2006-161 (October 17, 2006)

The IRS published proposed regulations that would create capital gains tax treatment for the exchange of appreciated property for a private annuity in the same manner as the exchange of such property for a commercial annuity, declaring Revenue Ruling 69-74 (allowing deferral of the tax consequences) obsolete. While the proposed regulations focus on private annuities, the IRS asked for comments on the appropriateness of extending the regulations to cover charitable gift annuities, raising concerns with many gift planners.

IRS Publishes 2007 Inflation Adjusted Figures for Taxes, Giving Limits, Mileage and Pooled Income Fund Rate for New Funds (Less Than Three Years), Rev. Proc. 2006-53, 2006-48 I.R.B. 1, (inflation adjustments); IR-2006-168 (11/1/2006) (mileage); Rev. Rul. 2007-2; 2007-3 IRB 1 (pooled income fund rate for new funds).

The IRS has published the 2006 inflation-adjusted exclusions and exemptions for gifts and estate transfers, and posted the miscellaneous deduction limits applicable to individual taxpayers. Selected figures of interest to planners are set out below.

Individual Income Tax

“Kiddie tax” threshold (for children under age 14) before income is taxed at parent’s rate (same as 2006)	\$1,700
Standard deduction, married individual filing jointly/surviving spouse	\$10,700
Standard deduction, head of household	\$7,850
Standard deduction unmarried individual (not surviving spouse or head of household)	\$5,350
Standard deduction, married individual filing separate return	\$5,350
Personal exemption	\$3,400
Gross income threshold for phase out of itemized deductions	\$156,400

Gift, Estate, and Generation Skipping Exclusion Amounts and Rates

Annual exclusion amount under IRC § 2503	\$12,000
Annual non-domestic spouse gift limit	\$125,000
Lifetime gift tax exclusion amount	\$1,000,000
Estate generation-skipping exclusion amount	\$2,000,000
Estate tax exclusion amount	\$2,000,000
Highest tax rate for gifts, estates, and generation skipping	45%

Miscellaneous Charitable Rules

Deemed rate of return for pooled income funds less than 3 years old	4.8%
Insubstantial benefit limits	\$8.90, \$44.50, \$89
Mileage rate for deduction - charitable work	14¢
Mileage rate for business	48.5¢

■ Philanthropy News

Bank of America High Net-Worth Philanthropy Report Provides Insight into Giving Patterns and Motivations of Wealthy Americans

Bank of America and The Center on Philanthropy at Indiana University recently published research focused on high net worth households entitled “Study of High Net-Worth Philanthropy.” The study surveyed 30,000 households with incomes of more than \$200,000 or assets in excess of \$1,000,000. The survey, which is available on the Bank of America website (<http://newsroom.bankofamerica.com>), found:

- Nearly 98 percent of high net worth households made a gift to charity in 2005.
- The most popular charitable recipients were entities with multiple beneficiaries such as United Way, foundations, donor advised funds, and trusts.
- The top three motivations for making gifts were meeting critical needs (86.3%); giving back to society (82.6%); and reciprocity (81.5%).
- Just over 40% of the high net worth households have included a gift to charity under will; close to 20% have established a foundation; and almost 16 percent have established a donor advised fund.

■ Advocate Health Care

Advocate Health Care is a not for profit family of caregivers, grounded in faith and serving the needs of 2 million people in Chicagoland. We pursue a distinctive commitment to both clinical excellence and community outreach. Advocate Charitable Foundation staff and volunteers raise vital funds that allow us to continue this mission. The Advocate family is made up of 200 sites of care, eight acute care hospitals and two children's hospitals.

Advocate Hospitals

Advocate Bethany Hospital
Advocate Christ Medical Center
Advocate Good Samaritan Hospital
Advocate Good Shepherd Hospital
Advocate Home Health and Hospice
Advocate Hope Children's Hospital
Advocate Illinois Masonic Medical Center
Advocate Lutheran General Children's Hospital
Advocate Lutheran General Hospital
Advocate South Suburban Hospital
Advocate Trinity Hospital

■ News from Advocate

Advocate Good Shepherd Hospital Cardiac Surgery Program Named #1 in Illinois

The Wayne and Patricia Kocourek Family Cardiac Care Center at Advocate Good Shepherd Hospital in Barrington was recently named the best cardiac surgery program in the State of Illinois by HealthGrades, the nation's leading hospital rating organization. In addition, the center's cardiology program and comprehensive cardiac care were named in the top five percent of hospital programs in the U.S. for quality outcomes.

"Thanks to a significant gift from the Kocourek family, as well as to other large donations from members of our community, our young cardiac program has jumped from good to great," says Mike Ploszek, the hospital's vice president for development, who notes that Good Shepherd's cardiac program only began serving area communities in July 2004. The Wayne and Patricia Kocourek Family Cardiac Care Center at Good Shepherd is part of Advocate Health Care, whose more than 29,000 dedicated associates and 6,000-plus physicians and specialists serve a diversity of communities and healthcare needs. For more about Good Shepherd Hospital, visit: www.advocatehealth.com/goodshep.

Suggested Wording for Making a Bequest

If you or your client would like to make a bequest to a program or hospital of Advocate Health Care, please make the bequest to Advocate Charitable Foundation for the benefit of the hospital or program. For example:

When making a specific bequest: "I give Advocate Charitable Foundation, Park Ridge, Illinois, 60068, the sum of \$_____ [to be used by the (insert name of hospital or program) for its general purposes or according to a letter of intent previously agreed to by the Foundation and me].

When making a residual bequest: "I give Advocate Charitable Foundation, Park Ridge, Illinois, 60068, _____ percent of the residue of my estate [to be used by the (insert name of hospital or program) for its general purposes or according to a letter of intent previously agreed to by the Foundation and me].

For further information, please contact the Office of Gift Planning at 847.384.3418. Our staff would be pleased to assist you, or check out our website <http://www.advocatehealth.planyourgift.org/>.

Charitable mid-term federal rates

The charitable mid-term federal rates under IRC § 7520 for gifts made in February 2007 are set out below. These rates are used to determine the present value of an annuity, an interest for a life or term of years, or a remainder or reversionary interest.

February 2007	5.6%
January 2007	5.6%
December 2006	5.8%

Contact information

For assistance in structuring gifts to Advocate Health Care hospitals, sites, and programs, contact the Office of Gift Planning at Advocate Charitable Foundation.

Marilyn B. Schaffer, CAPTM
Director of Gift Planning
847.384.3424

Also, visit our Web site at
www.advocatehealth.planyourgift.org/


Do you or your clients have questions about the IRA charitable rollover?

We are here to help. Please call our Gift Planning team for guidance.

The information in this newsletter is provided as a service of Advocate Charitable Foundation and is not to be construed as legal advice.
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