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CHARITABLE GIVING

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I. Charitable Estate Tax Deductions

A. Charitable Transfers for Estate Tax Purposes

A deduction from a decedent's gross estate is allowed for all bequests, legacies, devises and other transfers, which includes lifetime gifts as well as testamentary gifts, to qualifying recipients for public, charitable, religious and other similar purposes. I.R.C. § 2055

A qualifying recipient must fall within one of the following categories:

1. The United States, any state, any political subdivision thereof, or the District of Columbia, so long as the funds are used "for exclusively public purposes";
2. Any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, or to foster national or international amateur sports competition, and the prevention of cruelty to children or animals, so long as:
 - a. no part of the corporation's activities involve the provision of athletic facilities or equipment;
 - b. no part of the net earnings inures to the benefit of any private stockholder or individual;
 - c. the corporation is not disqualified for tax exemption under I.R.C. § 501(c)(3) by reason of attempting to influence legislation; and
 - d. the corporation does not participate in or intervene in any political campaign on behalf of any candidate for public office.
3. Any trustee or any fraternal society, order or association operating under the lodge system, if the transfers are used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, so long as they are not disqualified for

tax exemption under I.R.C. § 501(c)(3) by reason of attempting to influence legislation and so long as they do not participate in or intervene in any political campaign on behalf of any candidate for public office.

4. Any veterans' organization incorporated by Act of Congress, so long as no part of the net earnings inure to the benefit of any private shareholder or individual.
5. Any employee stock ownership plan if such transfer qualifies as a qualified gratuitous transfer of qualified employer securities within the meaning of I.R.C. § 664(g).

B. Charitable Transfers resulting from Disclaimed Property

Amounts added to a charitable bequest or transfer as a result of a qualified disclaimer under I.R.C. § 2518 are also allowed as a deduction from the decedent's gross estate.

1. A complete termination of a power to consume, invade or appropriate property for the benefit of an individual before such power has been exercised shall be considered to be a qualified disclaimer. I.R.C. § 2055(a)

C. Amount Deductible for Estate Tax Purposes

1. The charitable deduction amount will be reduced by the amount of any death taxes which are assessed against an otherwise deductible bequest or other transfer. (i.e. if the terms of the will require payment of death taxes from the residuary estate and the charity is a beneficiary of the residuary estate, the bequest to the charity will be reduced by the payment of the taxes, therefore the deductible amount will be reduced) I.R.C. § 2055(c)
2. The amount of the deduction may not exceed the value of the transferred property required to be included in the gross estate. I.R.C. § 2055(d) (Example: A testamentary exercise of a special power of appointment in favor of a charity does not qualify for a charitable estate tax deduction.)
3. Charitable bequests from the residuary estate may be reduced by certain administration expenses charged against the residue, if the deduction has a material effect on the value of the property received by the donee. Comr. v. Hubert Est., 520 U.S. 93 (1997), Regs. § 20.2055-3(b)(1).

D. Charitable Transfers with Split-Interests

A transfer of property in which the interest in the property is split between a charitable and a non-charitable person must meet specific rules as discussed in other parts of this outline.

E. Qualifying Transfers

The charitable transfer must be made by the decedent.

1. A transfer is not deductible in the decedent's estate for the amount of the estate that the *beneficiaries* transfer to a charity. Kirkwood Est. v. Comr., 23 B.T.A. 955 (1931).
2. Property that escheats to the state does not qualify for a deduction. Senft v. U.S., 319 F.2d 642 (3d Cir. 1963).
3. Indefinite or discretionary bequests will not be deductible. Mere authority to make charitable transfers is not enough to qualify for the charitable estate tax deduction. Estate of Lockett v. Comr., 75 T.C.M 1731, T.C. Memo 1998-50.
4. Bequests void under local law will not be deductible. Riddle Est. v. Comr., 21 T.C. 1109 (1954). A bequest which is voidable, but in which no objection is made, qualifies for a charitable estate tax deduction to the extent of the amount received by the qualified recipient. Harvey Est. v. U.S., 678 F. Supp. 1268 (E.D. La. 1988).

F. Charitable Transfers resulting from a General Power of Appointment

Property included in a decedent's estate because of a general power of appointment will qualify for a charitable deduction for the decedent's estate if the property is received by a qualified charitable recipient, regardless if the property passes by the exercise, failure to exercise, release or lapse of the power of appointment. I.R.C. § 2055(b)

II. Charitable Gift Tax Deductions I.R.C. § 2522

A. Charitable Transfers for Gift Tax Purposes

A deduction is allowed for the amount of all gifts made to qualifying recipients for public, charitable, religious and other similar purposes. Unlike the charitable deduction for income tax purposes, the amount of the deduction for a charitable transfer is unlimited for gift tax purposes.

The categories for qualifying recipients for purposes of a charitable gift tax deduction are similar to that listed above for the charitable estate tax deduction, excluding ESOP recipients, however, for transfers made by a nonresident who is not a US citizen the charitable gift tax deduction on transfers to corporations applies only to transfers to domestic corporations. I.R.C. 2522(b)

B. Charitable Transfers with Split-Interests

A transfer of property in which the interest in the property is split between a charitable and a non-charitable person must meet specific rules as discussed in other parts of this outline.

C. Qualifying Transfers

No gift tax deduction is allowed for gift transfers to a charity if the donor retains control over the donee/charity. The donor has retained control over the disposition of the property, therefore the transfer is not a completed gift. PLR9124031