

TAX ASPECTS OF CHARITABLE GIVING
Professors Manny and Dale
Spring 2019

Assignment for January 22 and 29, 2019

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 – 6. Item 1 is optional.
2. Read these articles posted on NYUClasses:

Editorial Board of WALL ST. J., *The Uncharitable Charities*, Dec. 25, 2017, <https://www.wsj.com/articles/the-uncharitable-charities-1514237452>.

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), 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), 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).

TAX ASPECTS OF CHARITABLE GIVING
Professors Manny and Dale
Spring 2019

Assignment for February 5, 12, and 19

1. In the materials, read Items 7 – 13.
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 for February 19 class.
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.

TAX ASPECTS OF CHARITABLE GIVING
Professors Manny and Dale
Spring 2019

Assignments for February 26 March 5—Substantiation and Valuation

1. The class on February 26 will focus primarily on Problem 1 E and F.
2. 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 8: Rev. Rul. 67-246, 1967-2 C.B. 104.
 - e. Item 13: Rev. Proc. 90-12, 1990-1 C.B. 471.
 - f. Item 14: Daniel Gomez et ux. v. Commissioner, T.C. Summ. Op. 2008-93 (July 30, 2008).
 - g. Item 15: Van Zelst v. Commissioner, 100 F.3d 1259 (7th Cir. 1996).
 - h. Item 16: Mohamed vs. Commissioner, 103 T.C.M. (CCH) 1814 (2012).
 - i. Item 17: Hewitt v. Commissioner, 82 A.F.T.R. 2d 98-7164 (4th Cir. 1998).
3. In the Internal Revenue Code, read §§ 170(a)(1), 170(f), 170(l), 170(m), 507(d)(2), 509, and 4946, 6115, and 6714.
4. 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>.
5. 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), (f)(1) - (4), (6), (7), (8), (9), and 1.509(a)-3(a).

6. Prepare Problem 1, Parts A, D, E, and F, concentrating on substantiation and valuation issues.
7. Note that the class on March 12 has been cancelled and rescheduled for Friday, March 29 from noon to 1:50 p.m.

TAX ASPECTS OF CHARITABLE GIVING

Spring, 2019

Assignment for April 23rd (second half) and April 26, 2019

1. In the materials, read:
 - a. Item 64: Estate of Bernstein, NYLJ (Bronx. Co. Surr. Ct. 2015)
 - b. Item 63: Rev. Rul. 55-410, 1955-1 C.B. 297.
 - c. Item 25: Estate of Marine v. Commissioner, 990 F.2d 136 (4th Cir. 1993).
 - d. Item 27: Long Vue Foundation v. Commissioner, 90 T.C. 150 (1988), acq., 1989-1 C.B. 1989-2 C.B.1
 - e. Ahmanson Foundation v. U.S., 674 F.2d 761 (9th Circuit 1981) (added).
 - f. Dieringer v. Commissioner, (9th Circuit, March 12, 2019) (added).
 - g. Item 61: Hartwick College v. United States, 801 F.2d 608 (2d Cir. 1986).
 - h. Item 62: Estate of Cohen v. Crown, 954 S.W.2d 409 (Mo. App. 1997).
2. IRC §§ 170(f)(3) and (7); 170(h)(1)-(h)(4)(A); 2001(a) and (b); 2044; 2053(a), (b) and (c); 2106(a); 2502(a); 2503(g); 2522; 2651(f)(3).
3. 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. Work through Problems- Charitable Giving and the Transfer Taxes.

**New York University School of Law
TAX ASPECTS OF CHARITABLE GIVING**

Spring, 2019

**Assignment for April 16, 2019 (second hour of class)
and April 23, 2019 (first hour or more of class)**

Problem: Charitable Lead Trusts

A. ESTATE AND GIFT TAX

Read:

Code: §§2055(e), 2522(c)

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

Materials

Items 53 – 55 in the Materials (Rifkind v. United States; Rev. Proc. 2007-45; and Rev. Proc. 2007-46)

1. Diane created an inter vivos trust to which she transferred property worth \$20 million. 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 \$100,000 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 \$100,000 to any such charitable organization. Any such distribution of excess income will be treated as a prepayment of future annuity amounts.
 - 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.

- 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?
2. Drew bequeaths \$10 million 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 to the Society \$17,970 (or roughly 1.8% of the initial value of the trust) at the end of the first year. In subsequent years, the annuity payable to the Society is 120% of the prior year's annuity. The last annuity -- payable at the end of the 15th year - will be \$230,720 (or nearly 13 times the initial annuity). The remainder is 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), 681 and 4947(a)(2)

Regs.: §§1.170A-6(c)

1. Debra created a trust to pay the Little Flower Children's Home \$1 million per year for 10 years, with the remainder passing to her daughter Kate. The trust was funded with \$10 million. Debra's husband Henry has the power to determine that their son Pat will receive the remainder instead. Assume that the fair market value of the right to receive \$1 million per year for 10 years is \$8.8 million.
- a. What is the income tax deduction, if any, in the year the trust is created?
 - b. What is the income tax deduction for the trust or Debra each year as the Trustee pays the charity \$1 million?

- c. Assume that the trust earned \$1 million 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?
 - d. How would the answer to question 3 differ if the trust was to last for Debra's life?
 - e. How would the answers to 1 and 2 differ if the trust generated unrelated business income?
2. Marc's testamentary plan calls for his residuary estate to pass to a CLAT. Marc owns a controlling interest in a closely held operating business organized as an LLC. Marc and his family have engaged in transactions with the LLC, including loans and sales. What issues will arise during the estate administration, funding of the CLAT and administration of the CLAT?