TAX ASPECTS OF CHARITABLE GIVING
Professors Manny and Dale
Spring 2023

Assignment for January 17 and 24, 2023

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.

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), 170(p), 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 [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 2023

Assignment for January 31 and February 7 and 14

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 Brightspace:

   Cornelia Dean, *Wealthy Stake $25 Million in a War With the Sea*, N.Y. TIMES, July 8, 2007 for February 23 class.

4. In the Internal Revenue Code of 1986, as amended, read §§ 170(e), 170(f), 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, 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. Be prepared to discuss Problem 1C and D on January 31.

TAX ASPECTS OF CHARITABLE GIVING
Professors Manny and Dale
Spring 2023

February 28[1]—Substantiation and Valuation

1. In the materials, read new items and review items read earlier in the semester:

    a. Item 2: Hernandez v. Commissioner, 490 U.S. 680 (1989).

    b. Item 3: Sklar v. Commissioner, 282 F.3d 610 (9th Cir. 2002).

    c. Item 8: Rev. Rul. 67-246, 1967-2 C.B. 104.

    d. Item 13: Rev. Proc. 90-12, 1990-1 C.B. 471.

    e. Item 14: Daniel Gomez et ux. v. Commissioner, T.C. Summ. Op. 2008-93 (July 30, 2008).

    f. Item 15: Van Zelst v. Commissioner, 100 F.3d 1259 (7th Cir. 1996).

    g. Item 16: Mohamed vs. Commissioner, 103 T.C.M. (CCH) 1814 (2012).

    h. Item 17: 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.

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), (f)(1) - (4), (6), (7), (8), (9), 1.170A-15, 1.170A-16, 1.170A-17, and 1.509(a)-3(a).

5. Prepare Problem 1, Parts A, D, E, and F, concentrating on substantiation and valuation issues.

[1] No Class on February 21– Legislative Monday.

Tax Aspects of Charitable Giving
Profs. Dale & Manny
Spring 2023

Assignments for March 7, 21, and 28, and April 4 and 11

1. In the Materials, read:
   a. Item 34: Excerpt from III SCOTT ON TRUSTS §§ 232-33.2 (3d ed. 1967).
   b. Item 35 Excerpt from New York Estates, Powers & Trusts Law § 11-A-1.3.
   c. Item 36: Excerpt from New York Estates, Powers & Trusts Law § 11-2.3.
   d. Item 37: Excerpt from New York Estates, Powers & Trusts Law § 11-2.4.
   e. Item 38: Excerpt from Leo L. Schmolka, Income Taxation of Decedents' Estates and Charitable Remainder Trusts, 40 TAX L. REV. 1 (1984).
   f. Item 39: Rev. Proc. 2005-24, 2005-1 C.B. 909
   g. Item 40: Notice 2006-15, 2006-1 C.B. 501.
   h. Item 41: Rev. Rul. 72-395, 1972-2 C.B. 340.
   i. Item 42: Rev. Rul. 80-123, 1980-1 C.B. 205.
   j. Item 43: Rev. Rul. 60-370, 1960-2 C.B. 203.
   k. Item 44: Notice 94-78, 1994-2 C.B. 555.
   l. Item 45: Technical Advice Memorandum 9825001 (October 29, 1997).
   m. Item 47: Notice 2000-37, 2000-2 C.B. 118.
   n. Item 48: Notice 2008-99, 2008-2 C.B. 1194.
   o. Item 49: PLR 201714002 (December 21, 2016).
   p. Item 56: § 522 of the New York State Prudent Management of Institutional Funds Act, which is also § 522 of the Non-Profit Corporation Law.
   q. 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.
   r. Item 65: PLR 201713002 (December 20, 2016).
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); 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).

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 Treas. Reg. §§ 1.1411-3(b)(1)(iii) and -3(d) and Treas. Reg. § 25.2511-2(c).

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).

TAX ASPECTS OF CHARITABLE GIVING
Spring 2023

April 18: Charitable Giving and the Transfer Taxes

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. Item 31: PLR 9403005 (Oct. 14, 1993).

   f. Item 61: Hartwick College v. United States, 801 F.2d 608 (2d Cir. 1986).

   g. 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.
   (Posted as separate document)

April 25: Charitable Lead Trusts

Problem: Charitable Lead Trusts

A. ESTATE AND GIFT TAX

Read:

Code: §§2055(e)(1) and (2), and 2522(c)(1) and (2)

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 $1 million 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 $1 million 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. <u>INCOME TAX</u>

<u>Read</u>:

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?