

TAX ASPECTS OF CHARITABLE GIVING
Professors Manny and Dale
Spring 2016

Assignment for January 19 and 26, 2016

Access Cases and Materials, Tax Aspects of Charitable Giving, on NYUClasses under the “Resources” section of the course site. There is no casebook to purchase. You will need a current version of the Internal Revenue Code and the Treasury Regulations issued under the Code.

1. In the Cases and Materials, read items 1 – 7.
2. Read these articles posted on NYUClasses:

Pierre Omidyar, How I Did It: EBay’s Founder on Innovating the Business Model of Social Change, HARV. BUS. REV., Sept. 1, 2011, <https://hbr.org/2011/09/ebays-founder-on-innovating-the-business-model-of-social-change>.

Gene Steuerle, The Zuckerberg Charitable Pledge and Giving from One’s Wealth, THE GOVERNMENT WE DESERVE, Jan. 11, 2016, <http://blog.governmentwedeserve.org/2016/01/11/the-zuckerberg-charitable-pledge-and-giving-from-ones-wealth/>.

3. Optional reading posted on NYUClasses:

Ginia Bellafante, *Bulk of Charitable Giving Not Earmarked for the Poor*, N.Y. TIMES, September 9, 2012, at MB1.

Robert B. Reich, *Is Harvard a Charity?*, L.A. TIMES, Oct. 2007, at A 13.

Patricia Cohen, *Writing Off the Warhol Next Door: Art Collectors Gain Tax Benefits From Private Museums*, N.Y. TIMES, Jan. 11, 2015, at BU1.

Excerpt from John Simon, Harvey Dale & Laura Chisolm, The Federal Tax Treatment of Charitable Organizations, previously published by Yale University Press in THE NONPROFIT SECTOR: A RESEARCH HANDBOOK 267 (Walter W. Powell & Richard Steinberg, eds., 2d ed. 2006).

4. In the Internal Revenue Code of 1986, as amended, read §§ 62(a), 67(a), 67(b)(4), 68, 170(a)(1) and (2), 170(b), 170(c), 170(d), 170(f)(8), 501(c)(3), 509(a), 642(c)(1), 642(c)(6), 702(a)(4), 703(a)(2)(C), 1366(a)(1), 1411, 6115, and 6714.

5. In the Treasury Regulations, read §§ 1.61-3(a), 1.170-0, 1.170A-1, 1.170A-8, 1.170A-9 [very lightly — just to become acquainted with its coverage and organization], 1.170A-10 (except 1.170A-10(d)), 1.170A-13, and 1.501(c)(3)-1.
6. Prepare Problem 1 (Introduction), parts A and B (part A for the first class and part B for the second class).

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Assignment for February 2, 9, and 23

1. In the materials, read Items 8 – 14.
2. Review the Items, Code sections, and Treasury Regulations assigned previously.
3. Read the article posted on NYUClasses:

Cornelia Dean, *Wealthy Stake \$25 Million in a War With the Sea*, N.Y. TIMES, July 8, 2007.

4. In the Internal Revenue Code of 1986, as amended, read §§ 170(e), 170(f), 170(g), 170(j), 170(l), 170(m), 170(o), 509(a), 1015(a), 1221, 1222(3), 2055(a) and (d), 2522(a), 6050L, 6662 (except subsections (c), (d), and (f)), and 6664(c).
5. In the Treasury Regulations, read Treas. Reg. §§ 1.170A-4, 1.170A-11, and 1.1015-4.
6. Prepare a written outline of your answer to Problem 1, parts C through F, for your own use during class discussions.

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Assignments for March 8¹—Substantiation and Valuation

1. In the materials, read new items and review items read earlier in the semester:
 - a. Item 1: Harvey P. Dale & Roger Colinvaux, *The Charitable Contributions Deduction: Federal Tax Rules*, 68 TAX LAW. 331 (2015).
 - b. Item 2: Hernandez v. Commissioner, 490 U.S. 680 (1989).
 - c. Item 3: Sklar v. Commissioner, 282 F.3d 610 (9th Cir. 2002).
 - d. Item 4: Sklar v. Commissioner, 549 F.3d 1252 (9th Cir. 2008).
 - e. Item 9: Rev. Rul. 67-246, 1967-2 C.B. 104.
 - f. Item 14: Rev. Proc. 90-12, 1990-1 C.B. 471.
 - g. Item 15: Daniel Gomez et ux. v. Commissioner, T.C. Summ. Op. 2008-93 (July 30, 2008).
 - h. Item 16: Van Zelst v. Commissioner, 100 F.3d 1259 (7th Cir. 1996).
 - i. Item 17: Mohamed vs. Commissioner, 103 T.C.M. (CCH) 1814 (2012).
 - j. Item 18: Hewitt v. Commissioner, 82 A.F.T.R. 2d 98-7164 (4th Cir. 1998).
2. In the Internal Revenue Code, read §§ 170(a)(1), 170(f), 170(l), 170(m), 507(d)(2), 509, and 4946, 6115, and 6714.
3. David Fitzpatrick & Drew Griffin, *Charities Accused of Overvaluing Donations*, CNN, July 28, 2012, <http://edition.cnn.com/2012/07/27/us/charities-overvalued-donations/index.html>.

¹ We may begin this discussion at the end of class on March 1, so it might be worthwhile to skim the assigned statutory provisions prior to class.

4. In the Treasury Regulations, read Treas. Reg. §§ 1.170A-1, 1.170A-13 [first skim through this lengthy regulation quickly to understand how it is structured; then focus more carefully on §§ 1.170A-13(c) and 1.170A-13(f)], 20.2031-1(b), 1.6115-1, 53.4946-1(a), 1.170A-9(a), (b), (c)(1), (d), (e)(1) - (4), (6), (7), (8), (9), and 1.509(a)-3(a).
5. Prepare Problem 1, Parts A, D, E, and F, concentrating on substantiation and valuation issues.

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Assignments for March 22 and 29 and April 5, 12, and 19, * 2016

1. In the Materials, read:
 - a. Item 35: Excerpt from III SCOTT ON TRUSTS §§ 232-33.2 (3d ed. 1967).
 - b. Item 36 Excerpt from New York Estates, Powers & Trusts Law § 11-A-1.3.
 - c. Item 37: Excerpt from New York Estates, Powers & Trusts Law § 11-2.3.
 - d. Item 38: Excerpt from New York Estates, Powers & Trusts Law § 11-2.4.
 - e. Item 39: Excerpt from Leo L. Schmolka, Income Taxation of Decedents' Estates and Charitable Remainder Trusts, 40 TAX L. REV. 1 (1984).
 - f. Item 40: Rev. Proc. 2005-24, 2005-1 C.B. 909
 - g. Item 41: Notice 2006-15, 2006-1 C.B. 501.
 - h. Item 42: Rev. Rul. 72-395, 1972-2 C.B. 340.
 - i. Item 43: Rev. Rul. 80-123, 1980-1 C.B. 205.
 - j. Item 44: Rev. Rul. 60-370, 1960-2 C.B. 203.
 - k. Item 45: Notice 94-78, 1994-2 C.B. 555.
 - l. Item 46: Technical Advice Memorandum 9825001 (October 29, 1997).
 - m. Item 48: Notice 2000-37, 2000-2 C.B. 118.
 - n. Item 49: Notice 2008-99, 2008-2 C.B. 1194.
 - o. Item 56: § 522 of the New York State Prudent Management of Institutional Funds Act, which is also § 522 of the Non-Profit Corporation Law.
 - p. Item 57: Chapter 23, Restatement (Third) of Trusts (2012). Read the Introductory Note, the black-letter law (§§ 109-11), and the Comments; skim the Reporter's Notes.
2. In the Internal Revenue Code of 1986, as amended, carefully read §§ 170(e)(1); 170(f)(1), (2), and (3); 501(a); 501(c)(3); 508(d)(2); 508(e)(1); 512(a)(1); 512(b)(1) through (5); 643(b); 664; 671; 674; 677(a); 683; 1001(e); 1411; 2036(a)(1); 2055(e)(2) and (3); 2056(a), (b)(1), and (b)(8); 2511(c); 2522(c)(2) and (4); 2523(a), (b)(1), and (g); 4947; and 7520. In addition, read for understanding (but without the need to dominate the details) §§ 170(f)(7) and 2518 on reformations; and, with respect to private foundations, §§ 4941; 4942(a) through (e); 4943; 4944(a) through (c); 4945(a), (b), and (d); and 4946(a) and (b).

* First hour of class.

3. In the Treasury Regulations, read Treas. Reg. §§ 1.170A-4(c); 1.170A-4(d) example (9); 1.170A-8(a)(2); 1.643(a)-8; 1.643(b)-1; 1.664-1(a) through (e)[†] and -1(f)(4); 1.664-2; 1.664-3; 1.664-4(a) through (d); 1.1014-5; 1.1015-1(b); 1.1411-3(b)(1); 1.1411-3(d); 20.2031-7; and 20.2036-1. Also read Treas. Reg. §§ 1.7520-1, 1.7520-2, 20.7520-1, 20.7520-2, 25.7520-1, and 25.7520-2. Because the three versions of the 7520-1 and -2 regulations are so similar, you should concentrate on the income tax regulations, but note any material differences among the three versions. Read Prop. Treas. Reg. §§ 1.1411-3(b)(3) and -3(c)(2).
4. Prepare the Charitable Remainder Trusts Problem. Answer Question 1(a) first, Question 4(a) second, and Question 1(b) third. Then proceed to the rest of the Problem in proper numbered order.

[†] Read the entire T.D. 9190, including the “Background” and “Explanation of Provisions” text for Final Regulations under 1.664-1(d).

New York University School of Law
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Spring, 2016

Assignment for April 19, 2015 (second hour of class)

Problem: Charitable Lead Trusts

A. ESTATE AND GIFT TAX

Read:

Code: § § 2055(e), 2522(c), 7520(a)

Regs.: Treas. Reg § § 20.2055-2(e)(2)(vi) and (vii), 25.2522(c)-3(c)(2)(vi) and (vii).

Materials Items 52 – 55 in the Materials

1. Diane created an inter vivos trust to which she transferred property worth \$100,000. The terms of the trust agreement provide:

- Diane and the Fidelity Trust Company are the trustees.
- The term of the trust is for the life of Diane's husband, Hayden, plus 20 years. Hayden is 50 years old at the time of the trust's creation.
- At the end of each year during the trust term, the trustees are to pay \$5,000 to such charitable organizations as are then described in each of § 170(c)(2), § 2055(a)(2), and § 2522(a)(2) as the trustees in their discretion determine. In addition, they may distribute any trust income in excess of the \$5,000 to any such charitable organization. Any such distribution of excess income will be treated as a prepayment of future annuity amounts.
- The trustees may distribute such amounts for the support of Hayden or Diane's daughter, Jenny, as the trustees see fit.

- When the trust terminates, the remaining trust property must be paid to Jenny or to any of Jenny's descendants as the trustees, in their sole discretion, determine.
- A trustee may release any power at any time and a trustee may resign at any time.
- Diane or any other person may make additions to the trust.
 - a. Does Diane's transfer to the trust qualify for the gift tax charitable deduction?
 - b. If not, what trust provisions cause disqualification?
 - c. If not, can any steps be taken to qualify it?

2. Drew bequeaths \$100,000 to a 15-year trust under his will for the benefit of the Children's Aid Society and his son John. The terms of the trust provide that the trustee must distribute \$6,000 to the society, at the end of the first year of the trust, and an amount equal to 10.7% of the prior year's amount at the end of each subsequent year, concluding with a final payment at the end of the 15th year. The remainder was to be paid to John. Will Drew's estate receive an estate tax charitable deduction for the present value of the future payments to charity?

B. INCOME TAX

Read:

Code: § 170(f)(2)(B), § 642(c)

Regs.: § 1.170A-6(c)

1. Debra created a trust to pay the Little Flower Children's Home \$10,000 per year for 10 years, remainder to her daughter Kate. The trust was funded with \$100,000. Debra's husband Henry has the power to determine that their son Pat will receive the remainder instead.

a. Assume that the trust earned \$10,000 per year for its first 5 years and that Debra died at the end of the 5th year. What are the income tax consequences of her death?

b. How would the answer to question a differ if the trust was to last for Debra's life.

C. **GENERATION-SKIPPING TRANSFER TAX**

Read:

Code: § 2642(e).

Regs.: § 26.2642-3

Materials: Private Letter Ruling 200107015 (**posted on NYUClasses under “Resources” tab**)

Assume an individual creates a charitable lead annuity trust. What are the generation-skipping tax consequences if, at the end of the charitable lead term, the trust property passes to grandchildren. Does it matter whether the trust is structured as a charitable lead annuity or a charitable lead unitrust? Is there any way to utilize a charitable lead trust to provide for grandchildren?

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Assignment for April 26 and May 3, 2016

1. In the materials, read:
 - a. Item 26: Estate of Marine v. Commissioner, 990 F.2d 136 (4th Cir. 1993).
 - b. Item 28: Long Vue Foundation v. Commissioner, 90 T.C. 150 (1988), acq., 1989-1 C.B. 1, 1989-2 C.B. 1.
 - c. Item 32: PLR 9403005 (Oct. 14, 1993).
 - d. Item 58: PLR 201117005
 - e. Item 60: Hartwick College v. United States, 801 F.2d 608 (2d Cir. 1986).
 - f. Item 61: Estate of Cohen v. Crown, 954 S.W.2d 409 (Mo. App. 1997).
 - g. Item 62: Rev. Rul. 55-410, 1955-1 C.B. 297.
 - h. Item 63: Estate of Bernstein, NYLJ (Bronx. Co. Surr. Ct. 2015)
 - i. Estate of Dieringer v. Commissioner of Internal Revenue, 146 T.C. No. 8 (2016).
2. In the Internal Revenue Code of 1986, as amended, read §§ 170(e)(1) and (7), 170(f)(3) and (7), 170(h), 2001, 2010, 2044, 2053, 2055, 2106(a), 2502(a), 2503(g), 2505, 2522, 2651(e).
3. In the Treasury Regulations, read Treas. Reg. §§ 1.170A-7(a), 20.2044-1(b), 20.2055-1, 20.2055-2(a), 20.2055-3, 25.2522(a)-1.
4. Prepare Problem - Charitable Giving and the Transfer Taxes.