Bequests to Charity in a Will Must be Measurable

During their lives, many individuals make donations to favorite charitable causes to address social ills or support certain institutions. For some, altruistic motives predominate. Many technological, medical, and educational advances have resulted from assets earmarked to public or private charities. For others, a primary goal is to significantly reduce estate taxation and potentially maximize asset distribution to beneficiaries.

Financial professionals often recommend including both goals, the altruistic and tax reduction features in the last will and testament. Gifts and bequests made through a will represent a legally binding provision to make a final transfer of property. When a named **beneficiary** is a recognized public or private charitable organization, the Internal Revenue Code (IRC Section 2055) usually permits the estate an estate tax deduction, under certain conditions.

Wills are commonly drafted to bequeath money or property outright to religious, medical, health care, educational, or other public and private charitable organizations (IRC Section 501). Immediate, primary bequests to charity are generally fully deductible in calculating the estate tax.

In many instances, however, the charity is designated as a contingent beneficiary. A **contingent beneficiary** only receives the identified share if the *primary* beneficiary is deceased or disqualified. Transfers for public charitable welfare require definitive language in the will document. In brief, the Internal Revenue Service (IRS) requires the charitable bequest to be established in reality, not affiliated in any way with a noncharitable entity or purpose, and the contingency status is not so remote (an actuarially determined percentage) as to be deemed nonexistent. Would a specified class of income beneficiaries have a life expectancy that could conceivably deplete the corpus of a **testamentary trust** under will? Or, does the income beneficiary have access to the corpus during lifetime and before being transferred to charity?

LET'S EXAMINE TWO HYPOTHETICAL EXAMPLES:

A deceased father's will provided income to his daughter for life with the corpus to charity upon her death. She was 30 years old and the trustee possessed a discretionary power to invade the corpus for her personal benefit before the age of 70. This power would probably negate a charitable deduction to her father's estate because the bequest would not be a completed gift, if any corpus remained, or acertainable until the daughter reached age 70.

Or, given the circumstances above, suppose the daughter and charity each received 50% of the income stream and suppose the trustee had power to invade the charity's income stream for the benefit of the daughter, the power to invade the charity'sincome stream makes the bequest to charity immeasurable.

The United States Tax Court has reviewed numerous cases where estate tax deductions were taken when the charity's receipt of a bequest was extremely remote and not measurable.

In regard to bequests by will to charitable purposes, it is important to protect your estate in order to benefit your heirs and chosen charities to the fullest. Neverleave the choice of charities up to your trustees oranyone else. You may lose all or part of your estate tax charitable deduction if you fail to cite the appropriate Internal Revenue Code Sections in predetermining the types of charities selected. Your financial team is equipped to assist you in determining various ways to secure a gift for your charity, as well as compare the taxable consequences of various options. Your accountant, estate attorney and financial professional should always be consulted *before* a provision of this magnitude is executed.

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