ONE-YEAR EXTENSION FOR CHARITABLE PROVISIONS

Several provisions originally introduced in the *CARES (Coronavirus Aid, Relief, and Economic Security) Act* to encourage gifts to charity have been extended through 2021 under the *Taxpayer Certainty and Disaster Tax Relief Act of 2020*, as part of the *Consolidated Appropriations Act*.

■ The $300 deduction for cash gifts to charity continues through 2021 and is increased to $600 for joint filers. This deduction, available only to taxpayers who don't itemize, does not apply to gifts to donor advised funds.

■ For taxpayers who itemize, the deduction limit for cash gifts to charity is increased from 60% of adjusted gross income (AGI) to 100%. The deduction limit for gifts of appreciated assets remains 30% of AGI. Any excess deductions may be carried over and deducted over the next five years.

■ The deduction limit for charitable gifts made by corporations is 10% of taxable income. An enhanced limitation of up to 25% for cash gifts continues through 2021.

TRUST LANGUAGE DIDN'T CREATE LEASEHOLD INTEREST

In 1994, Mary Lou McGrew executed a second codicil to her 1991 will, directing her trustee to continue renting nearly 200 acres of farmland to Wayne Meyer or any of his adult children provided they were actively engaged in farming the property. Her will included a testamentary charitable remainder unitrust to ultimately benefit Shriners Hospital for Children. The trust contained required language prohibiting the trustee from engaging in prohibited transactions and gave trustees the right to sell any real property of the trust.

The bank trustee rented the land to Daniel Meyer and his siblings beginning at McGrew's death in 1998. In 2019, the trustee sought a declaratory judgment that the Meyer family did not have a long-term or lifetime leasehold interest in the land, that the current one-year lease could be terminated at its expiration and any sale of the farmland is subject only to the lease's current term. The trustee sought to sell all or a portion of the land and reinvest the proceeds to provide greater liquidity and make sufficient charitable distributions to avoid federal excise taxes. The Meyer family claimed McGrew's will gave them a leasehold interest for as long as they chose to farm the land and any sale would have to be subject to the continuing leasehold interest. The trustee argued making the sale contingent on a leasehold interest would diminish the value. Shriners filed a motion in favor of the trustee. The Circuit Court entered a declaratory judgment in favor of the trustee, which the Meyer siblings appealed.

The Appellate Court of Illinois noted McGrew's 1994 codicil directed the trustee to continuing renting the land to the Meyer family, giving them a special interest different from the public generally. There is no language indicating the direction to rent to the Meyer siblings runs with the farmland or granting them any type of life tenancy. The trustee is specifically allowed to sell any real property that prevents the trustee from making distributions to charity in order to avoid federal excise tax. The court said the trustee's right to sell the farmland is "without limitations." If farmland is no longer in the trust, the trustee has nothing to rent to the Meyer siblings, said the court (*Prospect Bank v. Meyer,* 2020 Il App (4th) 200074-U).

BENEFICIARIES VS. CHARITIES: PART TWO

Ralph Shepley's will directed that his real property be appraised, with the proceeds divided in thirds for his daughter, Debra Moore Fountain, and two charities. Larry and Linda Brewer were given first right to purchase any or all of the property from the estate at a price equal to the appraised value. The 191-acre property was appraised at $4.4 million. The Brewers exercised their option by selecting 21.3 acres that included the farm house, a majority of the lake and the access road to the homestead, claiming the per-acre total to be $794,849.45. This division created an orphan tract of seven acres and the bulk of the land inaccessible by road because the Brewers included the entire access road.

Fountain sought court approval to have the property reappraised in two parts: the tract selected by the Brewers and the property the couple declined to purchase. The charities argued the purchase price offered by the Brewers violated the appraisal process, which did not authorize a per-acre valuation. The reappraisal ordered by the trial court determined the value of the portion selected by the Brewers was $2,869,592. The couple objected to the trial court ruling.

The Texas Court of Appeals found the formula for ascertaining the value of the selected property to be clear and unambiguous. It ordered the trial court to have an appraisal of the date-of-death value of the selected portion of the land, without regard to any diminution in value to the remainder of the property (*Brewer v. Fountain*, 583 S.W.3d 871).

On remand, Fountain proposed a price of $1.28 million, reflecting a second appraisal of the selected portion of land. The Brewers said the price should be $794,849.45, based on their calculation from the first appraisal. The trial court agreed with Fountain's valuation. The Texas Court of Appeals was asked to determine whether the trial court properly enforced its mandate in remanding the matter. The court noted the first appraisal took place before the Brewers selected the land they wanted to purchase from the estate. They did not offer an appraisal from a qualified appraiser explaining why the second appraisal should be rejected. The trial court found the second appraisal properly appraised the value of the land the Brewers selected without taking into account any diminution in value of the remaining property. The appeals court said the lower court's ruling "fell within this Court's mandate," and was not arbitrary or unreasonable. The determination of a $1.28 million value for the chosen portion of the property was not an abuse of the trial court's discretion. *Brewer v. Fountain*, No. 01-20-00081-CV.

INCOME BENEFICIARY HAS SOME STANDING

A testamentary trust created at Augustus Ashton's death in 1951 provided annuity payments to named individuals and their issue for life. Net income not needed for the annual distributions is to be made available for scholarships at the University of Pennsylvania. At the death of the last income beneficiary, the trust is to continue in perpetuity for scholarships. When initially funded, the trust value was $2,638,798.23. It now stands at more than $73 million.

The bank trustee asked the Orphan's Court to approve a division of the trust into two trusts. One trust, which would continue making annuity payments to the named individual beneficiaries, would be funded with $5 million. The other trust, holding the balance of the funds, would be used to fund scholarships. The trustee also sought to receive retroactive commissions for its past administration and an increase in its compensation.

Elizabeth Reed, who receives $2,400 annually from the trust, objected to the request, calling the change to commissions and fees along with the division of the trust "improper." She also asked that her daughter be appointed co-trustee. The Orphan's Court found Reed has standing because of her vested interest in the trust. The trustee appealed.

The Superior Court of Pennsylvania said Reed's interest in receiving $2,400 annually from the trust would not be harmed if the Orphan's Court grants the bank trustee's fee request. It found no legal authority to support the appointment of her daughter as co-trustee or any immediate harm to Reed's right to the annual distribution if her daughter is not appointed. Reed lacks standing to challenge these requests. The court found she did, however, have standing to contest the division of the trust into two trusts, saying the amount of the funding "will directly impact" her right to receive $2,400 annually. This is a change that impacts her alone, and not the general public, the court said. The matter was remanded to determine the extent to which the trust division impacts her right to receive the annual distribution. *In re Trust under Will of Ashton*, 2020 PA Super 130.

PLAN VIOLATES "TOO GOOD TO BE TRUE" RULE

Roderick Campbell was told by his CPA about a charitable contribution program involving eyeglass frames. ZD Products, Inc. obtained more than 170,000 designer frames. These were sold in lots of approximately 3,432 frames to 50 buyers for $50,000 per unit. After one year, buyers could contribute the frames to Lions in Sight or any other charity and claim a charitable deduction of $225,322. ZD stored all the frames, carried insurance, made transfers to a qualified charity and obtained the appraisal necessary for Form 8283. The appraisal provided by ZD listed the entire collection of frames and assigned a wholesale price for between $37 and $80. Wholesale prices were marked up 35%. The appraisal did not deal specifically with the frames in the lot Campbell purchased, but merely averaged the price per frame for the entire collection of frames.

Campbell purchased a unit in 2006 and made a contribution of the frames in 2007. He claimed a charitable deduction, a portion of which was carried over to 2008. The IRS disallowed the deduction, saying the gift was not made with donative intent, was made in 2008, not 2007, and that Campbell failed to comply with substantiation requirements because the appraisal was not a "qualified appraisal" under Reg. §1.170A-13(c)(3)(i). The IRS also said the receipt letter from Lions in Sight was not a proper contemporaneous written acknowledgment.

The Tax Court agreed with the IRS on the issue of the appraisal, noting the IRS has no way to determine from the appraisal whether what Campbell alone contributed was overvalued. The bill of sale from ZD references only a fractional interest in the whole but does not provide an itemized inventory of the frames. The acknowledgment letter from Lions in Sight does not include the required language regarding any quid pro quo. The court rejected Campbell's argument that his failure to meet the requirements was due to reasonable cause and not willful neglect. Although Campbell relied on his professional advisor, the court said the advice was not from "a competent and independent advisor," because Campbell's CPA was a promoter and personally participated in the program. *Campbell v. Comm'r.*, TC Memo 2020-41.

