24th Conference on Gift Annuities

April 26-28, 2000
Adam's Mark Hotel
St. Louis

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American Council on Gift Annuities
24th Conference
April 26-28, 2000 • St. Louis, Missouri

On behalf of the board of directors of the **American Council on Gift Annuities,** welcome to St. Louis and the 24th Conference on Gift Annuities.

For seventy-three years, the American Council—and its predecessor the Committee on Gift Annuities—has been serving America's charities and their donors. The Council is a nonprofit informational and educational organization that provides assistance to charities with their gift annuity programs.

Gift annuities have been a recognized form of giving in this country since the mid-1800s, and since the very first Conference on Gift Annuities was held in 1927, the Council has been an important part of the growth of what we now know as planned giving. While gift annuities have their origins in religious and church-related organizations, over the years, they have become a major part of the planned giving programs of an ever-growing array of charities: colleges and universities—including state colleges and universities—hospitals, museums, symphony orchestras, ballet and opera companies, children's homes, retirement centers, local and world-wide health and relief organizations, environmental groups, alumni associations and others too numerous to mention.

In late 1994, a class-action lawsuit was filed against the Council—a lawsuit that threatened its very existence, and eventually threatened every charity in the country that had issued gift annuities using the Council's suggested rates. This action sought to misapply various state and federal statutes to the activities of the Council and its sponsoring organizations. Over the course of the four-and-a- half-year pendency of the lawsuit, the Council and its work were recognized and its mission vindicated by the Texas Legislature, the U.S. Congress, the President and the Supreme Court of the United States. On July 23, 1999, the lawsuit was dismissed.

This 24th Conference promises to be our best ever. From an attendance of forty-seven at that first meeting in 1927, this oldest planned giving conference in the country has grown to almost a thousand participants who come from every part of the U.S., and Canada, representing charities of every description. We are delighted you are here, and we are confident you will find the time spent at the Conference to be beneficial to you, both professionally and personally.

Sincerely,

Tal Roberts
Chairman
American Council on Gift Annuities

233 McCrea Street, Suite 400 • Indianapolis, IN 46225-1030 • Phone (317)269-6271 • Fax (317)269-6276
acga@iupui.edu

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COUNCIL ON
GIFT ANNUITIES

CONFERENCE AGENDA

Wednesday, April 26

8:00 a.m. -- 6:00 p.m.	Registration
12 Noon	Exhibits Open
9:00 a.m. -- 3:00 p.m.	Introduction to Planned Giving Basics Nancy Perazelli, presenter
3:15 -- 5:00 p.m.	Symposium on Issues in Planned Giving Frank Minton, moderator Panelists: Kathryn Miree, Conrad Teitell, Craig Wruck
6:00 p.m.	Reception/Gathering in Exhibit Area
6:30 p.m.	Opening Dinner and Economic Address Robert Dederick, speaker " The American Economy: Is It Good for You or Bad for You?"

Thursday, April 27

8:30 -- 10:00 a.m.	Plenary Session Chairman's Report — Tal Roberts Gift Annuity Survey Report — Frank Minton
10:00 -- 10:30 a.m.	Refreshment Break in Exhibit Area
10:30 -- 11:45 a.m.	Breakout Seminar Session #1 Working Effectively in Gift Planning: Show Me! — Tom Cullinan The Rainy Day Unitrust — André Donikian Trustee Investment and Management — Bill Fender Gifts of Real Estate — Scott Lumpkin Selecting and Monitoring Investment Managers — Kathryn Miree Bequest Administration — Gary Pforzheimer Gift Annuity Administration — Jim Potter Planning Opportunities/Supporting Organizations — Gerry Treacy
12 Noon	Luncheon Roger Schoenhals, speaker "Dancing with Donors"
1:30 -- 2:45 p.m.	Breakout Seminar Session #2 Working Effectively in Gift Planning: Show Me! — Tom Cullinan The Rainy Day Unitrust — André Donikian Donor Identification and Cultivation — Ellen Estes Charitable Planning with IRAs — Christopher Hoyt Investment of Life-Income Gifts — Thom Lockerby Gifts of Real Estate — Scott Lumpkin Selecting and Monitoring Investment Managers — Kathryn Miree Bequest Administration — Gary Pforzheimer Planning Opportunities/Supporting Organization — Gerry Treacy

CONFERENCE AGENDA

2:45 -- 3:15 p.m.	Refreshment Break in Exhibit Area	
3:15 -- 4:30 p.m.	Breakout Seminar Session #3	
	Gift Planning for Deduction-Challenged Donors	— Marc Carmichael
	Fundamentals of CGAs and CRTs	— Pamela Jones Davidson
	Donor Identification and Cultivation	— Ellen Estes
	Charitable Planning with IRAs	— Christopher Hoyt
	Investment of Life-Income Gifts	— Thom Lockerby
	Gift Annuity Administration	— Jim Potter
	Private Equity Gift Partnerships	— Peter Ticconi
	Really Working with Allied Gift Planners	— Craig Wruck
	Trustee Investment and Management	— Bill Fender
4:30 -- 5:30 p.m.	Exhibits Open	

Friday, April 28

8:30 -- 9:45 a.m.	Breakout Seminar Session #4	
	Don't Be Afraid! Planned Giving Is Good	— Michael Donegan
	Fundamental Marketing Theory	— Jim Gillespie
	Donor Stewardship Techniques	— Melodie Knighten
	State Regulation of Gift Annuities	— Jim Potter/Clint Schroeder
	Multiple Media Marketing	— Charles Schultz
	Legal Update	— Terry Simmons
	Private Equity Gift Partnerships	— Peter Ticconi
	Charitable Gift Planning Cases and Problems	— Jonathan Tidd
	Really Working with Allied Gift Planners	— Craig Wruck
9:45 -- 10:15 a.m.	Refreshment Break in Exhibit Area	
10:15 -- 11:30 a.m.	Breakout Seminar Session #5	
	Don't Be Afraid! Planned Giving Is Good	— Michael Donegan
	Fundamental Marketing Theory	— Jim Gillespie
	Donor Stewardship Techniques	— Melodie Knighten
	Legal Update	— Terry Simmons
	State Regulation of Gift Annuities	— Jim Potter/Clint Schroeder
	Multiple Media Marketing	— Charles Schultz
	Charitable Gift Planning Cases and Problems	— Jonathan Tidd
	Fundamentals of CGAs and CRTs	— Pamela Jones Davidson
	Gift Planning for Deduction-Challenged Donors	— Marc Carmichael
11:45 -- 1:30 p.m.	Closing Luncheon	
	Address by Conrad Teitell	

BREAKOUT SESSIONS

Learning Tracks Geared to Your Needs

Track 1 — Fundamentals

Working Effectively in Gift Planning: Show Me! (Thomas Cullinan)
Fundamentals of Charitable Gift Annuities and Charitable Remainder Trusts (Pamela Jones Davidson)
Don't Be Afraid! Planned Giving Is Good for You! (Michael Donegan)
Fundamental Marketing Theory (James Gillespie)
Donor Identification and Cultivation (Ellen Estes)
Gifts of Real Estate: Opportunities and Pitfalls (Scott Lumpkin)
Donor Stewardship Techniques (Melodie Knighten)

Track 2 — Advanced Planned Giving

Gift Planning for Deduction-Challenged Donors (Marc Carmichael)
The Rainy Day Unitrust (André Donikian)
Charitable Planning with IRAs (Christopher Hoyt)
Private Equity Gift Partnerships (Peter Ticconi, Jr.)
Charitable Gift Planning Cases and Problems (Jonathan Tidd)
Planning Opportunities with Supporting Organizations and Other Foundation Formats (Gerald Treacy, Jr.)

Track 3 — Financial, Investment and Administrative Issues

Trustee Investment and Management Responsibilities Under the Uniform Prudent Investor Act (William Fender)
Investment of Life-Income Gifts: A Primer for Gift Planners (Thomas Lockerby)
Selecting and Monitoring Investment Managers (Kathryn Miree)
Bequest Administration (Gary Pforzheimer)
Gift Annuity Administration (James Potter)

Track 4 — Issues in Gift Planning

State Regulation of Gift Annuities (Clinton Schroeder and James Potter)
Multiple Media Marketing (Charles Schultz)
Legal Update (Terry Simmons)
Really Working with Allied Professionals (Craig Wruck)

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UNDERWRITERS

"The American Council on Gift Annuities would like to thank these organizations for sponsoring the following functions"

State Street Global Advisors
Boston, Massachusetts
Morning Refreshment Break
Thursday, April 27

Mellon Private Asset Management
Pittsburgh, Pennsylvania
Afternoon Refreshment Break
Thursday, April 27

U.S. Bank Charitable Services Group
Minneapolis, Minnesota
Morning Refreshment Break
Friday, April 28

EXHIBITORS

Christian Community Foundation
Woodland Park, Colorado
Booth 15

Concord Trust Company
Dallas, Texas
Booth 17

The Converse Group
Memphis, Tennessee
Booth 5

Crescendo Interactive
Camarillo, California
Booth 2

D.L. Moody Trust Company N.A.
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Booth 20

Fast-Tax Trust Services
Carrollton, Texas
Booth 32

Fiduciary Trust Company International
New York, New York
Booth 30

HWA International Inc.
Memphis, Tennessee
Booth 25

TBD
Booth 7

UMB Private Client Services
Kansas City, Missouri
Booth 22

Mellon Private Asset Management
Pittsburgh, Pennsylvania
Booth 27

Merrill Lynch Nonprofit Services
Plainsboro, New Jersey
Booth 1B

Morgan Keegan Philanthropic Services Group
Charlotte, North Carolina
Booth 23

National Committee on Planned Giving
Indianapolis, Indiana
Booth 29

Pentera, Inc.
Indianapolis, Indiana
Booth 13

PC Calc Incorporated
Cambridge, Massachusetts
Booth 31

Planned Giving Services
Seattle, Washington
Booth 14

Planned Giving Today
Edmonds, Washington
Booth 1A

Planned Giving Design Center
Matthews, North Carolina
Booth 10

R&R Newkirk
Willow Springs, Illinois
Booth 3

Resource Development, Inc.
Springfield, Missouri
Booth 8

Robert F. Sharpe & Co., Inc.
Memphis, Tennessee
Booth 24

State Street Global Advisors
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Booth 4

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Booth 12

Strategic Alliance
Lakewood, Colorado
Booth 19

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Booth 6

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Cedar Knolls, New Jersey
Booth 11

TAPE Productions Inc.
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Booth 18

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Booth 28

U. S. Bank Charitable Services Group
Minneapolis, Minnesota
Booth 9

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Booth 26

Young - Preston Associates, Inc.
Cloverdale, Virginia
Booth 16

CONFERENCE SPEAKERS

Betsy A. Mangone

Frank Minton

Robert G. Dederick

G. Roger Schoenhals

24th Conference Chair

Betsy A. Mangone is President of Mangone & Co., a charitable gift planning consulting firm. Prior to opening Mangone & Co. in 1996, Ms. Mangone served as Vice President of the University of Colorado Foundation, Inc. Ms. Mangone has 18 years experience in the charitable gift planning field. She serves as a member of the Executive Committee for the American Council on Gift Annuities and is Past President of the National Committee on Planned Giving, a national organization of gift planning professionals. She serves as a member of the Ethics Committee of the National Committee on Planned Giving and as a member of the Editorial Advisory Committee of *The Journal of Gift Planning.* She is an advisor to the Board of Directors of the Colorado Planned Giving Roundtable. She served on the editorial advisory board of the professional publication *Planned Giving Today* and is past chair of the Planned Giving Committee for the Women's Foundation of Colorado. Ms. Mangone serves on the faculty of several nationally recognized planned giving training institutes. She is a frequent speaker at national and international conferences, training sessions and seminars. Ms. Mangone addresses planned giving and estate planning councils around the country and is the author of numerous articles and booklets on philanthropy, trends in planned giving, emerging donor demographics, ethics and planned giving topics.

General Session Speakers

Tal Roberts has served on the board of the American Council on Gift Annuities and its predecessor, Committee on Gift Annuities, since 1977, and has been chairman since 1989. In 1997 he retired as Executive Vice President and Chief Operating Officer of the Baptist Foundation of Texas, where he had served for over 28 years. He holds business and law degrees from Baylor University. He and his wife, Nancy, who have two daughters, have lived in Dallas for 30 years, where Tal is active on various nonprofit boards.

Frank Minton is president of Planned Giving Services, which provides guidance in establishing, administering and marketing planned giving programs by nonprofit organizations. Before entering consulting in 1991, he spent over ten years with the University of Washington, where he served as Director of Planned Giving and Executive Director of Development. Previously he served as Senior Estate Planning Officer and Field Director at Northwestern University, and was a professor at Muskingum College in Ohio. He received M.A. and Ph.D. degrees from the University of Chicago. Dr. Minton has served both as conference chair and president of the National Committee on Planned Giving and received its Distinguished Service Award in 1992. He serves on the board of the American Council on Gift Annuities, directed its survey of gift annuities, was conference chair in 1995, and currently chairs the task force on gift annuity rates. He is a frequent speaker at seminars and conferences, has authored many booklets and articles on planned giving topics, and is co-author of *Planned Giving for Canadians.* He is on the advisory board of *Planned Giving Today*, and is a member of the Seattle Estate Planning Council and the Washington Planned Giving Council.

Robert Dederick is Chief Economist Emeritus to Northern Trust Corporation. In late 1994, he retired as Executive Vice President and Chief Economist at the Northern. From May 1981 until September 1983, Dederick was first Assistant Secretary and then Under Secretary of Commerce for Economic Affairs. He also taught economics at Harvard, Cornell and Boston Universities. A member of Phi Beta Kappa, Dr. Dederick was graduated from Harvard University, where he received his BA, MA and Ph.D. degrees. He is a member of the Congressional Budget Office's panel of Economic Advisors; member, Technical Consultants to the Business Council; fellow and former president of the National Association of Business Economists; and member and past Chairman, Conference of Business Economists.

CONFERENCE SPEAKERS

Conrad Teitell

Nancy L. Perazelli, CFRE

Marc Carmichael

Thomas W. Cullinan

G. Roger Schoenhals of Seattle, Washington, is the publisher and editor of *Planned Giving Today*, a subscription-based, monthly newsletter for gift-planning professionals. Launched in September 1990, the publication has acquired more than 6,000 readers in 50 states and eight Canadian provinces. It is regarded by many as the premier publication in the field of planned giving. He also produces *Gift Planning in Canada*, a supplementary publication for *PGT* subscribers in Canada. In addition, he has published ten books on planned giving and produces a monthly resource guide, *The PGT MarketPlace*. Mr. Schoenhals is the former director of Seattle Pacific Foundation and a past president of the Washington Planned Giving Council. He currently serves as a member of the National Committee on Planned Giving board of directors.

Conrad Teitell is a partner in the Connecticut- and Florida-based law firm of Cummings & Lockwood, resident in the Stamford, Connecticut office. He is an adjunct visiting professor at the University of Miami Law School and is also director of the Philanthropy Tax Institute, where he lectures on taxes, philanthropy and estate planning. Teitell is the author of the five-volume treatise, *Philanthropy and Taxation*, and writes the monthly newsletter, *Taxwise Giving*. He is listed in *The Best Lawyers in America*, is the recipient of NCPG's Distinguished Service Award and is the recipient of the American Law Institute/American Bar Association's Harrison Tweed Award for Special Merit in Continuing Legal Education. Teitell is counsel to the American Council on Gift Annuities.

Introduction to Planned Giving Basics Seminar Speaker

Nancy Perazelli, CFRE has conducted over 260 programs on the subject of wills for churches, organizations and institutions around the country. She co-authored a manual titled *How to Conduct a Successful Wills Seminar*. Ms. Perazelli has spoken widely across the nation to fundraising professionals and executives, support staff, board members, and donors on the benefits of a planned giving program. In addition, she has completed numerous seminars and institutes in the area of charitable giving. In 1988 Ms. Perazelli was appointed Gift Planning Officer for Drake University in Des Moines, Iowa. Formerly, she held the position of Director of Planned Giving for the Catholic Diocese of Des Moines, where she designed and implemented the planned giving program for the diocese. Ms. Perazelli served as President of the Central Iowa Chapter of the National Society of Fund Raising Executives in 1985 and 1986, and in 1986 received the Outstanding Fund Raising Executive Award from the Central Iowa Chapter of the NSFRE.

Breakout Session Speakers

Marc Carmichael has been publisher and director of seminars for R&R Newkirk Company in Chicago, Illinois since 1976. He also serves as publisher of the *Charitable Giving Tax Service*. Carmichael was the 1998 National Committee on Planned Giving President and serves on the board of directors of the Chicago Planned Giving Council. He was chair of the 1996 National Conference on Planned Giving. He has spoken at national fundraising conferences, state bar associations and the National Conference on Financial Planning. Mr. Carmichael is a graduate of the Indiana University School of Law and is a member of the Indiana State Bar Association.

Thomas W. Cullinan is Executive Director of Major and Planned Gift Programs for George Washington University in Washington, DC. He is also on the faculty and advisory board of the National Planned Giving Institute at the College of William and Mary. He is on the board of Charitable Accord, a national organization that lobbies on the federal level to improve the climate for charitable giving in America. He holds business and law degrees from the University of Nebraska and has career experience in the financial services and performance improvement industries.

CONFERENCE SPEAKERS

Pamela Jones Davidson, J.D.

Michael Donegan

André R. Donikian

Ellen G. Estes, LL.B.

Pamela Jones Davidson, J.D. is President of Davidson Gift Design, Bloomington, Indiana, a consulting firm specializing in gift planning, planned giving program design and implementation, and training. Previously, she was a charitable gift planner and consultant with Laura Hansen Dean and Associates, Indianapolis, Indiana for three years. From 1985 through 1996 she was with Indiana University Foundation, leaving that organization as its Executive Director of Planned Giving and Associate Counsel. Ms. Davidson received her undergraduate degree from Indiana University in 1975, and graduated *magna cum laude* from the Indiana University School of Law at Indianapolis in 1979. She has previously been an examiner in the Estate and Gift Tax Division of the Internal Revenue Service, and later practiced business, corporate and probate law with the Indianapolis law firm of Bingham, Summers, Welsh & Spilman before joining the nonprofit sector in 1985. Ms. Davidson was the 1999 President of the National Committee on Planned Giving, and served NCPG in various capacities during her six years on the board, in 1995 as Education Chair, in 1996 as Secretary, and as President Elect in 1998. She is a current board member and past treasurer of the Indiana Chapter of the National Society of Fund Raising Executives. She has served as a board member and past president of the Planned Giving Group of Indiana. Ms. Davidson is a former treasurer of the Monroe County Bar Association, a past president of the Network of Career Women, and a Leadership Bloomington alumna.

Michael Donegan received his B.A. from the University of Denver in 1976. Following 13 years managing in the retail business, he changed to a nonprofit career beginning in 1989 as a loaned executive for United Way. He began his career in planned giving in 1990 at National Jewish Hospital in Denver, responsible for the northeast region of the U.S. as well as all planned giving marketing and contract administration. Mr. Donegan then served as the Planned Giving Director for the American Cancer Society from May 1994 to October 1996, when he was hired by the Denver Zoological Foundation to start a planned giving program.

André R. Donikian is president of Pentera, Inc., a full-service planned giving company in Indianapolis, Indiana. Mr. Donikian has been actively engaged in the planned giving profession since 1969. He has served as advisor to more than 300 charities and educational institutions in the U.S. He is founder and former board member of the Planned Giving Group of Indiana and has served on the board of directors of the National Committee on Planned Giving. Mr. Donikian is a member of the New York Bar.

Ellen G. Estes, LL.B., a graduate of the Yale Law School, started her career as an estate planning and tax attorney. She then became Legal Counsel to the Campaign for Yale, and later served as the first Director of Development of the acclaimed Long Wharf Theatre in Connecticut. Ellen now consults with nonprofit organizations nationwide on major and planned gift matters, and is widely recognized for her no-nonsense, basic seminars, "Planned Giving – Plain and Simple". Ms. Estes is a regular speaker at professional conferences around the country. She is a co-author of the *1998 Practical Guide to Planned Giving,* and also writes the planned giving column for *Contributions*, the bi-monthly newspaper for nonprofit professionals.

William E. Fender, CPA, J.D. is an investment consultant with Innovest Portfolio Solutions, Inc., an independent, fee-only firm that provides services to tax-exempt entities with investment portfolios ranging from $1 million to $500 million. Mr. Fender is a certified public accountant and an attorney and has over 24 years of experience in investment and tax consulting. He has been a frequent lecturer and author on investment, tax and fiduciary related topics. Mr. Fender is a member of the Colorado Planned Giving Roundtable, and is active in its Leave a Legacy campaign. He served on the Planned Giving Advisory Council of the Cleveland Clinic Foundation.

CONFERENCE SPEAKERS

William E. Fender, CPA, J.D.

James E. Gillespie, CFRE

Christopher Hoyt

Melodie A. Knighten

James E. Gillespie, CFRE is president of CommonWealth, a firm that provides comprehensive counsel in the area of planned gift development programs and specializes in training, mentoring and professional development. Mr. Gillespie was chief operating officer of the consulting division of Renaissance Inc. for six years and was a professional development officer for the previous 20 years. He served Junior Achievement and Tri-County Mental Health Foundation in Indianapolis, Indiana, and was recruited to the Indianapolis Symphony Orchestra as Chief Development Officer in 1985. Mr. Gillespie consults with a variety of charitable organizations providing expertise in the design and implementation of planned giving programs; developing a charitable infrastructure for planned giving; training and mentoring staff and volunteers. He is a lead faculty member of The Fund Raising School, a unit of Indiana University's Center on Philanthropy. He also serves as a member of the Center on Philanthropy's Research Committee. Mr. Gillespie has written numerous articles on many aspects of development and philanthropy, and has spoken to over 750 groups of charitable volunteers and professional fundraising executives. He has conducted regular seminars with Renaissance and The Fund Raising School for governing boards, professional advisors and prospective donors. He is a speaker/presenter for the National Society of Fund Raising Executives and the National Committee on Planned Giving.

Christopher Hoyt is a Professor of Law at the University of Missouri (Kansas City) School of Law where he teaches courses in the area of federal income taxation and business organizations. He also serves as legal counsel to the Greater Kansas City Community Foundation. Previously, he was with the law firm of Spencer, Fane, Britt & Browne in Kansas City, Missouri. He received an undergraduate degree in economics from Northwestern University and he received dual law and accounting degrees from the University of Wisconsin. Professor Hoyt is the author of *The Legal Compendium for Community Foundations,* the most widely used legal reference for community foundations. He is Vice-Chair of the American Bar Association's Committee on Lifetime and Testamentary Charitable Gift Planning (Section of Probate and Trust). He is a frequent speaker at legal and educational programs and has been quoted in numerous publications, including *The Wall Street Journal, MONEY Magazine, Forbes Magazine,* and *The Washington Post.*

Melodie A. Knighten is Associate Director of Planned Giving at Georgetown University in Washington, DC. She has developed educational, marketing and stewardship ideas in gift planning more recently for the University System of Maryland where gift plan revenues grew from less than $3 million in 1997 to over $30 million in 1999. She is a frequent author for *Planned Giving Today* and a presenter for starting gift planning programs, bequest and recognition societies, marketing and stewardship. A former board member of the Chesapeake Planned Giving Council, Ms. Knighten now serves with the Executive Committee of Charitable Accord, the Planned Giving Study Group of Washington, DC's PG Days 2000 Committee, and the National Planned Giving Institute's graduate advisors.

Thomas P. Lockerby is Relationship Manager at Kaspick & Company, where he works closely with the firm's charity clients on all aspects of their gift planning programs. Kaspick & Company specializes in planned gift management and administration and currently manages $1.8 billion of planned gift assets for 44 clients nationwide. Before joining Kaspick & Company in 1999, Mr. Lockerby was Vice President at PG Calc Incorporated, a provider of planned gift software and services. He was responsible for client support, training, software testing, and project management. Mr. Lockerby also brings a decade of nonprofit experience to Kaspick & Company, including working for four years as Director of Development Relations at Harvard Business School, where he was responsible for both major and planned gift fund raising. Mr. Lockerby serves as Treasurer of the

CONFERENCE SPEAKERS

Thomas P. Lockerby

Scott R. Lumpkin

Kathryn W. Miree

Gary Pforzheimer

Planned Giving Group of New England. He received his AB from Harvard College in 1987. Lockerby has spoken to the Planned Giving Groups of New England, Connecticut, and the Upper Valley (NH); New England Association for Healthcare Philanthropy; CASE Advanced Planned Giving Conference; and the National Conference on Planned Giving. He has authored and co-authored several articles on planned giving topics in *Planned Giving Today* and the *Journal of Gift Planning.*

Scott R. Lumpkin has directed the University of Denver's planned giving program since 1984 and has a leading role in the University's current $200 million capital campaign. Mr. Lumpkin is a past-president and founding member of the Colorado Planned Giving Roundtable. He served on the Board of Directors of the National Committee on Planned Giving from 1992 through 1994. As Chair of NCPG's Research Committee, Mr. Lumpkin directed and co-authored NCPG's landmark research report: *Planned Giving in the United States: A Survey of Donors.* Mr. Lumpkin has taught continuing education courses on charitable planning strategies for Denver area attorneys, CPA's, trust officers, and financial planners as well as a graduate level course in planned giving. He holds a Bachelor of Science degree in Mathematics and a Masters of Business Administration degree from the University of Denver.

Kathryn W. Miree is President of Kathryn W. Miree & Associates, Inc., a consulting firm that works with nonprofits to develop planned giving programs. Ms. Miree spent 18 years in the trust and investment management business and worked extensively with nonprofits to structure and manage investment pools. Ms. Miree is a past President of the National Committee on Planned Giving, the Alabama Planned Giving Council, and the Estate Planning Council of Birmingham, Inc. In addition to those professional associations, she currently serves on a number of volunteer boards. Ms. Miree is a frequent lecturer and author of a series of books entitled *Building a Planned Giving Program.* Her clients include a variety of nonprofits across the country.

Gary Pforzheimer has been involved in planned giving for over 17 years, first with Harvard University's Planned Giving Office, and then with the company he founded and has led since 1985, PG Calc Incorporated. PG Calc designs, markets and supports software for planned giving marketing and administration. He received his BA and MBA degrees from Harvard University in 1984 and 1991 respectively. In May of 1995, Pforzheimer became the seventh recipient of the David M. Donaldson Distinguished Service Award, an award given by the Planned Giving Group of New England to individuals for their special contribution and distinguished service to the planned giving community. He has served as Vice President for Programming, Treasurer, and Director of Communications for the Planned Giving Group of New England.

James B. Potter was a planned giving executive for 20 years from 1970-1990, with two national charities, the Presbyterian Church (USA) Foundation and the American Lung Association. After five years of part-time consulting work, he became a full-time consultant in 1990, and is currently President of Planned Giving Resources in Alexandria, Virginia. He has served on the board of the American Council on Gift Annuities since 1974, and has chaired their State Regulations Committee since 1989. Mr. Potter was awarded the 1999 Distinguished Service Award by the Planned Giving Study Group of Washington DC, in May 1999.

Clinton A. Schroeder is an experienced tax lawyer, Bar Association leader, a Fellow of the American College of Tax Counsel, a former member of the ABA House of Delegates, former Chairperson of Tax Section of Minnesota State Bar Association and current Vice Chair of the American Council on Gift Annuities. He chairs the Tax Department of the law firm of Gray, Plant, Mooty, Mooty & Bennett, P.A. in Minneapolis, Minnesota. Mr.

CONFERENCE SPEAKERS

James B. Potter

Clinton A. Schroeder

A. Charles Schultz, J.D.

Terry L. Simmons

Schroeder has been a frequent seminar leader at tax institutes at both the state and national level. He is a past President of both Minnesota and Hennepin County Bar Associations. Mr. Schroeder is also very active in community organizations and is a past Chair of the Board of The Minneapolis Foundation and Fairview Hospital and HealthCare and since 1982 has served as Vice Chair of Minnesota Lawyers Mutual Insurance Company.

A. Charles Schultz, J.D., is a California attorney who previously was in private practice. He began his work in the field of planned giving with the Lutheran Church – Missouri Synod Foundation in St. Louis. For the past 15 years he has been President of Comdel, Inc. and is the author of the Crescendo Planned Giving Software System. In addition to publishing the *Crescendo Notes* quarterly newsletter, he is on the editorial advisory board for a monthly newsletter, *Planned Giving Today* and for a monthly newsletter for financial planners called *Financial Advisor Pro.* Schultz teaches Crescendo seminars and assists a group of business owner/trustees of major charities in charitable estate planning. He is a board member of an area charity, the Stewardship Development Foundation, and is on the Technical Advisory Committee of the Ventura County Community Foundation. He is past President of the Ventura County Planned Giving Roundtable. Schultz received his law degree from the University of Michigan, with further tax specialization training at Washington University in St. Louis, Missouri.

Terry L. Simmons practices estate planning, charitable gift planning, general tax and exempt organizations law in the 250-lawyer Dallas, Texas based firm of Thompson & Knight, LLP. He is co-editor and co-publisher of *Charitable Gift Planning News,* a monthly national newsletter for attorneys, accountants, planned giving officers, life underwriters and financial planners covering the planned giving field. He has B.B.A. and J.D. degrees from Baylor University and an LL. M. (Master of Laws in taxation) degree from Southern Methodist University School of Law. Mr. Simmons has spoken to hundreds of groups regarding the tax implications of gifts to charity, and has written widely on the same subject. Mr. Simmons is past president of the National Committee on Planned Giving and presently serves on various nonprofit boards. He was named the "1994 Planned Giving Professional of the Year" by *Planned Giving Today.* Recently, as President of Charitable Accord, he conceived of and coordinated the effort to enact legislation in the Texas Legislature to clarify the rights of charities to serve as trustee of charitable trusts and to issue charitable gift annuities. Likewise, he conceived of and led the successful efforts in Congress to enact the Philanthropy Protection Act of 1995 and the Charitable Gift Annuity Antitrust Relief Act of 1995. For his efforts he was awarded the David M. Donaldson Distinguished Service Award in May 1996 by the Planned Giving Group of New England. He is also the 1996 recipient of the National Committee on Planned Giving's Distinguished Service Award. In September 1997, Simmons received the first Terry L. Simmons Courage Award from the Tampa Bay Area Planned Giving Council. He was named Executive of the Year by *The NonProfit Times* in November 1997.

Peter J. Ticconi, Jr. is the Senior Planned Giving Advisor at Johns Hopkins University leading a team of five planned giving staff professionals. Before coming to Hopkins in August 1997, he was director of planned giving at Williams College for nearly 10 years. He holds both a Bachelor of Science degree, and a master's degree in education from St. Lawrence University, where he was director of planned giving for nine years before going to Williams in 1988. Ticconi began his fundraising career in 1969 at another alma mater, Northfield Mt. Hermon School and in 1973 he began his work in planned giving, first at Syracuse University and then at Connecticut College. He has been a speaker for many planned giving councils as well as the C.A.S.E. Advanced Planned Giving Conference. He is the author of articles on planned giving published by Prentice Hall and *Planned Giving Today.* He currently serves on the Chesapeake Planned Giving Council Board of Advisors, has served on the Planned Giving Group of New England Board of Directors, and is past president of the CANARAS Planned Giving Council, which he helped to establish in 1974.

CONFERENCE SPEAKERS

Peter J. Ticconi, Jr.

Jonathan G. Tidd

Gerald B. Treacy, Jr.

Craig Wruck

Jonathan G. Tidd is an attorney whose practice is limited to advising organizations on charitable gift planning issues. He is a member of the Connecticut, Illinois, Indiana and New York Bars. His clients include a wide range of educational, health care, arts, human rights and social service organizations. His articles on charitable gift planning have appeared in *The Journal of Taxation; Estate Planning; Taxes – The Tax Magazine; Trusts & Estates* and other professional journals. Formerly, he served as planned giving director for New York University. His office is in West Simsbury, Connecticut.

Gerald B. Treacy, Jr. is the managing member of Treacy Law Group, pllc, with offices located in Bellevue and Seattle, Washington. With over 17 years of experience, Mr. Treacy is the author of numerous texts and articles in the fields of charitable giving, charitable organizations, estate and business succession planning, probate and guardianship, and he speaks nationally on these topics. He has headed the estate planning departments in Washington State, Washington DC, Virginia and Maryland for two of the nation's largest law firms, McGuire Woods Battle & Boothe, and Perkins Coie. He is a fellow of the American College of Trust and Estate Counsel (ACTEC), and is listed in *Who's Who in America.*

Craig C. Wruck joined U.S. Bank recently to found the Charitable Management Group, a newly created division focusing on the needs of individual donors and charitable organizations. Prior to joining the bank he was vice president of development for The Saint Paul Foundation, one of the ten largest community foundations in the country. Before that he was with the University of Minnesota Foundation for 14 years serving as the director of gift planning. His career in development stretches over more than 23 years and includes experience at William Mitchell College of Law in St. Paul, Minnesota, and Claremont University Center in Claremont, California. Mr. Wruck is past president of the National Committee on Planned Giving, currently serves as Chair of the Government Relations Committee for NCPG, and in 1993 was chair of the Sixth National Conference on Planned Giving. He was the founding chair of the Minnesota Planned Giving Council. Mr. Wruck holds an MBA from the University of St. Thomas and a bachelor's degree in journalism from the University of Utah.

NOTES

NOTES

Gateway to the 21st Century

WORKING EFFECTIVELY IN GIFT PLANNING: SHOW ME!

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All gift planning officers bring their own skills, methods, and work ethic to their jobs. We quite readily acknowledge that style, personality, energy, and experience influence how our time is spent. The culture of our charitable organizations, our colleagues, and the people with whom we interact also dictate accommodations in order to fit into the flow.

Each gift planning officer (GPO) has many reasons for managing his or her activities with an eye on superior performance. It should be expected that we can work effectively with multiple priorities, so things are accomplished at the appropriate intervals so that our time is, in fact, well spent.

Performance improvement experts tell us that a strategic plan provides the best context for good results. In other words, the worker who understands the overarching goals and objectives for that job — and then breaks down those long range targets into achievable short term tasks that support such targets — is in a position to turn in the most effective job performance, typically with less error, rework, and downtime.

Our challenge is to maximize the output of our time on the job. We know that a GPO is supposed to bring in planned gift commitments somehow, so where might we look to determine how that job is to be done?

Job description

One obvious starting point is the job description that contains our marching orders, so to speak. A well-written position description will include the purpose for the position and sets out the duties and responsibilities that individual holds. It also links the position within the organization, describing the qualifications of the holder, supervision received and given, and other factors that relate to the day-to-day activities of the employee.

What you must do The detail of the assigned responsibilities should give a clear view of the tasks to be performed. These will likely be linked to performance reviews, and in well-managed organizations they are coordinated with the position descriptions of others around whom you work and interact.

An occasional reading of your job description provides a good reminder of the general expectation management holds for you. It may be clear, it may be confused, but it does describe the basics of what you must do to hold the position for any length of time.

What you can do The basic job description also empowers the holder to do certain things, either directly or indirectly. This fact is invaluable as you chart a course for the next interval of time you spend working and managing your activities.

Reactive service

What happens when our time is not our own? One approach is to actually manage your time by scheduling opportunities for the reactive service you provide to others.

Inquiries and referrals If the GPO is doing things right, volunteers, donors, and other development colleagues will be calling to refer new prospects and opportunities. A good marketing program will also develop a fairly predictable flow of inquiries and questions, further opportunities to educate and inform those who will consider making a planned gift to the charity.

Particularly in the weeks following an advertisement, the GPO does well to set aside time to respond to the inquiries that will be generated. The same goes for a referral. Typically, it is a satisfied donor, board member, volunteer, or professional who provides the GPO with such an opportunity to contact someone known or suspected to be a prospect. Prompt action is essential to avoid disappointing both the referrer and the prospect (not to mention your management).

Support to your colleagues, management, and volunteers Due to the specialized knowledge the GPO holds, it is common for any number of internal staff to ask technical questions or pick your brain about new legislation, market conditions, and trends. The GPO becomes a resource for solving problems and working with other aspects of the charity. Again, it is wise for the GPO to schedule time that will allow giving appropriate and timely responses to those who look to her for answers to questions, however simple or complex they may be.

Program administration Whether the GPO is running the administrative aspects of a planned giving operation or providing information to the person with that job, it is critical that she saves time to competently handle the administrative aspects of her job.

Basic information needs to be provided to capture new prospects, document calls, track responses to marketing initiatives, conduct research, develop proposals, and report on progress. For many GPOs a favorite activity is the direct, face-to-face contact with the prospect, so key administrative tasks may not get one's best attention.

Annual objectives: Numbers and dollars

Most GPOs will encounter formal or informal performance objectives that are negotiated with or assigned by their management. Sometimes fair and sometimes not, these objectives tend to be very tangible, measurable, and almost always expressed in absolute numbers and dollars.

It is important to recognize that multiple objectives are often the best way to evaluate progress in any complex assignment (such as the management of a successful planned giving operation). Stated another way, the complicated job done by the GPO is most fairly evaluated on several levels using an assortment of measurements.

Most of us know the exquisite little inconvenience known as a financial goal. And whether they are realistic or not, we must answer the question, "What do I have to do to make my numbers?"

Current and deferred gift commitments It is rare that a GPO will not be given the assignment of delivering a certain number new gift commitments, either current or deferred or both, in a particular cycle. Perhaps as a quarterly or an annual goal, the GPO is to bring in a certain number of new commitments, or a certain total value of gifts, or both. These will then be documented and tracked for the purposes of counting up the success of the GPO's function and satisfaction of this annual objective.

Personal meetings, proposals Many development shops also measure the number of prospect and donor meetings in which the GPO participates. Getting out of the office is crucial, as we all know. As a result of those meetings and other direct donor contact you might also expect to count up the number of gift proposals that you develop and present in pursuit of new gift commitments.

Prospect identification Most charities look to the GPO to find and qualify new prospects for important charitable gifts supporting the mission. How one does that is beyond the scope of this session (and discussed in other addresses in this conference). The important thing to take from this is that the number

of suspects transformed into prospects is an essential and tangible measure of the effectiveness of the GPO. In some development operations it is every bit as important as the financial goals.

Communications and marketing Because marketing is rarely free, because most charities (nearly by definition?) have scarce resources, and because we want to understand the effectiveness of our outreach, the skilled GPO will keep track of the communications that yield better results. It is common practice to code direct mail and advertising to see which messages and media are the most effective in producing the desired responses. This provides useful data from which to allocate resources (such as financial budgets and GPO's time) in subsequent accounting periods. Most charities that have been in the planned giving arena for some time will have well established objectives for their marketing materials.

Seminars, workshops, and presentations It is not uncommon for a GPO to be assigned to conduct a certain number of stand-up presentations for prospects, donors, trustees, staff, and affiliated professionals. The targets might be the number of sessions, the total attendees, the variety of audiences, or the personal meetings that result.

2 Productivity matters

There are few occupational pursuits where on-the-job performance is so loosely understood or defined as in the field of planned giving. We have all heard about programs started and discontinued after a year or two because there were no obvious results. Tales circulate about GPOs who claimed many new gifts yet were terminated because they were unable to point to significant tangible outcomes.

In an era of heightened accountability, trustees have to know that their staff and expenditures are allocated in manners that will yield results in support of the mission. Donors and their advisors are increasingly demanding stewardship reports and reassurance of capable management. Given this environment, how is an individual GPO to know whether his or her time is well spent?

Results you must measure

There are certain results that you must measure, and these are the tangible and perhaps obvious products of the work of each GPO. They are often the leading metrics in annual objectives . . . the yield most frequently mentioned in annual reports . . . the stuff upon which campaigns and resumes are built.

Realized net gift income This simple figure is the literal "bottom line" sought by every charity and should therefor be Job One for the GPO. Whether measured annually or cumulatively, the impact of planned gifts on this figure will determine how long gift planning will be a focus for the organization and how many resources the GPO will be given in pursuit of realized net gift income as a result of the planned giving operation.

Expectancies discovered These are the unrealized gifts, those future contributions related to irrevocable and revocable beneficiary designations that are especially important to the GPO and her charity. The prevailing sentiment in our field is that even the best GPO will uncover only a limited number of these expectancies, perhaps one-fifth at best, because most donors wish to remain anonymous due to privacy or unwanted solicitation concerns.

Irrevocable gift commitments secured It is important that a charity learns when donors have made irrevocable gifts that will benefit that charity. Some are able to borrow against those future gifts, others budget with the anticipated gift income in mind, particularly with certain capital projects. In some jurisdictions it may be required for the charity be notified about the expectancy.

Other numbers and dollars Depending on the maturity of the planned giving effort and the sophistication of the accounting system, many other types of quantifiable data may be important to you. Average gift value (segmented by the gift plan used and type of property funding it) can be invaluable when setting a marketing budget.

Process activity that yields tangible results

It should be obvious by now that every GPO does many things toward the goals of increasing gift income, expectancies, and new commitments. Especially for emerging programs and less-seasoned development staffs, the journey to sustainable levels of planned gift income seems long. Unfortunately, the GPO has not always been properly provisioned reach the destination.

If you and your charity believe there is a nexus between a well-run planned gift effort and gift income, then you instinctively know that good process activities are essential to productivity.

Responses to marketing and communication Measure and report the quantity and quality of prospect responses to your advertisements, direct mail, special promotions, recognition events, and contacts with prospects and donors. Knowing how many people (and who) were reached and the actions that followed give hard evidence of successful messages.

Appointments with prospects Reporting on direct and highly substantive contacts you have with prospects is a key indicator of relationship development and cultivation. It is also a prerequisite for preparing gift proposals and solicitations that are likely to yield successful results.

Proposals delivered This is an important metric, because so many managers believe someone must ask before the institution receives a gift. Whether a proposal precedes or contains a solicitation, the assumption is that a well-crafted appeal demonstrates clear progress toward a gift commitment.

Advisor contacts Advisors come in many disciplines: Estate planning attorneys, trust officers, accountants, real estate professionals, business brokers, appraisers, financial planners, life insurance agents and brokers, and retirement benefits specialists. You are wise to be known in these circles, and the fact that your organization actively pursues planned gifts should be common knowledge to professionals whose clients make charitable gifts.

Presentations made Some charities generate prospects largely through seminars and workshops that inform people about the charity's work or the benefits of particular giving techniques. The GPO is advised to report the number of presentations, as well as the attendance, responses, and prospects identified through these events.

Coached contacts Contacts with planned gift prospects may occur through trustees, volunteers, advisors or other colleagues, particularly when the GPO is unable to have direct contact with an individual prospect. It often falls to the GPO to guide those conversations and assist the intermediary with information and strategies that move the prospect toward a proposal. It is usually important for management to know when the GPO has successfully coached someone.

Prospect research developed Learning about prospects can come from personal interactions and by conducting research from many other sources. Information about prospects that can be captured and utilized by the GPO and the charity can be important for a cultivation strategy and beyond.

Rules of thumb on productivity

People tend to express performance expectations in simple, memorable statements and employees find it useful to have those expectations boiled down so they can recognize the target and achieve the goals set for them. As a result, oversimplified yet measurable productivity goals exist far too often in our complex occupation. Here are a few shrink-to-fit standards that may — or may not — wash.

Out-of-the-office half of the time It seems intuitively obvious that an active GPO will be working among prospects, donors and their advisors as often as possible.

Know that some GPOs feel it takes two to three hours of preparation and recap for each hour of donor meetings. Travel budgets, time between appointments, and dispersion of prospects may make this measure imperfect. Secretarial and technological support (such as voice mail, cellular phones, a laptop computer, and your ability to file remote contact reports, or generate proposals on the road) may make or break the accomplishment of this productivity goal.

Dollars-per-year raised One of the most common metrics across many institutions, the standard determination of whether a development officer is "paying for herself" is netted to a dollar amount, say $1.0 million in gift income (which is not that uncommon in higher education).

Consider whether these dollars are measured on a net present value or not, or how to factor irrevocable commitments against the revocable ones. As a single objective, this one obviously negates, subverts, or depreciates many of the process activities previously discussed.

Annual/monthly/weekly prospect meetings This measurement is usually more realistic than the out-of-the-office measure simply because it is tied to desired activity (rather than location).

It may not be ideal for the GPO, however, compared to what other development officers are asked to do. For example, development staff at Columbia University are expected to have about 200 prospect meetings each year while the University of Maryland College Park recently expected an average of 20 each month from major gift officers. Some institutions are double those levels, others seek less than half.

The complexity of the GPO's work tends to reduce the absolute number of meetings in any given interval. It is also understood that there are more discovery and follow-up meetings with so-called planned gift prospects.

Cold calls Some GPOs are asked to conduct prospecting activity over the phone and in person with individuals who have not been previously qualified as planned gift prospects. Others will initiate contacts with long-standing donors, or marketing respondents who have not asked to be contacted, or others who show inclinations or demographic characteristics that seem to imply they could be prospects for planned gifts.

Typically, the GPO will be assigned a target number of cold calls to make in a given period. The outcome from those contacts may be less important that the fact that the outbound calls were made. Perhaps the most convenient comparison for this activity is the prospecting done by stockbrokers, known to be a "numbers game," where a glib and determined broker could probably gain a couple of new accounts for every 100 cold calls made by telephone.

Call reports and contact management A next step up from the number of prospect meetings, this measurement requires the filing of a document memorializing the contact. If one were obligated to complete 15 contacts each month, then this system would have the GPO turn in 15 call reports.

If the GPO is actively visiting with prospects and donors about their charitable objectives, there is no better way to assemble that intelligence than in written form. A call report provides a lasting memory of the meeting and can be read by others (management, successors, volunteers, etc.). Some organizations require the filing of a contact report; more than one institution requires a contact report on file before authorizing reimbursement for expenses related to that call.

Managers, seeing the value in consistent calls and contacts, use this information to manage a pool of prospects. There may be no better method than linking a contact database with a calendar, allowing the GPO to schedule next steps and actions related to any stage of contact (relationship, cultivation, solicitation, or stewardship) with any number of prospects.

Moves Whether handled formally or informally (using a purchased system or one that is hand-made), more development operations are relying on techniques used in commercial ventures that assist sales staff make the most out of their customer base. Though development — and especially gift planning — is *not* sales work, the handling of prospects and managing our communications and relationships with them can be adapted from proven systems from other fields.

On the macro level, one views her pool of prospects and categorizes them typically in four or five stages of readiness related to their ability to commit to a planned gift. This is the concept of a pipeline, where the GPO will identify her top number of prospects (say, the top 110, or best 200, or elite 80) and attempt to move a sufficient number toward the appropriate gift commitment. Done right, personalized stewardship then begins and the cycle repeats itself.

The GPO applies a portion of her time each week/month/quarter/year working in each segment with the idea that a fair proportion of the prospects she works with can move through the continuum. The result is that some of each category of prospects will, as a result of the GPO's work, tend to move to the next stage of readiness with respect to their gift commitment.

This represents the most comprehensive rule of thumb on productivity, requiring the most activity and reporting. Yet many gift planners object to the notion advanced by some managers that prospects could be somehow moved along the decision path.

We resist a performance measurement that holds us accountable for things entirely beyond our control. (People do not often jump into estate planning or seek out their attorney following a visit from their charity.) And consider this: Attorneys routinely prepare wills and trust documents that would-be clients fail to execute and for which they never pay.

In truth, most recognize that the work of the GPO will reflect deliberate and thoughtful effort to educate, inform, and motivate their donors and prospects toward actions that will support the charitable objectives of the individual. The prospect is the one in control of the timing of a decision to move forward, and the GPO will exploit (meant in the legal, not criminal, sense) an opportunity when the prospect is disposed toward that next step.

Times salary-plus-benefits Back to the dollar-driven measurements, and one often viewed by trustees with an eye toward the bottom line, this look at productivity has an air of simplicity. Someone is seen as cost effective if they didn't "cost" anything to the charitable organization and in fact brought in some multiple of their compensation.

A number of colleges and national charities suggest that a GPO needs to bring in gift commitments valued at three to four times her salary-plus-benefits within the first three years on the job. Example: A

GPO is paid at the rate of $70,000 and has employer-paid insurance and other benefits valued at 20% of salary, then the expectation is that the GPO will be generating gift income in the range of $250,000 to $350,000 annually within three years.

An obvious question relates to how those gifts are valued (net present value, or face amount) and whether they are current or deferred or both. Other factors, such as dispersion of prospects, prior contacts by development staff, giving history, will influence how quickly any GPO comes "on stream" and begins to be cost effective.

Return on investment (cost per dollar raised) It is unfortunate that so many people compare charities' cost-per-dollar-raised as a basic measurement of fund raising effectiveness. We recognize the inherent inequity to compare charities this way. For instance, consider a national charity with an average gift of $150 from a direct mail base. It is not fair to measure that against a regional private college with a highly developed board solicitation strategy and an average annual fund contribution of $1,500, or the local charity that relies on a single event to generate the bulk of its gift income for the entire year.

Still, GPOs are quick to point out that a 20:1 ratio in many established planned gift operations is easily attainable, and this is usually quite favorable compared to the other development methods (direct mail appeals, events, etc.). In other development shops a 50:1 or 100:1 ratio would occur in a so-called bad year.

______ months to become effective Most charities expect that newly hired GPOs will establish themselves and become truly effective within 12 to 18 months. Others permit three to five years for someone to become fully effective. The distinction is likely to be definitional: What is effective? What is the difference between *truly* and *fully* effective? What is the starting point for the GPO: A mature, fully designed planned gift initiative, or a start-up?

Factors to consider

The very act of measuring productivity implies underlying factors and conditions that will make some measurements more predictive and illuminating than others. Before advancing a single measure or set of measurements in an all-or-nothing effort to define productivity, the GPO will look to things that will impact performance on the job.

Responsiveness and reaction time If the GPO is full time in the planned giving function, her responsiveness is primarily one of time management. Are the responsibilities of the job such that she can provide answers to questions and inquiries that meets the expectations of her prospects, donors, and colleagues? If the person handling planned giving is also responsible for other work (as is often the case), then the measurements must fit the job.

Quality versus quantity I know of a GPO who actually delivered more proposals last year than he had meetings with prospects. Another major gifts officer regularly exceeds her targets for donor calls by more than 50%, yet repeatedly fails to achieve her financial targets. On one level this looks like good performance, but in the real world these seasoned staff members are not getting the job done.

Immediate, intermediate, and long-term horizons On one hand we are working with gifts that will be realized in increments literally measured by a lifetime. Yet, it is important to our institutions that our efforts generate dollars sooner rather than later, that our efforts yield a blend of irrevocable and revocable gifts, and that we strike a balance between current and deferred planned gifts. It is therefor important to break down that time into intermediate (annual) and immediate (monthly) horizons.

Locations of prospects and access to them The location of your prospects and your ability to access them is key. Are your prospects located in a senior care facility operated by your charity across the street from your office? Do you serve an area from the Dakotas to Texas? Are 95% of your grateful patients from other states? Are many of your most affluent parishioners considered snowbirds on South Padre Island?

Have you inherited a pool of prospects from a retiring GPO who has managed them well for the past ten years? When was the last time most of your prospects were contacted by your institution? Was that contact a positive one?

Budget considerations Deferred gift programs sometimes have their budgets deferred, too. Scarce financial resources tend to be allocated to necessities and (despite our persuasive arguments to the contrary) fast money is often considered a necessity. Planned giving is not alchemy, though the funding for some planned giving programs might make you think it is.

The other budget is time. What is the right amount of time necessary to be productive, and can you realistically carve out the right amounts of time needed to succeed?

Best laid plans

No matter how organized, disciplined, and committed one is to her work, things will happen to throw her off the track of meeting productivity goals. When setting plans to meet objectives, remember those things that can (and will) get in the way and anticipate them. Some people even build in contingencies that use these events to their advantage.

Interruptions, and blocks of time Telephone calls, drop-in guests, impromptu meetings with suddenly available volunteers . . . these occur with such regularity that it only makes sense to be realistic about them when scheduling work in pursuit of performance objectives.

Writing a letter might take ten minutes, and a cogent proposal might devour five hours. For you, conducting prospect research might mean filing a request three days in advance, or it might require you to spend more than a day gathering the right information so you can make the most of next week's face-to-face meeting.

Turnover in the field Development work is challenging, but the troubling amount of turnover that is seen among generalists in development also permeates the field of gift planning. Sometimes it is the GPO who is moving up as others move out. Colleagues' job changes can influence your achievement of some performance objectives, as you may take on some of their assignments along the way or need to recalibrate strategies and relationships.

Unfortunately or fortunately (depending on your point-of-view), our donors and prospects have become somewhat accustomed to these changes and they can be forgiving. However, this does not diminish the time it takes to establish new relationships and restart the cultivation process.

Changes in management and management priorities Performance objectives tend to be negotiated or set by your immediate manager and are normally done in the context of the marketing, development, and budget plans for the division or organization. Management changes due to reassignment, resignation, or reorganization regularly cause development plans to be revised. Performance goals beg for revision when this happens.

External factors such as the loss of a primary funding source, an unanticipated mission-related priority, or adverse financial circumstances can cause a shift in priorities that can interrupt or undermine a planned giving initiative. If the rules change in the middle of the plan, the GPO will want to renegotiate the performance measures.

Changing circumstances and random events Expect the unexpected. Murphy's Law is a part of daily life, and the wise GPO builds in a certain amount of uncertainty and adversity into their work plans.

3 Controlling your efforts and tracking progress

All of these productivity measures, results, objectives, time management skills may be a lot for the typical GPO to digest. A fair proportion of folks in our field do not have the practical experience gained by others who may have worked in sales, marketing, and other business pursuits.

Planning intervals

Making optimal use of your time requires planning and forethought. Just as the GPO asks prospects to give attention to their priorities and work toward action, so too must we fill the time available with productive efforts.

Business plan The planned gifts initiative for your organization may become (or may be now) the single most important method for generating gift income. Some organizations literally could not exist without planned gift income, and others would be vastly different in the services they deliver. Since your program can be essential to the charity and the people you serve, it only seems appropriate to establish a formal business plan for it.

A business plan reflects a long-term strategy for achieving important goals, and a plan spanning five years is common. Where do you want your program to go into the next century?

Annual plan This is developed in support of the business plan. The annual plan is typically coordinated with (or incorporates) marketing and budget plans for the year. Ideally, it also provides the right goals and measurements to make accountability easy. This can be especially important to managers and trustees.

Quarterly plan Especially because the GPO's work is often oriented to the future, I find that a quarterly review of activity and progress is essential to stay on track with annual goals. It is a chance to assess how you are doing and make adjustments needed to perform at your best.

Monthly, weekly, and daily schedules You might love or hate these tools, depending on your preferences for organization, list making, and devotion to a calendar. Most successful GPOs, due to travel commitments, budget considerations, and heavy meeting schedules both in and out of the office find they need to plan their time carefully. Such tools help to fill our days with productive work, sets aside blocks of time where needed, and helps us reach the number of people we need to in order to meet performance objectives.

Prospect ledger

Whether our organizations provide an extensive computer database or we keep names of your prospects on a handwritten page, it is essential that we identify and compile the names of those individuals we expect to be contacting.

Listing of prospects by name, plan, and value This is the stuff of basic identification. We tabulate information about the who, what, when, and how much so we can add up our prospects periodically and identify their accumulated interests in certain types of gift techniques and the types of property they expect to use to fund them.

Note status changes as they occur When a prospect moves from relationship to cultivation . . . to solicitation . . . to stewardship, this should be noted on the ledger. Essentially, we note the progress we are making in leading the prospect toward the desired outcome, a gift commitment to our organization.

Note valuation changes as they become firm Working with prospects often involves best guesses about the amount of their gifts. One GPO I know always records an unspecified gift annuity inquiry at the $25,000 level because it is that charity's minimum requirement for funding a gift annuity. Where the amount of a revocable gift is undeclared by the donor, I have always found it useful to note beneficiary designations to have net values of one dollar and face amounts of $10,000. (The $1 allows it to be added on the spreadsheet, and a vast majority of the gifts by will, living trust, and other beneficiary designations are realized above $10,000.)

It is important to track net present values as well as their higher current (or face) values, primarily because our business offices need to note this information as well. Anyone participating in campaign knows this, and our institutions often compare results with others.

Feeds reports for both prospect management and results By identifying the interests of your prospects, quantifying their values, and noting progress through the pipeline, you will be able to calculate some of the tangible outcomes from your work on a regular interval.

Activity reports

Someone once said, "Success always occurs in private, and failure happens in full view." Let's do something to change that axiom.

There are too many GPOs who labor without a clear indication of whether they are succeeding or failing. Often the hope is that continued application of staff and funding will yield *something* at *some time* in the future.

It is probably a given that our organizations will be forever totaling up gifts and their values. What is equally important, I have found, is highlighting all of the process activity that we do to encourage those tangible results. An activity report, regularly filed, is a simple and effective tool to express the work that is done.

Based on process activities Our report contains a series of brief narratives about prospect contacts, research, proposal development, and professional development. Instead of a dull listing of all things done during the course of the month, this report deliberately highlights items of special importance that we want management and trustees to see.

Such a report will describe good news and adversities, opportunities exploited and lost, and each listing is a concise explanation of why it is important. I have found that a month's work for a GPO is usually compiled in a one- or two-page report.

Report monthly, quarterly, and annually It is best sent to management quarterly, at least, often with a summary of financial results. These are easily compiled into an annual format for fiscal year reports and annual performance and budget reviews.

4 Outcomes

If one is willing to be measured against fair performance objectives and willing to account for the way time is spent, and if those objectives and the tasks performed to satisfy them are designed to yield the desired results, then success lies in fulfillment of the plans.

What gets measured gets managed

It is a truism of performance improvement that we take care of the things about which we are held accountable. The GPO knows that her field is filled with estimates and gift commitments that are intransigent, hard to define, and almost impossible to value. Many of the fruits of our labor will be realized at an unknown time.

People who love ambiguity will not embrace many of the ideas advanced here. Those who want enhanced job security, job satisfaction, and the ability to weather adversities will find rational measures to lift their programs to higher levels of professionalism and effectiveness.

Organization The simple act of measurement is an act of organization. When the GPO accepts that the number of gift proposals is a meaningful measure, she can organize her time to make certain she works to meet the objective for proposals. Those tasks that are not measured are, by definition, less important in the eyes of management. It really is just that simple.

Focus Measurement against objectives is perhaps the strongest signal of what needs to be done and in which priority. The GPO is able to focus on what is important as far as the performance measures dictate.

Flexibility Performance measures need to be dynamic, reflecting the changing nature of the work and external circumstances that impact performance. A one-year 25% drop in the Dow Jones Industrial Average would likely generate a lot of forgiveness as most GPOs could fall short of their targets for new gift commitments. Conversely, the emergence of new opportunities (like the establishment of a gift annuity program, or tax law changes permitting tax-advantaged rollovers from retirement plans) can lead to increased goals.

What gets managed gets done

Good people doing important work want to achieve results. Guided through their tasks over regular intervals, it is the rule rather than the exception that they can attain their objectives.

Prioritization If we know where the emphasis needs to be (for example, prospect identification) we are able to allocate more time to that activity due to its enhanced current priority. The relief agency overwhelmed by war, famine, or natural disaster will manage its development efforts to generate more current gifts to meet an immediate need. As a crisis fades, priorities shift.

Balance Having more than one outcome being managed also helps the GPO balance the time spent on different tasks. While for most the process of securing gift commitments as an outcome of solicitation is one of the top priorities, so too is the need to cultivate prospects that can make those commitments in the next six months. The better GPO spends time at both tasks at regular intervals.

Effectiveness Some object to being directed into certain tasks or areas. After all, many GPOs have been successful by being reactive, going with the flow, and handling opportunities as they come along. A clear majority of gift planning practitioners working today have less than three years of experience in the field, and these management tools might assist the less experienced practitioner to become effective sooner.

Final thoughts on accountability and professionalism

A goal-oriented GPO can work within a set of objectives and measurements that reflect and drive high performance. And it is important that these objectives and tasks be placed into context in the development operation.

What is the historical average value of gifts at your organization, and what types of gift plans have been used? Are there opportunities for multi-level commitments from certain prospects? Is there adequate access to prospects, the time and money to travel to see them, and a reasonable chance for success? Is there an adequate referral network in place, or the time to establish one?

The best people practicing in our field work toward goals on a weekly or monthly basis. They find ways to obtain gift commitments from prospects (and where it applies, allocate efforts toward both current and deferred gifts).

They seek perhaps 10 appointments weekly, knowing that some proportion will not take place. The better GPOs have the pipeline working for them, so they will soon have the next proposal to deliver. They are deliberate, methodical, and predictable . . . and they are prepared to drop everything fairly often.

They maintain contacts with other professionals, they attend as many meetings as needed to remain effective without wasting time, they network with colleagues, learn new technology and participate in continuing education. They take time for planning, reflection, and analysis.

The time we spend on gift planning is limited. Some of the gifts we facilitate will arrive soon, and some will come years after we have left our employer, or left the field, or even left the Earth.

The way we manage our time and the resources given to us can yield far more than mere continued employment in the service of our charitable institutions. Given the opportunity to assist people in making their most important charitable gifts, it falls to the GPO to be as effective as possible in the time given.

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THE RAINY DAY UNITRUST

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Profit-Sharing Plan

Assuming D, age 50, were to contribute $30,000 a year to a profit-sharing plan until retirement in 20 years and the plan assets grow at 10% a year, then

YR	Year-End Principal (BUILDUP)	Capital Apprec. (10%)	Income (0%)	Before-Tax Ben. Inc.	After-Tax Ben. Inc. (39.6%)
0	$30,000				
1	63,000	$3,000	$0	$0	$0
2	99,300	6,300	0	0	0
3	139,230	9,930	0	0	0
18	1,534,773	136,798	0	0	0
19	1,718,250	153,477	0	0	0
		(0x%)	(10%)		
20	1,718,250	0	171,825	171,825	103,782
21	1,718,250	0	171,825	171,825	103,782
22	1,718,250	0	171,825	171,825	103,782
23	1,718,250	0	171,825	171,825	103,782
24	1,718,250	0	171,825	171,825	103,782
25	1,718,250	0	171,825	171,825	103,782
26	1,718,250	0	171,825	171,825	103,782
27	1,718,250	0	171,825	171,825	103,782
28	1,718,250	0	171,825	171,825	103,782
29	1,718,250	0	171,825	171,825	103,782
30	1,718,250	0	171,825	171,825	103,782
31	1,718,250	0	171,825	171,825	103,782
32	1,718,250	0	171,825	171,825	103,782
33	1,718,250	0	171,825	171,825	103,782
TOT	**$1,718,250**	**$1,118,250**	**$2,405,550**	**$2,405,550**	**$1,452,952**
PV (5.8%)	$267,337			$553,991	$334,611

Profit-Sharing Plan

Total contributions 20 x $30,000	$ 600,000
At 10% annual growth rate	$1,718,250
Total lifetime distributions to D	$2,405,550
After-tax benefit (39.6%)	$1,452,952
Present value (5.8%) (1)	$ 334,611
Available for distribution to child	$1,718,250
Present value	$ 267,337
After-estate & income tax benefit (55%) (2)	$ 56,675
Total-after-tax benefit (1) + (2)	$ 391,286
Charity receives	0

Traditional Retirement NIMCRUT

D, age 50, contributes $30,000 a year to a traditional retirement NIMCRUT and the trust assets grow at 10% a year.

YR	Year-End Principal (BUILDUP)	Capital Apprec. (10%)	Income (0%)	Before-Tax Ben. Inc.	After-Tax Ben. Inc. (39.6%)
0	$30,000				
1	63,000	$3,000	$0	$0	$0
2	99,300	6,300	0	0	0
3	139,230	9,930	0	0	0
18	1,534,773	136,798	0	0	0
19	1,718,250	153,477	0	0	0
		(0x%)	(10%)		
20	1,718,250	0	171,825	171,825	103,782
21	1,718,250	0	171,825	171,825	103,782
22	1,718,250	0	171,825	171,825	103,782
23	1,718,250	0	171,825	171,825	103,782
24	1,763,046	0	171,825	127,029	76,726
25	1,851,198	0	176,305	88,152	53,244
26	1,943,758	0	185,120	92,560	55,906
27	2,040,946	0	194,376	97,188	58,701
28	2,142,993	0	204,095	102,047	61,637
29	2,250,143	0	214,299	107,150	64,718
30	2,362,650	0	225,014	112,507	67,954
31	2,480,782	0	236,265	118,132	71,352
32	2,604,821	0	248,078	124,039	74,920
33	2,735,062	0	260,482	130,241	78,666
TOT	**$2,735,062**	**$1,118,250**	**$2,803,158**	**$1,786,346**	**$1,078,953**
PV (5.8%)	$425,540			$425,772	$257,166

Traditional Retirement NIMCRUT

Total contributions	$ 600,000
At 10% growth rate	$1,718,250
Total lifetime distributions to D	$1,786,346
After-tax benefit (39.6%)	$1,078,953
Present value (5.8%) (1)	$ 257,166
Available for distribution to child	0
Total after-tax benefit	$ 257,166
Profit sharing plan ahead by ($391,286 less $257,166)	$ 134,120
However, Charity receives	$2,735,062
Present value to Charity	$ 425,540

Final Regulations

Prohibition on Allocating Precontribution Gain to Trust Income (effective for taxable years ending after April 18, 1997)

Background—Donors to income-exception CRUTs proposed to allocate realized capital gain to income (state law permitting). Effect is to create an **additional source** from which to make **income-only payments**. The ability to do this is especially meaningful if there is a **large make-up balance**. In addition, it gives the trustee considerable **flexibility to control when and to what extent income is realized**.

Final Regulations.

a. Acknowledge that the governing instrument may allocate **realized capital gain** to trust income if state law permits.

b. Require that the proceeds from the sale or exchange of any assets contributed to the trust must be allocated to principal at least to the extent of the fair-market value of those assets contributed to the trust.

c. Clarify in preamble that make-up balance does not have to be treated as a liability when valuing the assets of a NIMCRUT.

Retirement NIMCRUT
Capital Gain Allocated to Income

D, age 50, contributes $30,000 a year to a traditional retirement NIMCRUT and the trust assets grow at 10% a year. The trust document and state law permit the trustee to allocate capital gain to income (per PLR 9442017).

YR	Year-End Principal (BUILDUP)	Capital Apprec. (10%)	Income (0%)	Before-Tax Ben. Inc.	After-Tax Ben. Inc. (20%)
0	$30,000				
1	63,000	$3,000	$0	$0	$0
2	99,300	6,300	0	0	0
3	139,230	9,930	0	0	0
18	1,534,773	136,798	0	0	0
19	1,718,250	153,477	0	0	0
		(0x%)	(10%)		
20	1,718,250	0	171,825	171,825	137,460
21	1,718,250	0	171,825	171,825	137,460
22	1,718,250	0	171,825	171,825	137,460
23	1,718,250	0	171,825	171,825	137,460
24	1,763,046	0	171,825	127,029	101,624
25	1,851,198	0	176,305	88,152	70,522
26	1,943,758	0	185,120	92,560	74,048
27	2,040,946	0	194,376	97,188	77,750
28	2,142,993	0	204,095	102,047	81,638
29	2,250,143	0	214,299	107,150	85,720
30	2,362,650	0	225,014	112,507	90,006
31	2,480,782	0	236,265	118,132	94,506
32	2,604,821	0	248,078	124,039	99,231
33	2,735,062	0	260,482	130,241	104,193
TOT	**$2,735,062**	**$1,118,250**	**$2,803,158**	**$1,786,346**	**$1,429,077**
PV (5.8%)	$425,540			$425,772	$340,618

Retirement NIMCRUT
Capital Gain Allocated to Income

Total contributions	$ 600,000
At 10% growth rate	$1,718,250
Total lifetime distributions to D	$1,786,346
After-tax benefit (20%)	$1,429,077
Present value (5.8%) (1)	$ 340,618
Available for distribution to child	0
Total after-tax benefit	$ 340,618
Profit sharing plan ahead by ($391,286 less $340,618)	$ 50,668
However, Charity receives	$2,735,062
Present value to Charity	$ 425,540

Retirement NIMCRUT
Capital Gain Allocated to Income—First Variation

D, age 50, contributes $30,000 a year to a traditional retirement NIMCRUT and the trust assets grow at 10% a year. Post-contribution realized capital gain allocated to income. **Trust assets sold in first year of retirement.**

YR	Year-End Principal (BUILDUP)	Capital Apprec. (10%)	Income (0%)	Before-Tax Ben. Inc.	After-Tax Ben. Inc. (20%)
0	$30,000				
1	63,000	$3,000	$0	$0	$0
2	99,300	6,300	0	0	0
3	139,230	9,930	0	0	0
18	1,534,773	136,798	0	0	0
19	1,718,250	153,477	0	0	0
		(0%)	(10%)		
20	1,359,714	0	171,825	530,360	424,288
21	1,427,700	0	135,971	67,986	54,389
22	1,499,085	0	142,770	71,385	57,108
23	1,574,039	0	149,909	74,954	59,963
24	1,652,741	0	157,404	78,702	62,962
25	1,735,379	0	165,274	82,637	66,110
26	1,822,147	0	173,538	86,769	69,415
27	1,913,255	0	182,215	91,107	72,886
28	2,008,918	0	191,325	95,663	76,530
29	2,109,363	0	200,892	100,446	80,357
30	2,214,832	0	210,936	105,468	84,375
31	2,325,573	0	221,483	110,742	88,593
32	2,441,852	0	232,557	116,279	93,023
33	2,563,944	0	244,185	122,093	97,674
TOT	**$2,563,944**	**$1,118,250**	**$2,580,285**	**$1,734,590**	**$1,387,672**
PV (5.8%)	$398,916			$430,293	$344,235

Retirement NIMCRUT
Capital Gain Allocated to Income—First Variation

Total contributions	$ 600,000
At 10% growth rate	$1,718,250
Total lifetime distributions to D	$1,734,590
After-tax benefit (20%)	$1,387,672
Present value (5.8%) (1)	$ 344,235
Available for distribution to child	0
Total after-tax benefit	$ 344,235
Profit sharing plan ahead by	
($391,286 less $344,235)	$ 47,051
However, Charity receives	$2,563,944
Present value to Charity	$ 398,916

Q: What if sale produces no realized gain?

Flip Retirement NIMCRUT
Capital Gain Allocated to Income—Second Variation

D, age 50, contributes $30,000 a year to a flip retirement NIMCRUT and the trust assets grow at 10% a year. **Capital gain to income, assets *sold** in first year of retirement.**

YR	Year-End Principal (BUILDUP)	Capital Apprec. (10%)	Income (0%)	Before-Tax Ben. Inc.	After-Tax Ben. Inc. (20%)
0	$30,000				
1	63,000	$3,000	$0	$0	$0
2	99,300	6,300	0	0	0
3	139,230	9,930	0	0	0
18	1,534,773	136,798	0	0	0
19	1,718,250	153,477	0	0	0
		(0%)	(10%)		
20	1,359,714	0	171,825	530,360	424,288
21	1,427,700	0	135,971	67,986	54,389
22	1,499,085	0	142,770	71,385	57,108
23	1,574,039	0	149,909	74,954	59,963
24	1,652,741	0	157,404	78,702	62,962
25	1,735,379	0	165,274	82,637	66,110
26	1,822,147	0	173,538	86,769	69,415
27	1,913,255	0	182,215	91,107	72,886
28	2,008,918	0	191,325	95,663	76,530
29	2,109,363	0	200,892	100,446	80,357
30	2,214,832	0	210,936	105,468	84,375
31	2,325,573	0	221,483	110,742	88,593
32	2,441,852	0	232,557	116,279	93,023
33	2,563,944	0	244,185	122,093	97,674
TOT	**$2,563,944**	**$1,118,250**	**$2,580,285**	**$1,734,590**	**$1,387,672**
PV (5.8%)	$398,916			$430,293	$344,235

Flip Retirement NIMCRUT
Capital Gain Allocated to Income—Second Variation

Total contributions	$ 600,000
At 10% growth rate	$1,718,250
Total lifetime distributions to D	$1,734,590
After-tax benefit (20%)	$1,387,672
Present value (5.8%) (1)	$ 344,235
Available for distribution to child	0
Total after-tax benefit	$ 344,235
Profit sharing plan ahead by ($391,286 less $344,235)	$ 47,051
However, Ccharity receives	$2,563,944
Present value to Charity	$ 398,916

*What if sale produces no gain?

Flip Retirement NIMCRUT
Capital Gain Allocated to Income—Third Variation

Assets sold in first year of retirement but there is no realized gain

YR	Year-End Principal (BUILDUP)	Capital Apprec. (10%)	Income (0%)	Before-Tax Ben. Inc.	After-Tax Ben. Inc. (20%)
0	$30,000				
1	63,000	$3,000	$0	$0	$0
2	99,300	6,300	0	0	0
3	139,230	9,930	0	0	0
18	1,534,773	136,798	0	0	0
19	1,718,250	153,477	0	0	0
		(0%)	(10%)		
20	1,804,162	0	171,825	85,912	68,730
21	1,894,371	0	180,416	90,208	72,166
22	1,989,089	0	189,437	94,719	75,775
23	2,088,544	0	198,909	99,454	79,564
24	2,192,971	0	208,854	104,427	83,542
25	2,302,619	0	219,297	109,649	87,719
26	2,417,750	0	230,262	115,131	92,105
27	2,538,638	0	241,775	120,888	96,710
28	2,665,570	0	253,864	126,932	101,546
29	2,798,848	0	266,557	133,278	106,623
30	2,938,791	0	279,885	139,942	111,954
31	3,085,730	0	293,879	146,940	117,552
32	3,240,017	0	308,573	154,287	123,429
33	3,402,017	0	324,002	162,001	129,601
TOT	**$3,402,017**	**$1,118,250**	**$3,367,535**	**$1,683,767**	**$1,347,014**
PV (5.8%)	$529,309			$370,892	$296,714

Comparison of Allowable Deduction for Contributions

Total contributions to profit sharing plan		$600,000
Allowable income-tax deduction		$600,000
Tax savings in 39.6% bracket		$237,600
Present value	$146,536	
Total contributions to NIMCRUT		$600,000
Allowable income-tax deduction		$248,638
Tax savings in 39.6% bracket		$ 98,461
Present value	$ 57,302	
Profit sharing plan advantage		$ 89,234

1. Unitrust

YR	Gross Principal	Charitable Deduction	Tax Savings
0	30,000	8,952	3,545
1	30,000	9,279	3,674
2	30,000	9,614	3,807
3	30,000	9,956	3,943
4	30,000	10,306	4,081
5	30,000	10,662	4,222
6	30,000	11,024	4,366
7	30,000	11,394	4,512
8	30,000	11,771	4,661
9	30,000	12,154	4,813
10	30,000	12,542	4,967
11	30,000	12,934	5,122
12	30,000	13,330	5,279
13	30,000	13,729	5,437
14	30,000	14,132	5,596
15	30,000	14,538	5,757
16	30,000	14,950	5,920
17	30,000	15,368	6,086
18	30,000	15,789	6,253
19	30,000	16,214	6,421
TOT	**600,000**	**248,638**	**98,461**
PV (5.8%)	370,041	144,701	57,302

Comparison of Benefits

	Donor & Beneficiary (including income-tax benefits)	Charity
Profit sharing	$480,520	0
Traditional NIMCRUT	$257,166	$425,540
Capital gain to income NIMCRUT	$340,618	$425,540
Capital gain to income NIMCRUT		
Assets sold 1st year of retirement	$344,235	$398,916
Flip NIMCRUT capital gain to income	$344,235	$398,916
Flip NIMCRUT capital gain to income		
No realized gain	$296,714	$529,309
Profit-sharing advantage		
($480,520 less $344,235)	$136,285	

The Rainy Day Trust & The Successful Entrepreneur —Formative Aspects

Clearly, on the basis of the tax and income-tax benefits alone the retirement NIMCRUT comes in a distant second to a qualified retirement plan. Are there other considerations that can narrow the gap and make the NIMCRUT more attractive financially?

1. **Funding aspects and capital-gain tax savings.**

   A qualified retirement plan or an IRA can be funded **only with cash**.

   A retirement NIMCRUT, in contrast, may be funded with **appreciated assets** and escape any capital-gain tax on the initial funding of the trust. Thus,

Total contributions to NIMCRUT in stock	$600,000
Assume 25% basis	$150,000
"Built-in" capital gain	$450,000
Capital-gain tax avoided (20%)	$ 90,000
Present value	$ 55,505
Profit sharing advantage potentially reduced to ($136,285 - $55,505)	$ 80,780
Cost of gift = $80,780 ÷ $398,916	20%

2. **Neutralizing the tax threat in investment decision-making.**

Contributions to the retirement NIMCRUT can be coordinated with the implementation of decisions regarding the Donor's personal investment portfolio.

If the Donor is considering a sale of an asset for any of the following reasons, for example:

- **market conditions**
- **asset allocation**
- **diversification**—especially of a highly concentrated position
- **attractive offer**

The donor can use some or all of the assets to be sold to fund the NIMCRUT—no capital gain.

The trustee sells the asset—no capital gain, entire proceeds remain intact in the trust. **Sale proceeds allocated to principal.**

If the asset is stock and its value tumbles and it becomes an attractive buy again, the Donor can **repurchase stock** and establish a new, higher basis.

3. **Flexibility**

In contrast to qualified retirement plans, there are **no restrictions** on the

- **maximum size** of the contributions to a retirement NIMCRUT

- **timing** of the contribution

- **coverage** of participants

4. **Forging partnerships and establishing charitable objectives**

- Lest we forget outright gifts—direct and indirect

- And, of course, gifts by will

5. **Flow of income**

The trustee controls the flow of income in accordance with the needs of the Donor beneficiary.

Sale of assets with post-contribution gain converts unrealized gain to realized gain and trust income for distribution purposes.

If little or no appreciation, then triggering a **flip** would produce income stream.

If Donor does not need income, Rainy Day Trust builds an endowment for Charity.

Rainy Day Unitrust

YR	Year-End Principal (BUILDUP)	Capital Apprec. (10%)	Income (0x%)	Before-Tax Ben. Inc.	After-Tax Ben. Inc. (39.6%)
0	$30,000				
1	63,000	$3,000	$0	$0	$0
2	99,300	6,300	0	0	0
3	139,230	9,930	0	0	0
4	183,153	13,923	0	0	0
5	231,468	18,315	0	0	0
6	284,615	23,147	0	0	0
7	343,077	28,462	0	0	0
8	407,384	34,308	0	0	0
9	478,123	40,738	0	0	0
10	555,935	47,812	0	0	0
11	641,529	55,594	0	0	0
12	735,681	64,153	0	0	0
13	839,250	73,568	0	0	0
14	953,174	83,925	0	0	0
15	1,078,492	95,317	0	0	0
16	1,216,341	107,849	0	0	0
17	1,367,975	121,634	0	0	0
18	1,534,773	136,798	0	0	0
19	1,718,250	153,477	0	0	0
20	1,890,075	171,825	0	0	0
21	2,079,082	189,007	0	0	0
22	2,286,991	207,908	0	0	0
23	2,515,690	228,699	0	0	0
24	2,767,259	251,569	0	0	0
25	3,043,985	276,726	0	0	0
26	3,348,383	304,398	0	0	0
27	3,683,221	334,838	0	0	0
28	4,051,544	368,322	0	0	0
29	4,456,698	405,154	0	0	0
30	4,902,368	445,670	0	0	0
31	5,392,605	490,237	0	0	0
32	5,931,865	539,260	0	0	0
33	6,525,051	593,186	0	0	0
TOT	**$6,525,051**	**$5,925,051**	**$0**	**$0**	**$0**
PV (5.8%)	$1,015,212			$0	$0

6. **The Rainy Day Unitrust—taking shape**

Purpose is to build a significant endowment to address current and future charitable objectives while providing a hedge against future unforseen financial needs.

a. A NIMCRUT that allocates post-contribution gain to income and has a **flip** provision.

b. **May** include a charity or charities as income beneficiaries along with the Donor (e.g., 7% NIMCRUT, 2% to Charity, and 5% to Donor beneficiary).

   How about 5% unitrust, 0.5% to Donor beneficiary and 4.5% to Charity? See PLR 983205.

   Note: No additional deduction for charitable income interest.

c. **Distributions of trust principal** to charity or charities permitted at the discretion of the Donor and as circumstances warrant.

   A charitable contribution allowed for the present value of the relinquished unitrust interest

   Planning Pointer: If multiple charitable remaindermen, it would be advisable to retain power to change charitable beneficiaries.

d. The Donor retains control over trust **investments** by designating himself/herself as trustee.

e. The trust is very similar in operation to a **private foundation** during the Donor's lifetime but without

- requirement of mandatory annual distribution of 5% of the FMV of trust

- 2% or 1% excise tax

- income-tax deduction limitations

7. **Applications**

a. **Closed-end plan.**

Recently, a university in an effort to increase the number of endowed chairs has started promoting the so-called Eight & Eight Solution, as a leveraged gift for naming opportunities during the capital campaign.

Example: Donor funds an 8%, 8-year unitrust with stock valued at $1,000,000 and a cost basis of $200,000 (assumed).

Eight and Eight Leverage Plan

DePauw University is pleased to feature a leveraged gift plan, specifically designed for individuals who may be interested in taking advantage of one of the available naming opportunities during the Capital Campaign. The **Eight and Eight** plan enables a donor to make a significant contribution to fund a chair at a relatively modest out-of-pocket cost.

Here is how it works:

Donor contributes $1,000,000 of highly appreciated assets to a charitable remainder unitrust that will distribute 8% of its annual value each year to him or to her for a period of eight years after which the trust assets will be distributed to DePauw. Assuming the trust assets grow at 10% per year and the donor's basis in the assets is $200,000, the following results may be anticipated:

Transfer to unitrust		$1,000,000
Charitable deduction		$ 525,670
Tax savings at 39.6%	$208,1650	
Capital gain		$ 800,000
Tax savings at 20%	$160,000	
Total distribution to Donor over 8 years		$ 686,638
After-tax benefit	$567,447	
Total value of benefits	$935,612	$ 935,612
DePauw University receives		$1,171,659

Eight and Eight Leverage Plan

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Transfer to unitrust		$1,000,000
Charitable deduction		$ 525,670
Tax savings at 39.6%	$208,1650	
Total distribution to Donor over 8 years		$ 686,638
After-tax benefit	$567,447	
Estate tax savings*	$123,413	
Total value of benefits	$899,025	$ 899,025
Out-of-pocket cost of gift		$ 100,975
DePauw University receives after 8 years		$1,171,659

*Even though the value of the unitrust is removed from the estate, the income tax savings of $208,165 and the after-tax distributions of $567,447 are now part of the estate. So the net amount removed is $1,000,000 less $208,165 less $567,447 or $224,388 and the estate tax savings is 55% of that amount or $123,413.

Butler University
Endowment Association

To recognize, encourage, advise, and assist donors who wish to grow an endowment for Butler University through their own charitable remainder trusts

Prepared by
James B. Brandt
Director of Gift Planning

Butler University's current endowment is built primarily on a foundation of three large estate gifts, and several hundred smaller bequests and outright contributions received over the last 35 years. Favorable investment experience over the last several years has further strengthened our position despite heavier than normal draws against the endowment.

We are now facing the challenge of more than tripling the size of the endowment in the relatively short time span of ten years, and must look for innovative ways to accomplish this goal.

Charitable Remainder Trusts

A charitable remainder trust (CRT) allows a donor to make a substantial gift while retaining a stream of income for life. In addition, such trusts can generate a significant income tax charitable deduction, allow a donor to convert highly appreciated assets to income-producing assets without payment of capital gain taxes, and provide relief from federal estate taxes. For these reasons, CRTs have proven very popular with donors across the country and here at Butler as well.

Butler Foundation currently serves as trustee for seven charitable remainder trusts. The first of these trusts was created in 1989, with the remaining six trusts created between 1995 and 1997. The 1989 trust has grown in value from $1 million to $2.3 million (Butler will receive 60%), and the other six trusts combined have a market value of approximately $900,000.

And while the potential to add to our endowment through gifts in trust is significant, the rate at which these trusts are being established leaves a great deal to be desired.

Butler University Endowment Association

One aspect of CRTS, which is not often emphasized is the fact that donors may serve as trustees of their own remainder trusts. For donors who are interested and involved in making their own investment decisions, the opportunity to serve as trustee, to make investment decisions, to be responsible for the growth of the trust may have great appeal. These **donors**, while making a gift to Butler, **would still be actively involved in growing that gift for the future benefit of the University.**

The Butler University Endowment Association would be an organization of donors serving as trustees of their gifts to Butler. The purpose of the association would be to recognize these donors, advise and assist them in the management of their trusts, and encourage others to consider a CRT for the benefit of Butler University.

The association could **meet twice a year**. One of the meetings might center around a **presentation by Butler's investment advisors** of their philosophy, investment strategy, and results. This would allow the members to check their performance and have insight into how the University makes its investment decisions. The other meeting might center around a **presentation by a recognized expert in the investment**, financial planning, trust, or other related field.

In addition, members could **receive assistance with their trust tax returns** (a faculty member knowledgeable in the area, a representative from the University's business office?) and **information on topics like self-dealing**, the treatment of capital gains, or investment strategies to reach specific goals. **To be successful, the association must offer value to its members, and the opportunity to associate with other individuals with the means and motivation to create a charitable remainder trust.**

One desired consequence would be the opportunity **to foster an atmosphere of friendly competition among the members**. They will pursue different investment strategies which hopefully will increase the size of their trusts (and their annual income), and have the opportunity to share their investment strategies and philosophy with fellow members in the association.

Membership
Membership **should not be limited only to donors who are serving as trustees**. Some individuals may have the means but not the desire to act as trustee; they could **also participate along with their chosen trustee**. This would be an excellent way to involve a much broader segment of the investment community with the activities of Butler University.

It would also be helpful to **invite as members a small but distinguished group of professionals from the investment, legal, accounting, financial planning, and insurance communities**. These individuals would be rotated on a regular basis to provide further exposure about the association and Butler University in the professional community.

While it would be a requirement that individuals who have created a trust **name Butler University as an irrevocable beneficiary, it would not be necessary for Butler to be the only beneficiary**. Butler's interest should be irrevocable with respect to **at least one-half of the remainder**. The donors could name other charitable beneficiaries for the other one-half, or reserve the right to designate additional beneficiaries in the future. This would broaden the appeal of the association to individuals who may have some interest in Butler, but also have interests in other organizations. it would also **afford Butler the opportunity to collaborate with other charitable organizations**.

First Steps

In order to move the association forward, it will be necessary to:

- Identify likely prospects from our pool of alumni and friends of the University
- Select a pool of potential members from the professional community
- Develop and produce materials to explain the purpose, function, and benefits of the association
- Create strategies and select appropriate individuals to approach potential members about their participation in the association

Many charitable organizations have created bequest or legacy societies designed recognize and honor individuals who have made provisions for the charity either by will or through a life income gift. Butler's Fairview Heritage Society focuses on recognizing just such donors. The endowment society as outlined **will be a more active group**, requiring participation by its members and offering advice and assistance to donors who are managing their gifts for the future benefit of Butler. We do not believe there are any similar associations at other charitable organizations.

Charitable remainder trusts have great potential for substantially increasing the size of Butler's endowment. By **actively involving donors in the process**, we can increase awareness, interest, and commitment to the University. These donors will be able to watch their gifts and income grow, and we will hopefully benefit from a multitude of investment strategies.

Union College

DEVELOPMENT

Nicole Esquenet is living in Plantation, Fla., where she is attending Nova Southeastern College of Osteopathic Medicine. Her e-mail is Epernay409@aol.com.

Elissa Hecker, of New York City, is an associate to counsel for The Harry Fox Agency, Inc. Elissa also announces her engagement to **David Strauss '94**. Her e-mail is EDH911@aol.com.

Miriam Helm, of Whiteville, N.C., is a computer skills and mathematics teacher at Columbus County Schools in Evergreen and Fair Bluff. Her e-mail is miriam_helm@hotmail.com.

David Levine writes "I just completed my second year of law school, can't wait to finally finish with school next year! When I am not studying, I keep myself busy as the managing editor of NYU's *Annual Survey of American Law*. I recently met Janet Reno at the Journal's dedication ceremony. Yes, she is very tall! I will be spending the summer working for Schulte, Roth & Zabel, LLP, in New York City."

Seth Leventhal, of Orange, Conn., is a physician assistant with Cardiology Associates of New Haven. He enjoys weightlifting and running.

Scott Morrissey is a research analyst with the Firemark Group in Morristown, N.J. He writes, "I've completed my first year back from the Far East, and it's been pretty good." His e-mail is scm@firemarkgroup.com.

Rachel Murick writes from Brookline, Mass., "I got my master's in speech-language pathology from Boston University in June, 1997. I spent the summer in Costa Rica with **Allison Goldberg** and now work at Massachusetts General Hospital."

Daniella Pittocco writes, "I have been working as an account executive for Madison Direct Marketing in Greenwich, Conn., since November 1997. I would love to hear from old friends." Her e-mail is dpittocco@madisondm.com.

Veronica Rogers, of Brookline, Mass., writes, "I'm in graduate school at Simmons College School of Social Work in Boston. I work with inner city emotionally disturbed adolescents, an experience far outside the comforts of Union life. I am also living with **Sarah Olson '96** for the second year. We have lots of fun doing nothing together after long days at school and work." Her e-mail is Tahoe20@aol.com.

Oliver Schulz '95G is completing his studies at the Technical University of Darnstadt in Germany.

1996

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Christopher Coston is a transmission engineer at Level Three Communications in Louisville, Colo. He recently moved to the Denver area. His e-mail is Coston.Chris@Level3.com.

Ronald Ginsburg '96G, M.D., is a care line manager for the Stratton Veterans Administration Hospital in Albany, N.Y.

Kelly Herrington, of Philadelphia, Pa., received the Alumni Admissions Volunteer of the Year Award. He began recruiting for Union as a senior intern in the Admissions Office, and has continued as an alumni volunteer, fitting in numerous alumni receptions. Always positive and prompt in his turnaround, we thank Kelly for his service on Union's behalf.

Nott Society expands

The Eliphalet Nott Society, chaired by David Blakelock '83, discussed the establishment of a venture capital fund at its meeting in New York City in the spring.

Dr. Jay Cohn '52, president of Hypertension Diagnostics, Inc., of Minneapolis, was the featured speaker. Cohn invented a way to measure blood pressure and predict heart disease; Hypertension Diagnostics is the company he founded to market his new tool.

There are now nine members of the society, each of whom has pledged at least two percent of his or her eventual return in a company founded or part-owned by them whenever it is sold or goes public. For more information, contact Dan West, vice president for college relations, at (518)388-6180 or via e-mail at westd@union.edu.

New members of the Eliphalet Nott Society were welcomed by President Roger Hull at the group's spring meeting. From the left are Charles Roden '60, Jennifer Lawton '85, President Hull, and Warren Bagatelle '60.

The G.O.L.D. Society: one party, nine cities

On May 14th, more than 400 Union graduates of the last decade attended a coast-to-coast party to reminisce about Union and to bid a fond farewell to the "Seinfeld" sitcom. Alumni gathered in Atlanta, Boston; Chicago; Latham, N.Y.; Los Angeles; New Haven, Conn.; New York City; and San Francisco; a special party was held on campus for the Class of 1998.

The G.O.L.D. Society was created to encourage recent alumni to participate in the Annual Fund. Benefits include special events, discounts, and a network with other recent graduates. For information, call Joe Finocchiaro in the Annual Giving Office at 1-888-THE-IDOL, extension 6174.

The Atlanta G.O.L.D. Party.

The Rainy Day Trust
and The Younger Entrepreneur

1. Commitment to and partnership with Charity

2. Investment-management tool

    a. **diversification**, before or after sale or merger of company

    b. control of trust **investments**

    c. control of **flow of income**—a safety valve

3. Networking opportunities

4. Modest tax savings as trust is being funded
    • Why not revocable arrangement at first, irrevocable later?

5. Significant tax savings for principal distributions to fund charitable projects

6. Opportunity to achieve financial objectives for loved ones.

The Rainy Day Trust
and The Younger Entrepreneur

YR	Year-End Principal (BUILDUP)	Capital Apprec. (10%)	Income (0%)	Before-Tax Ben. Inc.	After-Tax Ben. Inc. (20%)
0	$30,000				
1	63,000	$3,000	$0	$0	$0
2	99,300	6,300	0	0	0
3	139,230	9,930	0	0	0
19	1,718,250	153,477	0	0	0
20	1,890,075	171,825	0	0	0
21	2,079,082	189,007	0	0	0
22	2,286,991	207,908	0	0	0
23	2,515,690	228,699	0	0	0
24	2,767,259	251,569	0	0	0
43	16,924,303	1,538,573	0	0	0
44	18,616,733	1,692,430	0	0	0
45	20,478,407	1,861,673	0	0	0
46	22,526,247	2,047,841	0	0	0
47	24,778,872	2,252,625	0	0	0
TOT	**$24,778,872**	**$24,178,872**	**$0**	**$0**	**$0**
PV (5.8%)	$1,750,875			$0	$0

Non-Charitable Interests for $2,079,082 Gift

	Makeup Unitrust
Income Rate	5%
One Life 57	$1,289,426

Examples

1. Assume a NIMCRUT has grown to $2,079,082 when Donor reaches age 57.

   By the time the Donor reaches age 57, he has achieved financial security and his need of income distributions from the NIMCRUT, now worth $2,079,082, has considerably lessened.

   a. Donor is interested in funding a charitable project for $207,908, and

   b. Donor has realized a capital gain of $255,307 on the sale of some real estate

   At age 57, the present value of the Donor's "income," or noncharitable interest in the NIMCRUT, is $1,289,426

Gift of 10% of income interest to Charity (a capital asset with 0 basis)		$128,943
Income-tax savings (39.6%)		$ 51,061
Capital gain on sale of real estate	$255,307	
Capital-gain tax		$ 51,061
Trust distributes to Charity		$207,908

2. In December 1996, H and W contributed $54,000 to a 5% NIMCRUT. In December 1997, they added $20,000. Trust invested in Intel and Cisco.

   In December 1998, NIMCRUT is worth $215,000

   In desperate need for tax relief, H and W terminate the trust and entire assets distributed to Charity.

Deduction for initial contributions of $74,000	$ 17,000
Value of noncharitable income interest when trust terminated	$164,000
Total charitable deduction	$181,000
Tax savings (39.6%)	$ 71,676
Out-of-pocket cost of gift	$ 2,324

3. Would you accept an income interest in such a trust in exchange for a gift annuity for the benefit of the donor's mother?

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TRUSTEE INVESTMENT AND MANAGEMENT RESPONSIBILITIES UNDER THE UNIFORM PRUDENT INVESTOR ACT

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The Uniform Prudent Investor Act (UPIA) provides the requirements that trustees must follow in the investment and management of trust assets. The UPIA reflects the significant changes that have occurred in the investment practices of fiduciaries over the last 30 years.

Prior to the UPIA, fiduciaries were severely restricted in their ability to invest and manage trust assets. They were frequently limited to lists of statutorily permitted investments ("legal lists"), presumably to reduce risk in the investment portfolio. In addition, they were generally prohibited from delegating trustee functions to investment experts. These restrictions were inconsistent with evolutionary changes in many areas of the law that encourage prudent investment practices and that permit delegation of trustee functions.

It is important for *all* trustees to understand and apply the rules embodied in the UPIA for at least two reasons. First, anyone who is acting as a trustee presumably is interested in improving investment performance and minimizing risk. Following the UPIA's guidelines will increase the probability of successful investment results. Second, trustees are increasingly being subjected to the threat of fiduciary liability. *Trustees should operate under the assumption that their decisions will be examined in detail by an adverse party at some point in the future.* Following the UPIA's guidelines will significantly reduce the threat of fiduciary liability.

Using a five-step investment management process, this paper discusses both the requirements of the UPIA and the methodology for trustees to ensure compliance with it.

BACKGROUND

In 1994, the National Conference of Commissioners on Uniform State Laws adopted the UPIA. It is based on the revised standards for prudent trust investment promulgated by the American Law Institute in its Restatement (Third) of Trusts: Prudent Investor Rule (1992) (hereinafter Restatement of Trusts 3d: Prudent Investor Rule).

At this time 39 states and the District of Columbia have enacted the UPIA or most of its fundamental provisions. [1] In addition, 8 states have enacted statutes that require an investment approach that focuses on the total portfolio, similar to the UPIA. [2] Three states have not enacted the UPIA or similar laws. In two of those three states, enactment of the UPIA is pending and/or the state has enacted the Uniform Management of Institutional Funds Act (UMIFA), which has considerable overlap with the UPIA when it comes to a total investment portfolio approach and delegation of trustee functions. [3] It is reasonable to expect that the UPIA will eventually be enacted, or at least be examined by the courts for guidance, in all states.

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[1] *Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming. Source:* Fiduciary Trust International Uniform Prudent Investor Act, *September 1999 and National Uniform Law Commissioners, Chicago, IL*

[2] *Alabama, Delaware, Georgia, Kentucky, Nevada, South Carolina, Tennessee, Texas. Id.*

[3] *Louisiana, Wisconsin. Id.*

SCOPE OF ACT

Who does it apply to?

Section 1(a) of the UPIA provides that "...a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule...."

Throughout the UPIA, the term "trustee" is specifically used. The term "fiduciary" is not used. But, the Prefatory Note to the UPIA includes an expansive definition of the fiduciaries, organizations and investment portfolios that fall within the scope of the Act.

The Prefatory Note to the UPIA indicates that it is primarily concerned with the investment responsibilities arising from a private trust.

The Prefatory Note indicates that the UPIA may apply to certain non-trustee fiduciaries, such as executors, conservators and guardians, who have investment management responsibilities. States may choose to adopt the UPIA for these fiduciaries, while taking into consideration the short duration and amount of court supervision of these non-trustee fiduciaries.

The Prefatory Note indicates that the UPIA is intended to provide guidance to trustees of charitable trusts. The Restatement of Trusts 2d (1959), [4] which is quoted in the Prefatory Note, provides "In making investments of trust funds, the trustee of a charitable trust is under a duty similar to that of a trustee of a private trust."

The Prefatory Note to the Act indicates that it is intended to provide guidance to pension trustees. The Employee Retirement Income Security Act (ERISA) absorbs trust investment law through its explicit standard of prudence. [5] The Supreme Court has said "ERISA's legislative history confirms that the Act's fiduciary responsibility provisions 'codif[y] and mak[e] applicable to [ERISA] fiduciaries certain principles developed in the evolution of the law of trusts.'" [6] While the UPIA may provide additional guidance to pension trustees, ERISA will also provide guidance to non-pension trustees. Because ERISA contains numerous requirements similar to the UPIA (e.g., the requirement to diversify investments), ERISA cases will undoubtedly be examined for guidance in the interpretation and application of the UPIA to non-pension trustees.

The UPIA governs charitable foundations organized in trust form. By its terms the law applies to trusts and not to charitable corporations. But, the Prefatory Note indicates that the UPIA is expected to provide guidance on investment responsibilities to charitable corporations. The Restatement of Trusts 3d: Prudent Investor Rule provides "...the duties of the members of the governing board of a charitable corporation are generally similar to the duties of the trustee of a charitable trust." [7] Absent a contrary statute, the prudent investor rule applies to the investment of funds held for a charitable corporation. [8] Charitable corporations are governed in many jurisdictions by the UMIFA. The UPIA will provide guidance to fiduciaries of charitable corporations because of its similarities to the UMIFA.

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[4] *Sec. 389*

[5] *ERISA Sec. 404(a)(1)(B) provides that "a fiduciary shall discharge his duties ...with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use...."*

[6] *Firestone Tire & Rubber v. Bruch, 489 U.S. 101, 110-11, 1989, quoted in Prefatory Note*

[7] *Section 379, Comment b at 190*

[8] *Section 389, Comment b at 190-91*

Simply stated, the UPIA governs or provides guidance to *all fiduciaries* who have investment management responsibilities, either by the law's specific terms or by virtue of its appropriateness as a standard of prudent investment management. Because it reflects the trend in previously enacted laws governing fiduciaries and a synthesis of modern investment practice, its guidelines will undoubtedly be widely applied in providing guidance to all fiduciaries in determining a prudent course of action and to courts in evaluating actions taken.

Throughout the remainder of this paper, the term trustee is used to include all fiduciaries.

<u>Size of trust</u>

The UPIA applies to all trusts, regardless of size. The drafters considered an exception for smaller trusts, but did not include one based on the conclusion that viable alternatives exist for trustees of smaller trusts. For example, the Comment to Section 2 states that Sections 2(b) and (c) (discussed below) list factors that can be adapted to the smaller trust, and Section 2(f) (relating to professional trustees and discussed below) allows for the difference between professional and non-professional trustees of smaller trusts. The Comment also discusses the use of mutual funds to meet the needs of smaller trusts.

<u>Effective date</u>

Section 11 of the UPIA provides that it applies to trusts existing on or created after the effective date of its enactment. For trusts existing on the effective date, the UPIA governs decisions or actions occurring after that date.

Section 10 of the UPIA lists terms and language, which are commonly used in trust instruments, to indicate when any investment or investment strategy is authorized under the Act. The language is very expansive and is intended, according to the Comment to Section 10, to incorporate use of the Act by means of language commonly used in trust instruments.

<u>Default rule</u>

Section 1(b) of the UPIA provides that "The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust."

<u>Remedies</u>

The Prefatory Note states that the UPIA does not address the issue of computation of damages, but leaves that to existing law.

<u>FOUR FUNDAMENTAL CHANGES</u>

The UPIA makes four important changes to prior law, all of which are based on the <u>Restatement of Trusts 3d: Prudent Investor Rule</u>. The Prudent Investor Rule Restatement was undertaken with a clear view that trust investment law should reflect and accommodate current investment knowledge. In addition, an important objective was to avoid the mistake of freezing its rules against future developments. As a result, the rules are intended to be general and flexible enough to adapt to changes that will occur in the investment marketplace.

Diversify investment portfolio

Section 3 of the UPIA provides that "A trustee shall diversify the investments of the trust...." In recent decades the importance of diversification has been increasingly emphasized among investment professionals. The purpose of diversification is to balance risk and reward. The Prefatory Note states that "The tradeoff in all investing between risk and return is identified as the fiduciary's central consideration."

Focus on risk/return characteristics of total portfolio

Under the UPIA, the standard of prudence is applied to the total investment portfolio, not to individual investments within the portfolio. Under prior law, each investment in a portfolio was evaluated on its own merit in terms of risk and potential return. Section 2(b) of the UPIA provides that "A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole...." The Prefatory Note states that "the trustee can invest in anything that plays an appropriate role in achieving the risk/return objectives of the trust and that meets the other requirements of prudent investing."

Delegate investment and management functions

Section 9(a) of the UPIA empowers the trustee to "...delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances." This change in the law reverses the much criticized prior rule that prohibited delegation of trustee functions. If the delegation meets the standards set forth in the UPIA, the trustee is not liable for the acts of the agent. As investment management and the responsibilities of trustees have grown more complex, there is more reason to believe delegation to experts is necessary.

Formalize investment policy

The UPIA doesn't specifically require the trustee to develop a written investment policy statement. But, everything about the UPIA strongly implies the need for a written investment policy statement. Under prior law, the trustee had so little latitude in the management of trust assets that a written investment policy statement may not have been required as a practical matter. The new law virtually requires customized portfolios. With that goes the responsibility of documenting the chosen investment strategy.

WHY IS THE UPIA IMPORTANT?

It is important for all trustees to understand and apply the UPIA for at least 5 reasons.

Following the UPIA'S guidelines will probably improve investment performance and reduce investment risk. Investors who develop strategic plans, implement them and periodically measure progress toward goals tend to be more successful.

Following the UPIA's guidelines demonstrates sound stewardship of investment assets. People and organizations are more likely to follow-through on financial commitments to an organization if it demonstrates sound stewardship of the investment portfolios it manages. In addition, they are more likely to follow-through with larger amounts.

Trustees are increasingly being subjected to the threat of personal liability. Following the UPIA's guidelines will minimize the threat of fiduciary liability.

It is important to understand the UPIA because it has been widely accepted. Forty-seven states and the District of Columbia have enacted the UPIA or most of its fundamental provisions. Section 12 of the UPIA explicitly provides that it is intended to accomplish the goal of making trust investment law uniform among the states that enact it.

Finally, it is important to understand and apply the guidelines in the UPIA because of its interaction with other uniform laws. The 1997 revision of the Uniform Principal and Income Act was approved by the American Bar Association in 1998. One of the stated purposes for the revision of this Act is "to provide a means for implementing the … principles embodied in the UPIA…." In addition, the recently approved Uniform Trust Act explicitly provides for conformity with the UPIA.

WHAT IS PRUDENT?

Prudence standard

The prudence standard for trust investing dates back to *Harvard College v. Amory*[9] in which the court said:

> All that can be required of a trustee to invest is, that he shall conduct himself faithfully and exercise sound discretion. He is to observe how men of prudence, discretion, and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested. [10]

Section 2(a) of the UPIA provides that "A trustee shall invest and manage trust assets *as a prudent investor* would by considering the purposes, terms, distribution requirements, and other circumstances of the trust." (emphasis added) The Comment to Section 1 notes that the concept of prudence is relational or comparative. It provides that "A prudent trustee behaves as other trustees similarly situated would behave." [11]

The UPIA applies to a wide range of trustees, from the most sophisticated professional investment management firms and corporate fiduciaries to family members with minimal experience. Section 2(f) provides that "A trustee who has special skills or expertise … has a duty to use those special skills or expertise." In other words, there is a higher standard for the trustee who is an expert or professional.

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[9] *26 Mass. 466 (1830)*

[10] *at 461*

[11] *The "prudent investor" standard may be problematic. Even if trustees know they are supposed to act "as a prudent investor", they may have strong beliefs about what a prudent investor would do based on their own experience. Those beliefs may not be consistent with the law. Many trustees may view themselves as investment "experts", especially after the exceptional performance of investment markets over the past 15 years. It is easy to find justification for almost any investment strategy in the electronic media, financial periodicals, infomercials and books written by self-proclaimed investment gurus. For example, many trustees may view market timing as a successful and appropriate investment approach, despite substantial research to the contrary. Until trustees are schooled in modern portfolio theory (discussed below), the standard of "other trustees similarly situated" is subject to wide interpretation. How is a trustee to know how "…other trustees similarly situated would behave"? Section 2(f), discussed below, may address but won't eliminate the problem.*

Prudence is demonstrated by process

The Restatement of Trusts 3rd: Prudent Investor Rule provides that "The test of prudence is one of conduct and not performance." [12] A trustee demonstrates prudence by the process used to develop, adopt, implement and monitor investment strategies in light of the purposes of the investment funds. Courts have uniformly measured prudence by analyzing the process used by a trustee to make decisions.

By combining the requirements of the UPIA, a five-step investment management process emerges. The process is not contained in the law per se, but it encompasses all of the requirements of the Act. The five steps are:

1. analyze current position
2. design optimal investment portfolio structure
3. formalize investment policy
4. implement investment policy, and
5. monitor and supervise.

The process emphasizes that the trustee is the manager of the investment process, not an investment expert.

The five steps are integrated. The later steps cannot be effectively evaluated and implemented without drawing upon information developed in the previous steps.

The balance of this article will examine each of the five steps in detail. It will discuss the requirements of the UPIA in connection with the five steps and the methodology for trustees to ensure compliance with the law.

REVIEWING FIDUCIARY COMPLIANCE

Section 8 of the UPIA provides that "Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight." This further emphasizes that process is the most relevant determinant of prudent trustee actions.

The Comment to Section 8 notes that "Trustees are not insurers. Not every investment or management decision will turn out in the light of hindsight to have been successful. Hindsight is not the relevant standard." As one author noted, "In cases involving the propriety of investments, the decision-making process may be as important as the decision itself, at least for purposes of determining the trustee's responsibility." [13]

STEP 1: ANALYZE CURRENT POSITION

Section 2(a) of the UPIA provides that "A trustee shall invest and manage trust assets as a prudent investor would by considering the purposes, terms, distribution requirements, and other circumstances of the trust."

Section 2(c) lists the circumstances a trustee should consider in investing and managing trust assets. It provides:

> "Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

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[12] *Section 227, page 23*

[13] *A. Walter Nossaman et al.,* *Trust Administration and Taxation* *Section 29.05(2) (1995)*

(1) general economic conditions;
(2) the possible effect of inflation or deflation;
(3) the expected tax consequences of investment decisions or strategies;
(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;
(5) the expected total return from income, and the preservation or appreciation of capital;
(6) other resources of the beneficiaries;
(7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries."

Two of the circumstances listed above are related to the general economic and investment climate, i.e., Section 2(c)(1)-(2). Most of the circumstances are uniquely different for each investment portfolio, i.e., Section 2(c)(3)-(8). The circumstances listed for consideration by the trustee indicate that trust investment portfolios should be customized for their specific situation.

As a result of the requirement that the trustee consider all the circumstances relevant to the trust, the first step in the investment management process is a thorough understanding and analysis of the trust's current situation and future needs. The trustee should determine the following:

1. The trust's investment objectives, time horizon, risk tolerance and return expectations
2. The trust investment portfolio's current asset allocation, risk/return profile, historical performance and fit with investment objectives
3. The trust's administration, custody, costs and taxes
4. The trust's compliance with trust provisions, written policies and legal requirements

Duties at inception

Section 4 of the UPIA provides that "Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of trust assets...." The duty also applies to investments that were proper when purchased, but which subsequently become improper. The related Comment observes that the question of what period of time is reasonable depends on all of the facts and circumstances affecting the assets and the trust, and that no rule can be established to set a reasonable time. [14] Consistent with the overall standard of prudence, trustees should take the appropriate amount of time to examine the trust's current situation and consider alternatives before making changes to a trust's investment portfolio. Not to do so would be clearly imprudent.

STEP 2: DESIGN OPTIMAL INVESTMENT PORTFOLIO

The second step in the investment management process is the design of an optimal investment portfolio. The UPIA requirements of diversification and focus on the total portfolio enter the investment management process in this step.

Modern portfolio theory

The Prefatory Note to the UPIA states that "The Uniform Prudent Investor Act (UPIA) undertakes to update trust investment law in recognition of the alterations that have occurred in investment practice.

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[14] *Restatement of Trusts 3d: Prudent Investor Rule, Section 229, Comment b*

These changes have occurred under the influence of a large and broadly accepted body of empirical and theoretical knowledge about the behavior of capital markets, often described as 'modern portfolio theory.'"

The theoretical underpinnings of modern portfolio theory originated in 1952 when Dr. Harry Markowitz, then a doctoral student at the University of Chicago, discovered that an investment portfolio could be constructed with less risk than the weighted average of its individual investments.[15] This is possible because all asset classes do not move up and down together in perfect synchronization. Markowitz and several of his associates received the Nobel Prize in Economic Science in 1990 for their work.

Modern portfolio theory is "An investment decision approach that permits an investor to classify, estimate and control both the kind and amount of expected risk and return. Essential to portfolio theory are its quantification of the relationship between risk and return and the assumption that investors must be compensated for assuming risk. This portfolio approach shifts emphasis from analyzing the characteristics of individual investments to determining the statistical relationships among the individual securities that comprise the overall portfolio." [16]

Asset allocation is another name for diversification. Optimal asset allocation is the systematic process of designing a portfolio mix, using the tools of modern portfolio theory, that satisfies the investor's specific risk and return parameters. Optimal asset allocation is accomplished by constructing portfolios using different investment asset classes and sub-classes that have different objectives, risk characteristics and complimentary relationships with other investments in the portfolio.

The overwhelming importance of asset allocation has been demonstrated by comprehensive research on investment returns actually achieved by large pension plans. Brinson, Hood and Beebower studied the impact of asset allocation for a group of 91 large pension plans from 1974 through 1983.[17] They found that asset allocation accounted for 93.6% of the total variation in returns. Less than 7% of the performance was due to security selection, market timing and other factors. Their conclusions have been verified by subsequent studies.[18]

UPIA diversification requirement

Because of the importance of investment diversification, the UPIA, in Section 3, specifically incorporates the requirement that "A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying."

The Comment to Section 3 provides that "There is no automatic rule for identifying how much diversification is enough." It goes on to quote the Restatement of Trusts 3d: Prudent Investor Rule, which states "Broader diversification is usually to be preferred in trust investing…." [19]

The law provides that the trustee may determine that, because of special circumstances, the trust is better served by not diversifying. Examples cited in the Comment include low basis stocks, stepped-up basis considerations and ownership of a family business enterprise.

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[15] *Harry M. Markowitz, "Portfolio Selection," Journal of Finance, March 1952*

[16] *Glossary of Investment Terms, Callan Associates, Inc., 1995*

[17] *Gary P. Brinson, L. Randolph Hood, and Gilbert L. Beebower, "Determinants of Portfolio Performance," Financial Analysts Journal, July/August 1986*

[18] *Gary P. Brinson, L. Randolph Hood, and Gilbert L. Beebower, "Determinants of Portfolio Performance II: An Update," Financial Analysts Journal, May/June 1991*

[19] *Restatement of Trusts 3d: Prudent Investor Rule, Section 227, General Note on Comments e-h, at 77*

The Comment to Section 3 recognizes that it may be difficult for small trusts to adequately diversify. Pooled investments and mutual funds are expressly approved to accomplish diversification. One mutual fund will usually not provide adequate diversification of a portfolio, but an appropriate mix of mutual funds would meet the portfolio diversification requirement.

Benefits of diversification

Most investors know that diversification reduces risk in an investment portfolio. They don't, however, understand why diversification reduces risk. They assume that the reason for diversification is to prevent excessive loss if any investment in the portfolio becomes worthless, i.e., don't put all your eggs in one basket. More importantly, diversification reduces risk, if it is done properly using the tools of modern portfolio theory, because it combines asset classes with different characteristics that compliment each other to smooth out the volatility in the total investment portfolio.

The UPIA emphasizes risk management throughout. As the Prefatory Note states, "The tradeoff in all investing between risk and return is the fiduciary's central consideration." As the Restatement of Trusts 3d: Prudent Investor Rule observes, "Therefore the duty of caution does not call for avoidance of risk by trustees but for the prudent management of risk." [20] The Comment to Section 2 states that "It is the trustee's task to invest at a risk level that is suitable to the purposes of the trust."

The clear message is that a trustee will not find a safe harbor from liability by investing exclusively in a portfolio of "safe" investments (e.g., government bonds). Risk cannot be completely avoided, but it can be managed through proper diversification.

Diversification also has the potential to increase investment returns. With proper diversification investors can add higher projected return (and higher projected risk) investments to their portfolio and either maintain or decrease the total portfolio risk because of the complimentary relationships of the asset classes. In addition, portfolio returns are smoothed by adding complimentary asset classes, which may lead to higher compounded amounts.

Focus on risk/return characteristics of total portfolio

Section 2(b) provides that "A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole…." This section addresses the trustee's responsibility from the perspective of the total portfolio. The Prefatory Note to the UPIA provides "The standard of prudence is applied to any investment as part of the total portfolio, rather than to individual investments."

Viewed from the perspective of the individual investments that make up the portfolio, Section 2(e) provides that "A trustee may invest in any kind of property or type of investment consistent with the standards of this (Act)." The Comment to Section 2 observes that "An investment that might be imprudent standing alone can become prudent if undertaken in sensible relation to other trust assets, or to other nontrust assets."

Under the UPIA, risk is now to be evaluated in relation to the total portfolio, but it must still be appropriate in relation to the trust's investment objectives. The Comment to Section 2 states that "It is the trustee's task to invest at a risk level that is suitable to the purposes of the trust." The authors of the UPIA reasoned that trust beneficiaries are better protected by attention to risk/return objectives and the total portfolio than

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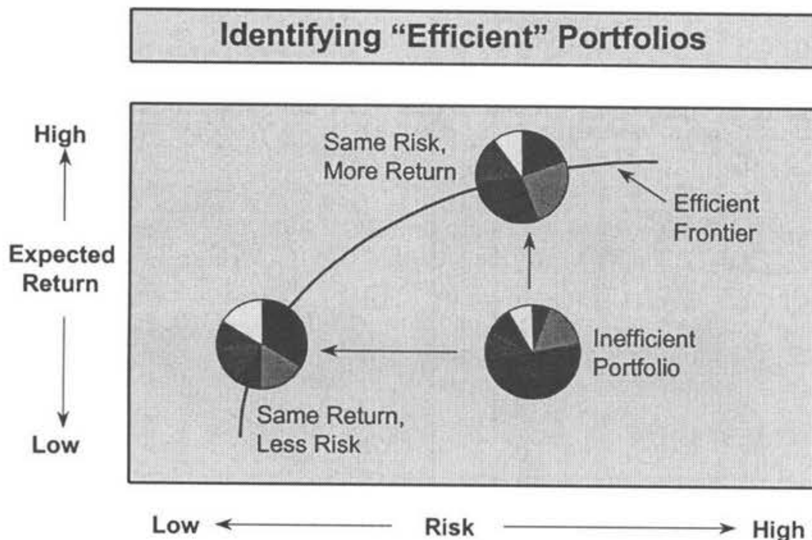
[20] *Section 227, Comment e, p. 18*

by attempts to identify categories of investments that are per se imprudent. For most trusts, excessive risk will be just as unsuitable as before, but now the trustee can examine the risk tolerance of each particular trust and tailor the trust's investment policy accordingly.

Identify efficient portfolios

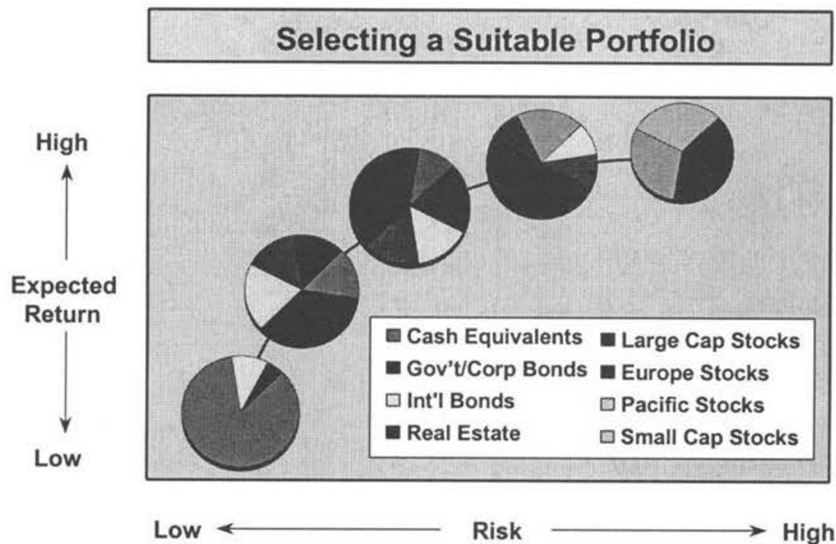
Using the tools of modern portfolio theory, investors are able to identify "efficient" portfolios. Through combinations of asset classes, efficient portfolios produce the maximum return for a given level of risk, *or* the minimum risk for a given level of return. Chart 1, "Identifying 'Efficient' Portfolios," shows an inefficient portfolio compared to two efficient portfolios. No investor would want the inefficient portfolio if they could have the efficient portfolios, i.e., a portfolio with the same risk and more return, *or* the same return and less risk. Remember that one of the tenets of modern portfolio theory is that investors are risk averse.



Select a suitable portfolio

As discussed above, modern portfolio theory and the UPIA both emphasize a total portfolio approach to investing. Trustees should focus on the design of total portfolios with risk/reward characteristics that meet the trust's investment objectives.

Chart 2, "Selecting A Suitable Portfolio," illustrates the rationale for the total portfolio approach. It shows several portfolio mixes, each of which is efficient in the language of modern portfolio theory. Each investment asset class within each of the portfolios has a different risk/reward profile. Each separate portfolio has, *as a total portfolio*, different risk (horizontal axis) and reward (vertical axis) characteristics. Because of the interaction of investments in each of the portfolios, the total portfolio profile is not merely the sum of the individual investments. The risk/reward profile of the total portfolio is product of the individual investments' risk/reward characteristics *and* the interaction of the individual investments within the total portfolio.



Duty of impartiality

Section 6 of the UPIA provides that "If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing trust assets, taking into account any differing interests of the beneficiaries."

The Comment to Section 6 notes that multiple beneficiaries may involve beneficiaries with simultaneous interests (e.g., when beneficiaries are sharing current income) or beneficiaries in succession (e.g., life and remainder interests). The duty of impartiality requires the trustee to balance competing interests.

When a trustee selects the asset allocation for an investment portfolio, it should be done with the duty of impartiality in mind. The best way for the trustee to balance competing interests is to look first at the trust creator's intent. The trustee should then examine the circumstances listed in Section 2(c) for guidance in selecting an appropriate asset allocation; e.g., the need for liquidity, income, and preservation or appreciation of capital.

In Matter of Estate of Cooper [21] the issue of impartiality, as it impacted the investment portfolio asset allocation, was a central issue. The court held that the trustee's investment of trust assets violated the

[21] *913 P.2d 393, Wash. App. Div. 3, 1996. Mrs. Cooper, in her will, provided that her property would be held in trust for her husband during his lifetime. The trust required payment of income to her husband and distribution of the corpus to her children on his death. The daughter sued to remove her father based on his management of the trust investments. The asset mix and its impact on the beneficiaries, is the primary source of the dispute. The trial court found that Mr. Cooper maintained a policy of investment that maximized the income of the trust to the detriment of the growth of corpus. Common stocks represented 13% of the trust's assets, and bonds represented 87%. The trust's gain attributable to increases in the value of securities was only 22%, or about 2.15% per year between 1978 and 1987. The court noted that inflation averaged 6% per year during that period, so the purchasing power of the assets decreased over 4% per year. The court held that the prudent investor rule focuses on performance of the trustee not the*

prudent investor rule because the investments favored the income beneficiary (who happened to be the trustee) to the detriment of the remainder beneficiary. [22]

STEP 3: FORMALIZE INVESTMENT POLICY

Section 2(b) of the UPIA requires that "A trustee's investment and management decisions must be evaluated in the context of the trust portfolio as a whole and as a part of an *overall investment strategy* having risk and return objectives reasonably suited to the trust." (emphasis added) The best way for a trustee to demonstrate the existence of and compliance with the "overall investment strategy" the law requires is to have a written investment policy statement.

Although the UPIA does not specifically require a *written* investment policy statement, it is clearly a critical fiduciary function. [23] As a result, the third step in the investment management process is the preparation of a written investment policy statement. *"The most important duty of the fiduciary or trustee is the development and ongoing maintenance of an investment policy statement."*[24]

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net gain or loss of the trust. It held that the father's investment strategy, which weighed heavily in favor of the income beneficiary (himself) was a breach of the duty to act as a prudent investor. The father was removed as trustee over the daughter's portion of the trust and was required to reimburse the trust for the loss caused by the investment strategy.

[22] *The Cooper case illustrates the apparent collision course of modern portfolio theory investing, as mandated by the UPIA, and traditional principal and income concepts, as incorporated in the Uniform Principal and Income Act. A trustee is required, under the duty of impartiality, to act with due regard to the interests of different beneficiaries, including, for example, an income and a remainder beneficiary. A trustee's investment decisions effectively determine the income and capital appreciation level (and therefore the benefits to an income and a remainder beneficiary under current accounting concepts) through the choice of investments that comprise the portfolio. But, investment decisions made to produce a particular form of return (i.e., current income or capital appreciation), conflict with modern portfolio theory concepts and may result in an inappropriate portfolio. For example, a trustee may determine that a certain level of total return and commensurate level of risk is appropriate for the trust's objectives. But, that level of return may only be attainable with investments that derive return from capital appreciation. Does the trustee invest for growth and sacrifice income, possibly breaching the duty of impartiality? Or, does the trustee invest to meet the needs of the current income beneficiary, sacrificing total return and appropriate investment objectives under modern portfolio theory and UPIA? With a modern portfolio theory approach, the trustee could invest for the total return suitable for the trust without regard to the form of the return. The National Conference of Commissioners on Uniform State Laws approved a revised version of the Uniform Principal and Income Act in July 1997. It was approved by the American Bar Association in 1998. The revised Act, in Section 104(a), provides that "A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor...." Section 104(b) provides factors to consider in determining whether to reallocate between principal and income. Under this provision, trustees will have the power to reallocate investment returns to income and principal, regardless of whether the return was derived from interest, dividends or capital gains.*

[23] *Restatement of Trusts 3d: Prudent Investor Rule, Section 227, comment d, page 14; ERISA specifically provides that every plan must be established and maintained pursuant to a written instrument. ERISA Sec. 402*

[24] *The Management of Investment Decisions, Trone, Donald, et. al., Irwin Professional Publishing, 1996, page 103.*

Purposes of investment policy statement

The investment policy statement has the following purposes:

1. Set objectives. The investment policy statement should establish clear and definable expectations, risk and return objectives and guidelines for investment of the assets.

2. Set the asset allocation policy. The investment policy statement should identify the investment asset classes to be used to achieve a diversified portfolio and the percentage allocation of those assets.

3. Establish management procedures. The investment policy statement should provide a guide for selecting, monitoring and evaluating the performance of those with investment and management responsibilities.

4. Determine communications procedures. The investment policy statement should provide a method of communicating the process and objectives among all parties involved.

Benefits of investment policy statement

There are multiple benefits that result from having an investment policy statement. An investment policy statement

- fulfills the most important trustee function, which is to set investment policy and implementation guidelines
- compels trustees to be more disciplined and systematic in their decision-making
- documents the policies, procedures and practices that will be used to manage assets
- provides continuity in the event of trustee turnover
- keeps investment strategy intact during periods of market volatility
- provides implementation guidance
- demonstrates sound investment stewardship
- provides the best defense in the event of a challenge to the trustee's investment and management of trust assets.

After an investment policy statement is formalized, it must be followed. There are numerous court cases in which trustees have been held liable for not adhering to the investment policy statement they approved.

Some trustees may question whether the written investment policy statement is more of a potential liability than an asset because it provides a paper trail for a challenge to a trustee's decisions. Because the UPIA emphasizes the use of a prudent investment process and because the standard for evaluating a trustee's actions is *not* based on hindsight, the trustee is better served with a written investment policy statement that documents prudent thought processes and actions.

STEP 4: IMPLEMENT INVESTMENT POLICY

The fourth step in the investment management process is to implement investment policy. In this step delegation of investment and management functions frequently occurs.

Delegation

The UPIA has imposed more responsibilities on trustees with investment management functions. It has, however, offset these additional responsibilities by enabling the trustee to delegate investment functions and, when prudent steps are followed in the delegation, to avoid fiduciary liability for the acts of the agent.

Under prior law, trustees were prohibited from delegating investment and management functions. The Restatement of Trusts 2nd (1959) provided that "A trustee cannot properly delegate to another the power to select investments." [25]

The UPIA recognizes that the trend of modern legislation is to favor delegation. [26] As a result, Section 9(a) of the UPIA reverses prior law and provides that

> "A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:
> (1) selecting an agent;
> (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
> (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation."

Section 9(c) provides that "A trustee who complies with the requirements of subsection (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated."

Although the Act does not require delegation to professionals, it does seem to strongly suggest it. The standard in the law is a "prudent trustee of comparable skills." Courts are increasingly recognizing the need for trustees to hire investment professionals. For many trustees it would be imprudent not to obtain professional expertise in the management of investment assets.

Money manager search

The most obvious example of delegation of investment and management responsibilities is the use of money managers or mutual funds (hereinafter money managers). A prudent search for money managers follows a formal, multi-step approach that documents the selection criteria and process. Although security selection plays a smaller role than asset allocation in determining investment success, it still makes sense to identify successful money managers.

The appropriate money manager for most trusts is not this year's superstar. The appropriate money manager for most trusts is one who:

- consistently applies a well-defined, disciplined investment style
- uses an investment style that fits in and complements the total portfolio
- demonstrates solid historic performance, and
- provides attractive risk-adjusted returns.

To identify the best money managers, trustees should set rigorous quantitative *and* qualitative standards.

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[25] *Restatement of Trusts 2d, Section171, comment h*

[26] *The Uniform Trustee Powers Act, Uniform Management of Institutional Funds Act and ERISA are discussed extensively in the Comment to Section 9*

1. Quantitative screens

Quantitative screens should be carefully evaluated. Quantitative screens include:

- investment style classification
- performance numbers over multiple time periods
- performance relative to assumed risk
- performance relative to peers
- adherence to stated investment style, and
- performance in both rising and falling markets.

2. Qualitative screens

Qualitative screens are extremely important. Most investors focus on quantitative analysis, but qualitative problems frequently are indications of future quantitative problems. Money management companies are not machines or inanimate objects. They are organizations of people. Qualitative screens focus on the people issues.

Trustees should carefully evaluate:

- key personnel (the decision makers, their tenure, their experience, the depth of their resources, their track record, their ability to communicate their investment philosophy and their resourcefulness)
- organizational factors (size, total assets, ownership structure, client retention, client service capabilities), and
- other factors (philosophy, strategies, discipline, internal research capabilities, external research resources, decision-making process, risk controls, costs).

3. Independent evaluation

The trustee should *independently* verify the quantitative and qualitative information. As one court noted "A fiduciary's independent investigation of the merits of a particular investment is at the heart of the prudent investor standard."[27] Money managers find many interesting ways to make poor performance look good. For example, money managers often compare their performance to inappropriate yardsticks. The trustee should always ensure that any comparisons of a money manager's performance to indexes or peer groups is a true "apples to apples" comparison. Another problem involves investment style drift, which occurs when a money manager deviates from his stated investment style. Trustees should not assume that the name of a fund or its stated investment style is an accurate reflection of its true investment style.

Investment costs

Section 7 of the UPIA provides that "In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee."

The Comment to Section 7 states "Wasting beneficiaries' money is imprudent. In devising and implementing strategies for the investment and management of trust assets, trustees are obliged to minimize costs.... It is important for trustees to make careful cost comparisons, particularly among similar products of a specific type being considered for a trust portfolio." [28]With regard to the delegation of

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[27] *Fink v. National Savings & Trust, 772 F.2d951, 1985*

[28] *Restatement of Trusts 3d: Prudent Investor Rule, Section 227, comment m, at 58*

investment and management functions, the Comment provides that the trustee must balance the projected benefits against the costs.

The cost structure of an investment portfolio can be extremely difficult to analyze, but it must be done because it is a key fiduciary duty and a necessity for maximizing returns. There are explicit costs. In addition, costs can be bundled or moved from one category to another to create apparent savings. Costs can be hidden in ways that are not obvious but that dramatically affect investment performance. Every service provider should be required to properly disclose *all* fees and expenses.

Costs fall into the following four categories.

- money manager fees
- trading costs, including commission charges and execution expenses
- custodial charges, including custodial fees, transaction charges and cash management fees, and
- consulting and administrative costs and fees.

Because of the changing landscape of the financial services industry and investment products, and the impact of technology, costs will become increasingly important for trustees to scrutinize. In addition, if (when?) investment market returns regress to historical norms, the impact of costs on bottom line performance will increase dramatically. Trustees must inquire about the costs of various implementation options, and keep asking questions until they have become fully informed about all costs that affect the performance of the portfolio. Every service provider should be required to properly disclose all fees and expenses. Finally, the trustees must determine if the costs incurred are reasonable and necessary, and contribute to achievement of the investment objectives of the trust.

Duty of loyalty

Section 5 of the UPIA mandates that "A trustee shall invest and manage the trust assets solely in the interest of beneficiaries." The traditional fiduciary duty of loyalty requires the trustee to act exclusively for the beneficiaries, as opposed to acting for the trustee's own interest or that of third parties. The duty of loyalty prohibits any self-dealing or conflicts of interest from which the trustee would benefit personally.

The Comment notes that "The duty of loyalty is not limited to settings entailing self-dealing or conflict of interest in which the trustee would benefit personally from the trust. The trustee is under a duty to the beneficiary in administering the trust not to be guided by the interest of any third person."

A trustee's duty of loyalty is the duty to act in the interest of the trust as if the trustee had no other competing interests to consider. The trustee must resolve all conflicts between his personal interest or the interests of others and the interests of the trust and its beneficiaries in favor of the latter. A conflict of interest, and therefore a breach of the duty of loyalty, involves an actual or *potential* conflict between a trustee's fiduciary responsibility and the trustee's private personal or financial interest.

The duty of loyalty requires a careful examination of any relationships between the trustee and any product or service vendors, and requires that vendors not be selected because of any benefit, financial or other, that flows to the trustee. Many trustees should carefully evaluate whether their relationship to product or service vendors to the trust is a breach of the duty of loyalty.

Social investing

The Comment to Section 5 notes that "No form of so-called 'social investing' is consistent with the duty of loyalty if the investment activity entails sacrificing the interests of trust beneficiaries (for example, by

accepting below market returns) in favor of interests of the persons supposedly benefited by pursuing the particular social cause." Remember, however, that the UPIA is a default rule that can be modified by the trust provisions.

STEP 5: MONITOR AND SUPERVISE

Ongoing supervision of an investment program is an essential element of prudent investing. Section 9(a)(3) of the UPIA requires the trustee to exercise reasonable, care, skill and caution in "...periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation." The Comment to Section 2 states that "Managing embraces monitoring, that is, the trustee's continuing responsibility for oversight of the suitability of investments already made as well as the trustee's decisions respecting new investments."

It is not enough for the trustee to develop strategic long-term investment objectives and implement them. The monitoring function extends beyond a strict examination of quarterly investment performance. By definition, monitoring occurs across all policy and procedural issues throughout the entire investment management process.

Why monitor investment portfolios?

There are many reasons that rigorous, periodic monitoring in an integral part of the trustee's responsibilities.

First, ongoing monitoring will probably improve investment performance and reduce investment risk.

Second, an organization's circumstances change as it evolves and grows. The size of its investment portfolio may grow. New investment pools or portfolios are created. The organization may have a new or expanded mission leading to different demands on its investment portfolio. Leaving existing investment portfolios on autopilot when an organization's circumstances change is not prudent investment management.

Third, ongoing monitoring demonstrates sound stewardship of assets.

Fourth, investment markets are dynamic. There have been dramatic changes in investment markets over the last few years. The exceptional performance of the investment markets, which has been far above historical standards, has dramatically altered investor expectations going forward, probably to unrealistic levels. The exceptional investment market performance has also hidden the mediocre performance of many investment managers.

Fifth, investment products and services are rapidly evolving. Technology has had a huge impact on the financial services landscape. New product structures (wrap plans, bundled plans) and new distribution channels (internet) add to the confusion and make it more difficult to evaluate. Finally, the roles of advisers in financial services have become blurred. If trustees haven't made major changes in their investment program over the last few years, a better and lower cost solution is probably available

Finally, trustees have specific legal requirements in the management of investment portfolios.

Ongoing performance reports

A review of investment performance has two components. First, performance measurement focuses on quantitative measurement and reporting. Second, performance evaluation analyzes and interprets qualitative and quantitative information.

The contents of a performance report should include the following:

- investment market overview
- portfolio balance sheet
- actual v. strategic asset allocation
- rates of return (by portfolio, asset class and money manager all time weighted)
- relative performance (i.e., performance vs. markets, peers and investor goals)
- qualitative discussion re: performance
- compliance with investment policy statement
- liquidity requirements, and
- rebalancing requirements.

The results should be reviewed periodically and should provide a forum for open discussion among trustees, money managers and investment consultants.

Criteria for terminating a money manager

Perhaps the most difficult question is how long to continue with a money manager during a period of underperformance. The criteria for terminating a money manager should have been established prior to this step and should be included in the investment policy statement. Some criteria that call for further investigation might include:

- a change in investment style
- organizational changes
- large increases/decreases in assets
- a new portfolio manager
- consistent underperformance relative to peer group
- lack of adherence to securities, asset allocation and procedural guidelines in the investment policy statement, and
- litigation or regulatory investigations.

It is important for quantitative screens to be realistic. Criteria that require consistently high performance targets (e.g., top quartile) in all periods are certain to lead to a revolving door of money managers.

Ongoing Process

The investment management process doesn't end here. It is dynamic and ongoing. Trustees should monitor and supervise throughout every step of the investment management process, including the investor's situation and investment objectives, the appropriateness of risk/reward characteristics of portfolio, the contents of the investment policy statement and the performance of money managers and other service vendors. At least annually or on the occurrence of any major change, the trustee should begin again at step one in the investment management process.

INVESTMENT MANAGEMENT PROCESS BENEFITS

Many benefits result from following the investment management process in situations falling within the requirements of the UPIA.

First, it provides a practical, easily understandable and easily adaptable process. The investment management process is applicable to all types of investment portfolios, regardless of size or intended use. It facilitates the development of individually customized solutions based on the client's unique needs and circumstances.

Second, it acts as a checklist to ensure that all relevant issues are considered and evaluated. It continues to have relevance and effectiveness into the future throughout changing investment markets.

Third, it encourages research-based decisions and prudent judgment, and replaces intuition and emotional decisions.

Fourth, the process promotes compliance with fiduciary responsibilities. The prudence of the trustee's decisions will be demonstrated by the quality and thoroughness of the decision-making process.

CONCLUSION

The UPIA reflects the very significant changes that have occurred in the investment practices of fiduciaries over the last 30 years. The four major changes to prior law are:

1. Trustees are required to diversify the investment portfolio
2. Trustees are required to focus on the risk/reward characteristics of the total portfolio
3. Trustees are permitted to delegate investment and management functions
4. Trustees should formalize investment policy.

Trustees have more latitude in the design and implementation of investment portfolios, but they also have more responsibilities. They must balance risk and reward. They must diversify investment portfolios. They must focus on the total investment portfolio. They cannot simply select conservative investments or investments from approved lists. They should prepare a written investment policy statement. They must independently monitor and supervise the investment portfolio on an ongoing basis. The UPIA has offset these additional responsibilities by enabling the trustee to delegate investment functions and, when prudent steps are followed in the delegation, avoid fiduciary responsibility for the acts of the agent.

The net effect of the UPIA should be improved investment performance, reduced investment risk and a higher probability of achievement of investment objectives on behalf of trust beneficiaries.

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GIFTS OF REAL ESTATE
OPPORTUNITIES AND PITFALLS

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Gifts of Real Estate: Opportunities and Pitfalls

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1) **Introduction / Scope of Presentation**

2) **Gift Potential**

   a) Widespread ownership (65% of families own their primary residence; 75% of individuals over age 65 own one or more homes. Total value of homes owned by those over age 65 is roughly $1 trillion. 83% of individuals over age 65 have no debt on their real estate.)

   b) Escalating property values

   c) Portion of individual wealth (Approximately 50% of all wealth is held in real estate.)

3) **Real Property Overview**

   a) **Raw Land -** Whether it is 10,000 acres of remote land in Montana or Wyoming, or one square block in Manhattan, raw land is still the simplest and most abundant form of real estate. While vast tracts of land will remain undeveloped in perpetuity, especially in the Western United States with its large areas of public lands, raw land will continue to have some the greatest potential for future growth in value. The value of raw land generally depends on its potential for future development, present or future scenic value, or present use as farm or ranch land.

      (1) **Farm / Ranch Land -** In spite of the urbanization of the United States in the 20th Century, the majority of the actual land remains undeveloped and is used in farming or ranching operations. The U.S. economy was originally based heavily on agriculture. Farm and ranch operations continue to be significant component of U.S. economic output today, even though the number of individuals involved in agricultural businesses has declined as many farms and ranches have consolidated into large operations. Gifts of farm and ranch land continue to represent a significant source of potential charitable gifts and can be relatively simple to evaluate and accept.

      (2) **Undeveloped Commercial** – With the continued growth of urban areas in the U.S., undeveloped commercial land is unparalleled for its potential gift value and challenges. Development of raw land for commercial use typically occurs in multiple stages and such land can be transferred as a charitable gift at any stage. The challenge for donees is assessing and evaluating relevant issues and considerations at each stage, including potential problems that it may encounter as owner of the land.

   b) **Personal Residences** – Easily the most numerous form of real estate, though not necessarily the most valuable. Ownership of personal residences is found across economic levels and often represents the most significant single asset of many individuals' estates. As such they can often represent important assets for individuals to consider when thinking about making a significant planned gift (i.e. a gift of assets) to a favorite charitable organization.

   Unfortunately, most charitable gifts of personal residences are limited by their very nature (i.e. they are where people live and where people often want to continue living). Personal residences cannot be separated from the process of daily living; even if a person wants to make a donation of their personal residence they must find another residence before making the gift (unless it is a gift of a remainder

interest). Therefore, any charitable gift planning involving personal residences must made in full consideration of this unique context.

c) **Vacation Homes** – Second homes or vacation homes represent a growing percent of real property ownership. They can be uniquely attractive as potential gifts since such transfers do not require the donors to move out of their primary residence. However, gifts of vacation homes can carry a downside if the potential donor's interest is heavily motivated by a desire to transfer the property to avoid existing problems such as deferred maintenance, limited potential rental income or marketability, high taxes or assessments. In such cases, charities would be wise to approach such potential gifts with a healthy dose of caution. In particular, timeshare interests may be of questionable value and marketability.

d) **Commercial Property** – Includes office buildings, warehouses, manufacturing facilities, retail complexes, apartment buildings, industrial parks, etc. and are often the most valuable types of real estate. Their value tends to be greater than most other property gifts received by any given charity. Gifts of commercial property are also more complex than any other gift of real property. In addition to its raw value, commercial property generally carries with it an additional benefit in that it often produces a stream of income. Therefore, gifts of commercial property often do not necessarily need to be sold in order to produce financial value for the donee. In some cases, retaining a particular gift of commercial property may actually make greater sense than selling it. Such decisions require a high degree of expertise and the involvement of professionals in analyzing the possible options. Given their complexity, all gifts of commercial real estate must involve careful, time-consuming analysis and planning with a team of experts in order to insure that the outcome is positive for all parties.

4) **Real Property Ownership**

a) **Fee Simple** – The owner is entitled to the entire property with unconditional power of disposition during his life and descending to heirs at death. Unlimited in duration, disposition, and descendability.

b) **Partial Interests** – Property held by more than one owner, each sharing a portion of ownership in some legal manner at the same time or consecutively.

i) **Tenancy in Common / Undivided Interests** – Property held by two or more tenants and by the same title whether the interests are equal or unequal. Each owner co-owns each and every right to the same property at the same time in their relative proportions.

ii) **Joint Tenancy with Right of Survivorship** – Unlike tenants in common, joint tenants all own equal, undivided interests with a right of survivorship. A joint tenant cannot transfer his interest by bequest; the right of survivorship prevails. Therefore, such transfers are not subject to probate administration in the estate of the decedent tenant. However, even though the transfer avoids the probate administration process, the decedent tenant's 50% share in the property is still included in his or her gross estate for federal estate tax purposes. The decedent's share does receive a stepped-up cost basis in the hands of the survivor, however, the survivor's interest remains unchanged.

iii) **Community Property** – Property owned in common by husband and wife each having an undivided one-half interest by reason of their marital status. Does not pass by operation of law to the surviving spouse; instead, the decedent's 50% share passes according to the terms of the decedent spouse's will. Also unlike joint tenancy property, upon the death of one spouse the entire property receives a stepped-up cost basis. Used in eight community property states: Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, and Washington.

iv) **Tenancy by the Entirety** – Ownership between husband and wife by which together they own title to the whole with right of survivorship. Used in non-community property states.

v) **Condominiums** – Division of property "horizontally" by which each owner possesses an exclusive right to use, occupy, mortgage, and dispose of his or her specific unit, plus an undivided fractional interest in the areas, fixtures, exterior structures, etc. that comprise common areas.

vi) **Leaseholds** – An interest in real estate allowing possession or occupancy of land or premises under the terms of a lease.

vii) **Life Estates and Remainders** – A form of consecutive ownership under which a life tenant is initially given the right to possess, control, and enjoy the property for his lifetime or a defined period of time as specified in a life estate agreement. Upon the death of the life estate owner, the property passes to the owner of the remainder interest.

c) **Indirect Ownership**

i) **Partnerships** – Ownership by an association of two or more persons who are carrying on business together. May be structured as a general partnership or limited partnership. The partnership may own property and the partners own partnership interests. Partnership interests may or may not be transferable to charity depending on the terms of the partnership agreement.

ii) **Corporations** – Property is held as an underlying asset. Indirect ownership is held by individuals through shares of stock in the corporation. Transfers of corporate owned property can be especially complex because there are two levels of tax, corporate and individual, that must be considered.

iii) **Cooperative Housing Corporations** – A corporation or association that holds property (typically multi-tenant residential) for the benefit of its members, who hold indirect ownership through shares. Shares may transferred but such transfers may be subject to approval by a board of directors.

iv) **Limited Liability Companies** – A legal structure that is a hybrid between a partnership and a corporation. Units of ownership may represent ownership interests in real estate, from which income may paid (similar to partnership interests). Acceptance of LLC units may include the realization of liabilities, debts, unrelated business income, etc.

v) **Revocable Living Trusts** – Common estate planning tool in which title is actually in the name of the trustee but where the trustor retains full ownership rights in the trust's assets. For purposes of charitable giving, it is generally advisable to reconvey title back to the trustor as an individual, who then transfers the property to the charity.

vi) **Real Estate Investment Trusts** – Specialized trusts that are traded as public companies and are designed primarily to acquire and hold real property or mortgages. Ownership is represented in the form of shares or certificates that may be donated to charity.

d) **Evidence of Title**

i) **Warranty Deed** – Provides the greatest amount of protection to the buyer or donee by providing assurances of good title. It creates an ongoing future obligation on the grantor to guarantee the covenants contained in the deed. This typically includes, among other guarantees, the assurance that the seller is the owner of, has possession of, and has the right to sell the property.

ii) **Grant Deed** - Used in some states in place of warranty deeds. Generally warrants that the property has not been conveyed to any other person, is free of any encumbrances, and describes any rights-of-way, easements, restrictions, etc. Unlike a warranty deed, it does not warrant good title.

iii) **Quit Claim Deed** - Does not warrant possession to or any right of title to the property. Simply conveys whatever rights the grantor possesses at the time of transfer. Offers the least amount of security. Commonly used by divorcing couples. The least desirable type of deed for charitable purposes.

iv) **Executor's Deed** – Used to convey title from the estate of a decedent. It contains only a covenant against acts of the grantor and, like a quit claim deed, makes no assurances with respect to possession or good title.

5) **Transferring Real Property**

a) **Title Search** – Intended to identify any defects, liens, or other restrictions against a property's title and disclose the details thereof.

b) **Title Insurance** – Used commonly to guarantee that the title received by the grantee is marketable and insure the grantee from any loss or damage as a result of any title defects that weren't discovered by the title search.

c) **Property Survey** – Shows the precise legal boundaries of a property, along with the location of improvements, easements, rights of way, encroachments, and other physical features.

d) **Inspection** – Physical examination of the property by a representation of the grantee / donee including confirmation of pertinent information regarding tenants, leases, deposits, etc.

e) **Environmental Hazards Review** – An inspection for any environmental hazards. Necessitated by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), under which an owner of property within the boundaries of an EPA Superfund site may be held liable for the costs of cleaning up the site. Potential liability was somewhat limited by the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act (1996).

f) **Acceptance and Removal of Encumbrances** – If encumbrances are to be removed prior to transfer, such removal should be evidenced by a reconveyance that has been properly recorded.

g) **Recording** – The final step of a property transfer is recording the deed, typically with the appropriate clerk and recorder's office where the property is located.

6) **Valuing Real Property**

a) **Valuation vs. Appraisal** – In many situations it is helpful to have a reasonable sense of the value of a parcel of real estate that is being considered as a charitable gift. Real estate professionals with experience in the area and with the particular type of property may be able to provide a very reasonable estimate of a property's market value based on recent selling prices of comparable properties and other market information. However, such a valuation must not be confused with a qualified appraisal that is obtained for purposes of substantiating a charitable deduction. In some cases, a valuation may be entirely appropriate (e.g. as in the case of a charitable remainder trust whose governing agreement does not require an official appraisal of trust assets each year). However, for any gift of real estate a qualified appraisal is requirement in order for the donor to be able to claim a charitable deduction.

b) **Appraisal Requirements** – IRS regulations (1.170A-13(c)) require that a qualified appraisal be obtained for any gift of property valued at $5,000 or more. The gift property's market value and other related information is reported on an Appraisal Summary - Form 8283 (Noncash Charitable Contributions) and submitted by the donor with his or her income tax return. If the charitable donee disposes of the property within two years of the date of the gift, it must notify the IRS of the sale using Form 8282.

c) **Qualified Appraisals** – An appraisal of the gift property that has been prepared, signed, and dated by a qualified appraiser, which includes information required by the IRS, and which does not involve a prohibited appraisal fee.

d) **Qualified Appraisers** – Someone who holds himself out to the public as an appraiser and is qualified by virtue of qualifications described in the appraisal to make appraisals of the type of property being valued. Persons who may not be qualified appraisers include, among others, the donor, any party to the transaction

in which the donor acquired the property, the donee, and any person employed by or related to such persons.

e) **Appraisal Fees** – May not be based in whole or in part on the value of the property being appraised.

f) **Timing** – Qualified appraisals must be made no earlier than 60 days before the date of the gift and no later than the due date of the tax return on which the donor first claims a charitable deduction for the contribution.

7) **Tax Considerations**

a) **Income Tax**

i) **Ordinary income property** – In most cases, contributions of property involve real estate that has been held for more than one year and qualifies as long-term property. However, some property would generate ordinary income if sold and, in such cases, the amount of the deduction must be reduced by the amount of ordinary income in the property. This may occur if the property has been held for only one year or less, if the donor held the property as a real estate dealer, or if the property is subject to depreciation recapture.

ii) **Capital gain property** – Gifts of long-term, capital gain property may be deducted at their fair market value up to a maximum of 30% of the donor's adjusted gross income with an additional five-year carryover period available if needed.

iii) **Special rules on sale of personal residences** – Individuals may exclude $250,000 of gain ($500,000 for married couples filing a joint return) on the sale of a personal residence. This provision, enacted in 1997, should be considered when evaluating a gift of a personal residence. In many cases, it may actually be more advantageous for the donor to first sell the residence and then contribute the proceeds, which will then qualify for the 50% deduction limitation as a gift of cash.

b) **Gift / Estate Tax Considerations**

i) **Advantages of Testamentary Gifts of Real Estate**

(1) **Stepped-up cost basis** – When real property is transferred at death it receives a step-up in cost basis in the hands of the grantee / donee. This may be advantageous with certain charitable gift plans including non-grantor charitable lead trusts in that the property can then be sold and reinvested without incurring taxable capital gains other than gains which occur after the date of the donor's death.

(2) **Responsibility can be delegated to personal representative** – It is not uncommon for charitable organizations to refuse gifts of real estate out of concerns that the organization is not equipped to evaluate, accept, or properly manage gifts of real property. Such concerns generally are not as great when property is contributed by action of a donor's estate plan. In such cases, the charitable donee can generally instruct the personal representative to sell the property on behalf of the charitable organization. The charity avoids being included in the chain of title, avoids the responsibilities inherent with managing and marketing the property, and does not need to dedicate substantial human resources to completing the transaction.

8) **Evaluating and Accepting Real Property**

a) **Inspection / Checklist** – Successfully evaluating prospective gifts of real estate starts with asking the right questions. It is impossible to remember all of the questions that need to be asked and so a checklist of questions is the key to gathering all of the relevant information with respect to any given piece of real estate. Once initial information has been obtained, scheduling a visit with the prospective donor to see the property provides the opportunity to complete the process of gathering information and document the

actual condition of the property through a visual inspection. Such an inspection should generally be conducted by the development officer and the charity's real estate manager.

b) **Environmental Audit**

i) **Phase 1** - Researches prior owners and uses of the property. Includes basic visual inspection.

ii) **Phase 2** - Includes more detailed physical inspection and core sampling to follow-up on any suspected hazards. Somewhat more intrusive but still limited in scope.

iii) **Phase 3** – Includes in-depth sampling, more intrusive inspection and accurate identification of materials followed by remediation, monitoring and reporting of identified hazardous materials and the cleanup.

iv) **Note:** Performing such audits may also qualify the donee for the innocent landowner exception to strict liability under the environmental laws.

v) **Warranty Statement** – A statement signed by the donor warranting that they have no knowledge of any environmental hazards present on the property and agree to hold the charity harmless for any such conditions that may be discovered in the future.

c) **Property Management and Maintenance** – Most gifts of real estate will entail at least some level of management and maintenance responsibilities to the recipient charity, even if sold by the charity in the least possible time. Depending on the condition of the property

d) **Property Tax Considerations** – In most cases, real property will continue to be subject to state and local property taxes even after being transferred to a charitable organization, unless the property is actually being used by the charity in furthering its exempt purpose. Therefore, it is important to address in advance who will be responsibility for the payment of property taxes, especially in the event that the property will be deliberately held for an extended period of time or will require an extended period of time to liquidate. The typical choice is for the donor to make an additional contribution of cash that can be used to cover future property taxes or for the charity to advance cash to pay the property taxes and then recover those and any other expenses upon the sale of the property.

e) **Insurance** – The responsibility to transfer the property to a charity's blanket insurance coverage is typically a simple process but one which can easily be overlooked with potentially disastrous consequences. Be sure to include this vital step in the checklist of procedures related to accepting any gift of real estate.

f) **Marketability** – Unless a piece of real estate can be liquidated after its contribution to a charity, it is often of minimal or no value as a gift to the charitable donee. As such, discussions about marketability must occur early in the process of evaluating a potential charitable gift, even though it will not officially become an issue until after the gift is completed. Discovering early on that a piece of real estate has questionable marketability gives the prospective donee the opportunity to graciously decline the gift and avoid wasting additional time evaluating a gift that just doesn't make sense.

9) **Gift Planning Opportunities**

a) **Outright Gift** – As with any gift of long-term appreciated assets, an outright gift of real estate has the greatest potential benefits for the donor and the charity. The donor receives maximum tax benefits in the form of a full market value income tax deduction and avoids all tax on any long-term appreciation. The charity receives an asset that it can liquidate and put to current use as directed by the donor. Given their significant value, gifts of real estate (especially if they are readily marketable) can have tremendous impact on a charitable organization and may constitute a significant component of major gift campaigns to fund capital building projects and large endowments such as endowed faculty chairs or program endowments.

b) **Bargain Sales** – If a donor is unwilling or unable for some reason to contribute real estate outright, it may make sense for the charity to purchase the property for a price that is less than the property's current market value. Such a transaction is termed a "bargain sale" since the property is being purchased at a bargain. The difference between the property's market value and the sale price is deductible as a charitable gift. In addition, part of any unrealized long-term gain is treated as reportable capital gain income to the donor. IRS regulations require that the cost basis be apportioned between the sale and gift portions of the transaction to determine the amount of the sale price that is recognizable by the donor/seller as capital gain. It is also important to note than the transfer of any real property subject to a mortgage will also trigger the bargain sale rules and the recognition of reportable capital gain. Even though the donor/seller may not receive any direct payment as a result, he is being relieved of an obligation in the amount of the remaining mortgage balance, which is subsequently treated as the sale portion of the bargain sale.

Example 1: Mrs. Evans sells a parcel of real property with a current market value of $500,000 to ABC Charity for $100,000. She has owned the property for twenty years. Her cost basis is $50,000.

Charitable Gift: $400,000
Sale Portion: $100,000
Cost Basis Allocable to Sale Portion: ($100,000 / $500,000) X $50,000 = $10,000
Reportable Capital Gain: $100,000 - $10,000 = $90,000

Example 2: Mr. Owen sells a home valued at $450,000 to XYZ Charity for $100,000. The property is also encumbered by an existing mortgage with a current balance of $50,000. Mr. Owen's adjusted cost basis is $90,000. He purchased the property fifteen years ago.

Charitable Gift: $300,000
Sale Portion: $100,000 + $50,000 = $150,000
Cost Basis Allocable to Sale Portion: ($150,000 / $450,000) X $90,000 = $30,000
Reportable Capital Gain: $150,000 - $30,000 = $120,000

i) **Installment Bargain Sales** – In many cases a bargain sale will involve a lump sum payment from the charity/buyer to the donor/seller. However, if the charity intends to keep the property or lacks the funds to fund the entire purchase price at once, another option would be for the charity to pay the purchase price over a defined period of time with interest via a negotiated series of payments (i.e. a mortgage). In this case, the reportable capital gain may qualify to be ratably reported as a portion of each installment payment rather than all at once at the time of the purchase. Depending on the circumstances of the transaction, the same treatment may be possible with a bargain sale involving encumbered property. As such, an installment bargain sale may be an ideal alternative to a charitable remainder trust or gift annuity where the gift property is encumbered with an existing mortgage and the donor desires a stream of income from the gift.

c) **Gift of Remainder Interest in Personal Residence or Farm** – A transaction in which an individual irrevocably transfers title to a personal residence or farm to a charitable organization with a retained right to the full use and enjoyment of the property for a term specified in the gift agreement. In most cases, the term is defined as the remaining lifetimes of one or two persons. Upon the completion of the specified term, all rights in the property are transferred to the charitable remainderman. A charitable income tax deduction is allowed for the present value of the charitable remainder interest.

i) **Special Considerations** – In view of the fact that the charity holds a future interest in a piece of property that it neither uses nor manages, it is important that the responsibility of the life tenant to maintain the property in good condition be spelled out. The agreement should also make it clear that the life tenant is also responsible for properly insuring the property, paying any ongoing expenses such as property taxes, utilities, etc. and may not encumber the property without the permission of the charitable remainderman.

d) **Bequests** – As mentioned under tax considerations above, a charitable bequest of real property can be an effective strategy for conveying real estate after the donor no longer needs it. This also eliminates the need

for the charity to have the internal expertise needed to evaluate and accept gifts of real estate since these responsibilities can be delegated to the personal representative. In addition, if the charity has concerns about the property, hazardous materials, etc. it can avoid entering the chain of title since the property will be sold by the personal representative on behalf of the estate.

e) **Gift Annuities** – A gift of real property in exchange for a gift annuity may be possible in certain circumstances if the charity offers gift annuities and as long as state regulations do not prohibit such transfers. Since the obligation to make annuity payments is treated as a general obligation of the issuing charity and begins immediately in the case of an outright gift annuity, many organizations may not accept gifts of real estate in exchange for a gift annuity. In other cases, state law restricts gifts that may be transferred for a gift annuity and specifically exclude real property. Under the right conditions, however, such a transfer can be an appropriate and advantageous strategy but only after the charity has conducted a thorough examination of the property. In addition, the issuing charity may want to consider using a deferred payment gift annuity to delay the initial payment date in order to give the charity a period of time to sell the property. Also, the charity may need to reduce the annuity rate to adjust for liquidity and market risk.

f) **Pooled Income Fund** – Transfers of real property to a pooled income fund are generally not advisable since such a transfer will usually dilute the income produced by the fund, thus reducing the income of the other fund participants. Even if the property can be sold immediately and with minimal market risk it is likely that the net sales proceeds will be less than the property's appraised value on which the assignment of the donor's units in the fund is based. Only where the property generates a significant current stream of income or where the charity is prepared to purchase the property for use in connection with its mission does such a transfer make sense.

g) **Charitable Remainder Trusts**

i) **Annuity Trusts** – Transferring real property into a charitable remainder annuity trust is inadvisable under almost any and all circumstances. This is true since the obligation for the trust to begin making fixed distributions commences the day that the property is transferred to the trust, whether or not the property generates sufficient income. If the property generates insufficient income or is non-income generating, an extended period of time may be needed to sell the property. Any efforts to push for an immediate sale may or may not be successful and inevitably result in the trustee settling for a lower sales price than the property's appraised market value at the time of the initial contribution. If the sale nets less than the property's initial appraised value then the trust's effective payout rate increases, placing the trust under an increased risk that principal will be eroded over the trust term. Also, since an annuity trust may not receive any additional contributions the donor has no opportunity to make an additional gift of cash or marketable securities to help fund the required payments. Bottom Line: Contributing real property into a charitable remainder annuity trust places all parties at the greatest risk and should be avoided.

ii) **Unitrusts** – Charitable remainder unitrusts have long been the most popular gift planning option for gifts of real property. In particular, net income unitrusts, have typically been the most commonly recommended and accepted charitable plan to use in converting a piece of appreciated real estate into a stream of income. A net income trust can easily handle low- or non-income producing property since its distributions are limited to the lesser of the trust's actual income or the stated payout rate. In addition, a makeup clause can be added providing the opportunity to make up in the future for any payout deficiencies that occur prior the property's sale. Also, unitrusts can accept additional contributions at any time. One disadvantage of a net-income unitrust is that it puts pressure on the trustee to invest more heavily in fixed-income investments in order to generate the desired level of distributable net income. Over time such an investment strategy underperforms a strategy that pursues a total return objective through a diversified portfolio of equities and fixed-income investments. This limitation has lead to the creation and approval of a new hybrid charitable remainder trust, the flip unitrust.

iii) **Flip Unitrusts** – New regulations approved by the IRS in late 1998 approved a hybrid unitrust that starts out with a net income payout format and then switches or "flips" to a standard payout format upon the occurrence of a specified event, condition, or date. This is ideal planning tool for gifts of real property. After real property is transferred to a flip unitrust and prior to the property's sale, the trust functions as a net income unitrust, distributing income only to the extent that the trust has net income available. Once the property is sold, the trust "flips" to a standard payout (the flip actually occurs at the beginning of the calendar year following the sale). The trust then begins making regular distributions to the income beneficiary from income and, if necessary, from principal (including realized and unrealized capital gains) based on the stated payout rate in the trust agreement. The trustee can invest the net sale proceeds for total return, thereby taking into the current interests of the income beneficiary and the future interests of the charitable remainder beneficiary(ies).

Flip unitrusts offer a high degree of flexibility that previously was not availability for charitable gift planners. They are ideally suited for gifts of real estate. Unless the donor desires to delay or vary future trust distributions, then a flip unitrust or, in some cases, a standard unitrust should be the preferred choices over a net income unitrust.

h) **Charitable Lead Trusts** – Transferring real property to a charitable lead trust can be an effective planning strategy but requires careful planning. This stems primarily from the fact that a lead trust is not exempt from paying income taxes and is, therefore, subject to capital gain on the sale of any appreciated real property within the trust. For this reason, real property that is transferred by a donor to a charitable lead trust as a lifetime gift is generally held rather than being sold. This requires that the property already generates a stream of income that can be used to fund the charitable distributions from the trust and can generally be expected to continue doing so. An alternative is to structure the gift as a testamentary transfer, through which the property will receive a stepped-up cost basis. This would then allow the trust to sell the property and avoid tax on any gains prior to the transfer. The proceeds could then be invested for total return for the term of the trust. Since many lead trusts are used as part of a comprehensive estate plan, such a testamentary transfer can be an ideal solution for converting real property into a form that can be transferred to heirs while also reducing estate taxes.

10) Real Estate Pitfalls

a) **Environmental Problems**

i) **Contamination / Hazardous materials**

ii) **Geophysical conditions**

(1) **Ground water**

(2) **Soil problems**

(3) **Unstable slopes / faults**

b) **Encumbered Property**

i) **Problems**

(1) **Bargain sale rules** – As discussed above, when debt encumbered real property is transferred to charity, whether as an outright gift or to a charitable remainder trust, the entire amount of indebtedness is considered an amount realized by the donor for purposes of the bargain sale rules.

(2) **Grantor Trust Rules** – Funding a charitable remainder trust with debt encumbered property on which the donor remains personally liable can cause the donor to be treated as the owner of the entire trust under the grantor trust rules, in which case the trust is not a charitable remainder trust and the donor will be taxed on the trust's income.

(3) **Acquisition indebtedness** – If the trustee of a charitable remainder trust accepts property subject to an indebtedness the trust will have acquisition indebtedness. Therefore, any income generated from the property will be considered unrelated business taxable income, thus causing the charitable remainder trust to lose its tax exempt status for the year when the income was realized.

(4) **Self-dealing considerations** – Transferring encumbered property to a charitable remainder trust can also be treated as violating the self-dealing rules, which would disqualify the trust.

ii) **Possible Solutions**

(1) **Retire Property Prior to Transfer**

(2) **Transfer Debt to Another Piece of Real Property**

(3) **Transfer Debt-Encumbered Property in exchange for a Charitable Gift Annuity**

(4) **Installment Bargain Sale**

c) **Illiquidity**

d) **Unexpected Expenses**

i) **Title Fees**

ii) **Insurance**

iii) **Utilities**

iv) **Taxes**

v) **Inspection Fees**

vi) **Appraisal Fees**

vii) **Repairs & Maintenance**

e) **Pre-arranged sales** – If the charitable donee is obligated at the time of the contribution to sell a gift of real property under the terms of a pre-arranged contract, the property is treated by the IRS as having been sold by the donor. The donor will be taxable on any realized gains from the sale. It is permissible for the charity to independently negotiate a sales contract in anticipation of the gift, but sales pre-arranged by the donor should be strenuously avoided.

f) **Mismatched gift plans**

i) **Example: illiquid property placed into a CRAT**

11) **Requirements for Promoting Gifts of Real Estate**

a) **Policies / Guidelines**

b) **A Team of Professionals**

i) **Property Experts**

ii) Competent Legal Counsel

iii) Financial Professionals

c) Institutional Commitment

i) President / Executive Director

ii) Board of Trustees

iii) Treasurer / Controller

iv) Property Management

d) Marketing Expertise

Appendix: Checklist for Acceptance of Real Property

Sources:

"Gift Asset Review: Real Property", Planned Giving Design Center (www.pgdc.net), 1999.

"Gift Planner's Digest: Gifts of Real Estate", Planned Giving Design Center (www.pgdc.net), 1999.

"Why Gone With The Wind?: Transforming Tara from Prospective Realty to Gift Reality", Philip M. Purcell, 11th National Conference on Planned Giving, Atlanta, Georgia, 1998.

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UNIVERSITY OF DENVER

INCOME PROPERTY FROM DONORS
CHECKLIST FOR CONSIDERING ACCEPTANCE

Potential property is ____Gift to DU ____Asset to fund a trust

1. Name of Donor____

   Address____

   ____

   Phone ____________________ ____________________
   Business phone Home phone

   Best time to call? ______________________________

   If professional services are used, (realtors, appraisers, environmental engineers etc.) how should arrangements be made to gain access to the property?______________
   ____
   ____
   ____

   Property Manager ____________________ ____________________
   Name Phone

   Donor's Attorney ____________________ ____________________
   Name Phone

   Donor's Accountant ____________________ ____________________
   Name Phone

   How long has donor owned the property? ______________________

   How is the title held? ______________________

   How was the property obtained? ______________________

   What was the original cost of the property? ______________________

   Has the property been depreciated? ______________________

   If so, what method? ______________________

2. Property Location:

   Address____
   ____
   ____

   Assessor's Parcel Number______________________________

3. Brief Property Description including the activity generating revenue.
   ____
   ____
   ____

Previous uses of property (please describe)________________________________
____
____
____

4. Area Description____
____
____
____

Are any of the following on the property? Or in the immediate area?
Please check if yes:
( ) Gas Stations
( ) Factories
( ) Landfills
( ) Underground storage tanks
( ) Any other potential environmental "red flags"
( ) Storage sheds

Please provide details for any of the items checked above:
____
____
____

5. Property Cash Flow (please attach copies of most recent annual income statement, current rent rolls, and copies of all existing leases involving the property).

Projected Annual Revenue $_______

Projected Annual Expenditures ($_______)

Projected Net Cash Flow $_______

6. Value and Marketability of Property.

a. Executor/trustee estimate of fair market value $________
Basis for opinion? ____
____

b. Any recent sales of neighboring properties?___________________________
If yes, describe:
____
____

c. What is the property tax assessment? $_____________

d. Have there been any appraisals or realtor market analyses performed on the property in the past two years?_______________________

If yes, please list date and values given.
_________________________ $___________
Date
_________________________ $___________
Date

e. Has the property been on the market recently?________________________

If yes, please report for how long, at what price, with what realtor. Also report amount of any offers received.

____
____

f. Property Liens

(1.) First Mortgage
Please list balance due $___________

Describe terms of the mortgage (interest rate, monthly payment, amortization, and year of final payment).____
____

(2.) Other (including second mortgage)
Please describe any other liens placed on the property. ________________
____

(3.) Easements
Please describe: ____
____
____

g. Major maintenance items needing immediate attention.
Please briefly describe, including estimated cost. ________________________
____
____
____

Has Owner made plans to do repairs? _______________________________
____
____

h. Major expenditures that may be required per statutes of local, state, or federal government.

<u>Earthquake Protection</u>
Please describe any known code requirements that the property may not be in compliance with and the estimated cost to correct.______________________

<u>Environmental</u>
Please describe any situation on the property that may require cleanup.
Include costs.____
____

Other Governmental Requirements (including flood, fire, etc.)
Please describe: ____
____

Is there the following on the property? Yes or No
Asbestos____________________________________

Urea Formaldehyde Insulation ____________________

If yes to either of the above please give details as to extent and location.
Also describe local requirements (i.e. Removal prior to sale, full disclosure, etc.)

____

____

____

i. Is property insured?_____ If not, please explain____________________

____

7. Materials to get from executor/trustee, if applicable.
   - •Pictures of property
   - •Appraisals and market analyses
   - •Most recent tax bill
   - •Engineering reports

8. Please list names and phone numbers of realtors that donor recommends who would be potential marketers of the property.

____

____

9. Does donor have any names of potential buyers of the property? ____________
   If yes, please list names and phone numbers below.

____

____

____

10. Real Estate Manager comments on whether or not to accept property.

____

____

____

____

____

____

____
Real Estate Manager

10. Acceptance or Non-acceptance of the property.

APPROVED	**NOT APPROVED**	
______________	______________	______________
Treasurer/Controller	Treasurer/Controller	Date
______________	______________	______________
VP - Development	VP - Development	Date

SELECTING AND MONITORING INVESTMENT MANAGERS
Understanding the Duties and Responsibilities of Funds Management

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AMERICAN COUNCIL ON GIFT ANNUITIES
24TH CONFERENCE ON GIFT ANNUITIES
APRIL, 2000

SELECTING AND MONITORING INVESTMENT MANAGERS
Understanding the Duties and Responsibilities of Funds Management

Kathryn W. Miree
Kathryn W. Miree & Associates, Inc.

Selecting and managing an investment manager can be intimidating. There are literally thousands of "professional" investment advisors in the market. The bull market of the 1990s has produced scores of "genius" advisors with short track records. Money management has become a commodity available from a variety of sources. How do you distinguish one manager from another? How do you select a manager that will best support your program? Those questions will be answered in this session.

The Need For Investment Policies

The nonprofit board must understand the fiduciary duty imposed by law relating to the investment of funds contributed to the nonprofit organization. The new prudent investor rule, adopted as law by many states, places a high conduct standard on the trustee. These standards provide clear guidelines for investment management. The fiduciary must consider:

- The overall portfolio
- General economic conditions
- Tax consequences of the investment process
- Duration of the account
- Needs of the beneficiaries (income and remainder) of the trust
- The goals of the trust instrument

The effect of the law is to hold the fiduciary responsible for examining each trust on its own merits, and to require that the fiduciary make a decision about that particular trust or investment based on the big picture. The legislation expands the duties of the fiduciary, and requires that he exercise discretion in setting investment policy. This statute requires that the fiduciary spend more time in formulating policy than under previous law, but provides greater protection when examining the course of action chosen as a result of that formulation. The process, rather than the outcome, is used to measure the proper discharge of investment responsibility.

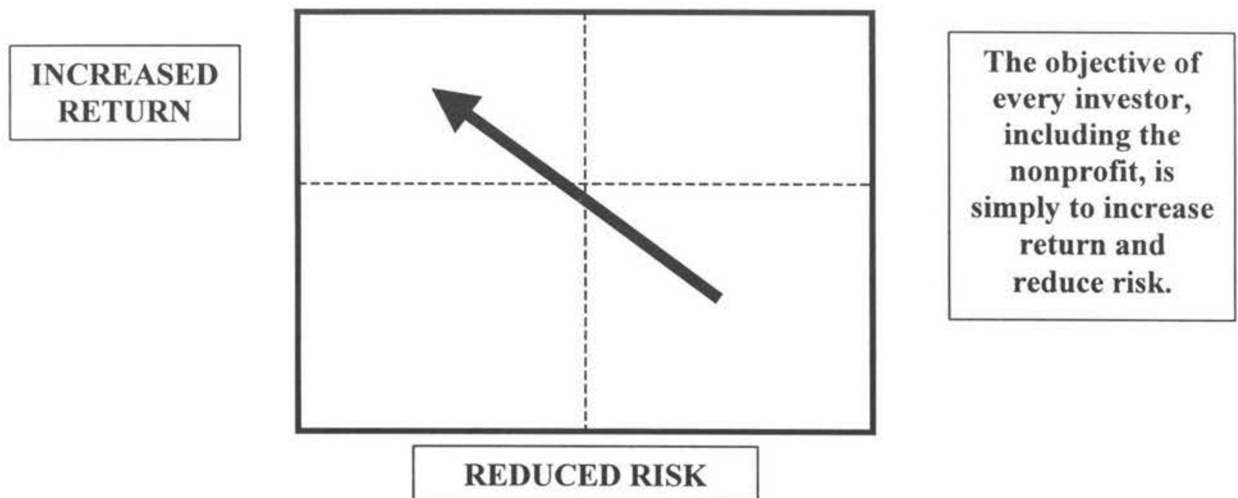
Donors are increasingly more sophisticated about investment options and about investment expectations. Donors expect the organization receiving the funds to have an investment plan, to achieve reasonable results, and to be able to explain those results. (The nonprofit may discover that donors know more about how to ask the questions than about how to interpret the answers. This means that the nonprofit must be prepared to educate the donor on the investment approach.)

Understanding The Investment Basics

Nonprofits have a fiduciary duty of care to properly manage assets given to them for investment. Managing the investment markets is a difficult process requiring professional investment advice. The market is now in the longest bull market ever experienced and the Dow and NASDAQ markets are at levels thought unattainable by many. This strong upward move in the equity markets has created several fringe market groups:

- ***The "Know No Fear" Group*** – This group believes that the market will continue to soar, and that all assets should be invested there.
- ***The "Sky Is Falling" Group*** – This group believes that the sky is falling. Disaster lurks. If they go into the market now, all will be lost. (As a note, the "Sky Is Falling Group" is the older of the two. I've had "SIF" clients since 1993 who are still waiting for the crash to venture in.)
- I recommend a third group – ***The Calm and Educated Investor Group***. This group makes decisions based on goals and risk tolerance and can withstand the fluctuations in the market.

Setting Investment Goals. The goal of the average investor, whether that investor is an individual or a nonprofit entity, is not difficult to understand. Simply put, all investors want the maximum return for the least risk.



"Maximum return" and "least risk" are generally defined by prioritizing the following:

- Preserving Capital
- Building Assets
- Need for Current Income
- Need for Future Capital

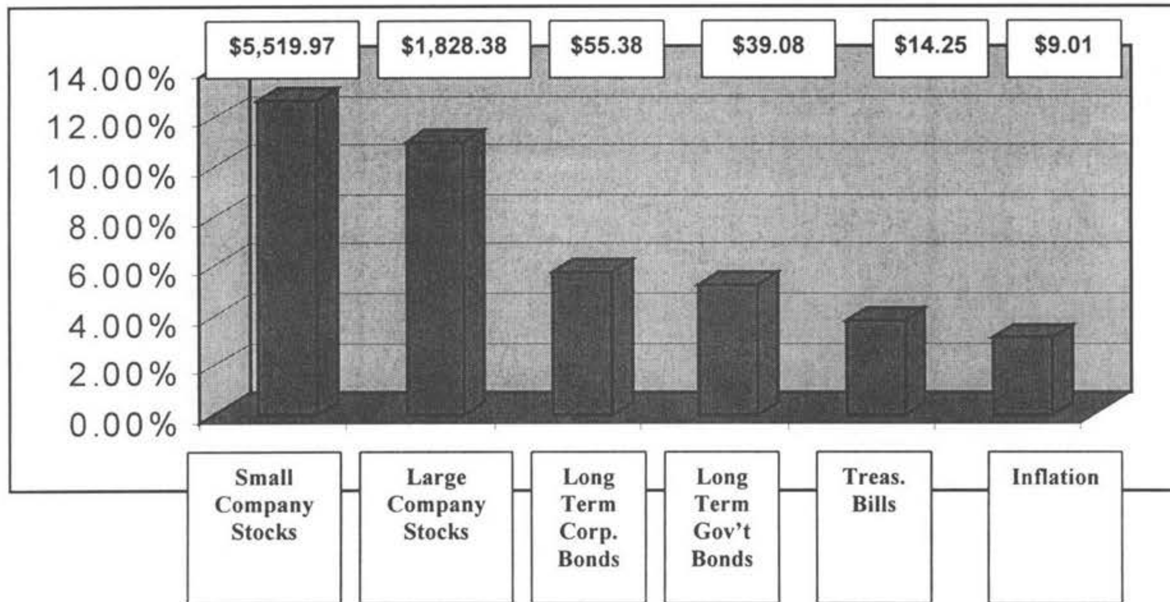
The priorities set by the nonprofit reflect the organization's risk tolerance and growth goals and determine the asset allocation for the portfolio.

The History of the Financial Markets. Proper investment management requires an understanding of market history. The chart on the next page reflects the asset class performance in the US Capital markets for various asset classes from 1925 through 1995. The percentage on the top of each column represents the average annual total return (combined income and principal growth) and the dollar values in boxes across the top of the chart represent the year-end 1995 value of a $1 investment made at the end of 1925 . This chart, though dated, uses 70-year averages to make the point that the equity markets drive long-term performance. This information may be especially important for boards that focus on short-term objectives.

The most significant observations about this chart are:

- The compounding effect of the annual return has an enormous impact on the long-term value of the dollar.

- The long-term portfolio must be exposed to the equity markets in order to attain significant growth beyond inflation.



Timing The Market. Most investors worry when the market reaches record levels. Those investors are often tempted to be market timers. (The "Sky is Falling" Group mentioned earlier is a classic market timer.) Market timing is uncontrollable and unpredictable. As the study below shows, the investor that bought the S & P basket of stocks on January 1, 1980 and held them until December 31, 1989, had a total annual return of 17.5%.

However, if that investor was out of the market on 10 key trading days during that period, the average annual return is reduced to 12.6%. If the investor was out of the market for 40 key trading days of the 2,528 days during the period, the average annual return was reduced to 3.9%. The days that were key during those ten years were with the benefit of hindsight and not with the benefit of trading indicators.

Market Period	S & P Annualized Returns
1980-1989	17.5%
Remove 10 Best Trading Days in Period	12.6%
Remove 20 Best Trading Days in Period	9.3%
Remove 30 Best Trading Days in Period	6.5%
Remove 40 Best Trading Days in Period	3.9%

Source: Datastream, Ibbotson Associates and Sanford C. Bernstein & Co.

The Importance of Asset Allocation. There has been great debate on what constitutes the best method of producing growth in an investment portfolio. What factors are most important: market timing, security selection or asset allocation?

In 1986, Gary Brinson and Randolph Hood, of First Chicago Investment Advisors, and Gilbert Beebower of SEI Corporation undertook a study to make that determination. The results of the study lead them to conclude that investment policy - allocating assets to asset classes - was the clear critical determinant of

portfolio performance. Investment strategy - timing the market and selecting the securities - had a much less significant role.[1]

The Brinson/Hood/Beebower study looked at the performance data from 91 large pension plans over a ten-year period (1974-1983). Their goal in the study was "to rank in order of importance the decisions made by investment clients and managers, and then to measure the overall importance of these decisions to actual plan performance."[2] Factors affecting performance that were examined included investment policy, the combination of policy and timing, the combination of policy and security selection and the actual return.

The results were compelling:

100% of the return was attributable to all factors
97.8% of the return was the result of policy and selection
95% of the return was the result of policy and timing
93.6% of the return was the result of policy

A follow up study was reported in 1991 in the ***Financial Analysts Journal***.[3] In this study the participants looked at 82 large pension plans over an 11 year period (1977-1987) and fine tuned the earlier formulas used to attribute results. While the total return results for this period were significantly higher than in the previously studied period, the results of the study were equally as compelling:

100% of the return was attributed to all factors
96.1% of the return was the result of policy and selection
96.1% of the return was the result of policy and allocation
91.5% of the return was the result of policy

These studies have become widely accepted and provide great guidance to the nonprofit. Specifically, the nonprofit should focus on the asset allocation decisions made for a trust account, and should not rely solely on investment strategy to achieve returns.

Diversification of Risk Through Time. Passage of time is another way to manage or diversify risk. Holding the asset through a longer period of time always reduces the volatility of return. The riskiest activity that a investor can undertake is to move in and out of asset classes over the short term. See the chart at ***Appendix*** ____ for a graphic illustration of the reduction of risk for holding periods of 1 year, 5 years and 20 years. This means that the nonprofit must anticipate its capital needs with reasonable accuracy so that funds are not committed to the equity market for a one-year period and then redeemed. If luck holds, the return will be positive. But if the statistics hold, the return will be severely compromised by this short exposure.

Consistency in Returns. A manager who consistently performs in the upper quartile of similar managers will produce better long-term results for your nonprofit that the mega-star that wildly exceeds expectations in some years, while underperforming in others. The chart below reflects the growth of $1,000,000 over five years in two portfolios. Both of these portfolios had an average of a 10% numerical return over the five-year period (measured by taking annual returns, adding them and dividing that figure by 5). The value of Portfolio 1, which achieved a steady 10% return year after year, was $1,610,510 at the end of the term. The value of Portfolio II, which varied widely from year to year, had a value of $1,134,000 at the end of the term. The chart emphasizes the value of consistency of performance and sends a cautionary message to the nonprofit that is tempted to chase the previous year's high flyer.

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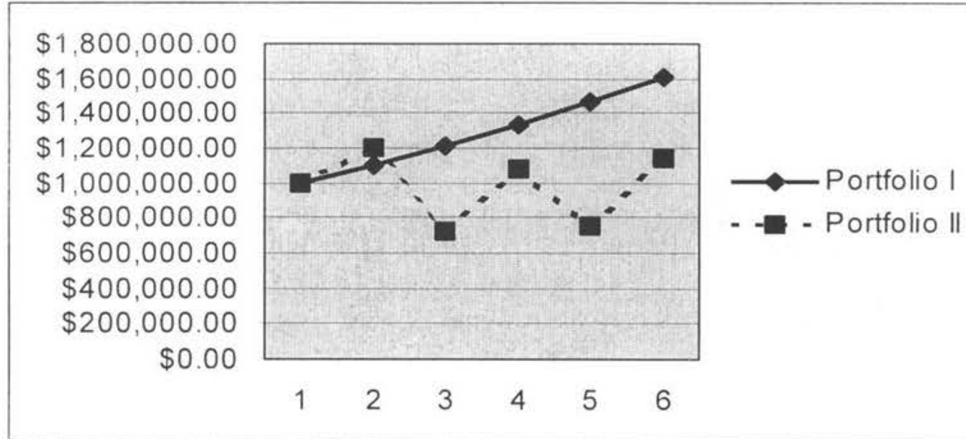
[1] Brinson, Gary P., L. Randolph Hood and Gilbert L. Beebower, "Determinants of Portfolio Performance," ***Financial Analysts Journal***, July-August, 1986, pp. 39-43.
[2] ***Supra***. at p. 40.
[3] Brinson, Gary P., Brian D. Singer and Gilbert L. Beebower, "Determinants of Portfolio Performance II: An Update," ***Financial Analysts Journal***, May-June, 1991, pp. 40-48.

Growth of $1,000,000 Over Five Years



Portfolio	Year 1	Year 2	Year 3	Year 4	Year 5	Ending Balance
Portfolio I	**+10%**	**+10%**	**+10%**	**+10%**	**+10%**	**$1,610,510**
Portfolio II	**+20%**	**-40%**	**+50%**	**-30%**	**+50%**	**$1,134,000**

The Challenges of Investment Management

The basic challenges facing nonprofits in investment management include:

- ***Pooled endowment funds representing designated pockets of accounts*** managed in an investment pool. These accounts have two challenges. First, the trustee must keep records on the underlying sub-accounts and track income, principal growth and transactions. Secondly, the trustee must find the most efficient and effective way to manage the pool.

- ***Life income gifts – charitable remainder trusts, pooled income funds and gift annuity pools – come in a variety of forms and sizes.*** These gifts have two interested parties: the individual beneficiary receiving the income stream, and the charity receiving the remainder interest. Both interests must be protected.

  These gifts are further complicated by the fact that "one size does not fit all." Life expectancies, income obligations, trust structure (annuity versus unitrust, for example) dictate different approaches for each instrument. It is important to have a master plan that has a rational underlying approach that can address these variances.

- ***The volunteer board adds an additional complication to the investment management process.*** These board members, often the community leaders with reputations for a mastery of the investment process with their personal or corporate assets, are different. They bring personal prejudices to the table...and personal success stories...and personal influence. Many boards are dominated by or defer to one of their number in investment decisions. Conflicting investment companies are often represented around the board table. And to make it more complicated, the group barely has time to get commit to one investment approach before the board terms end and the members change. The new influential board member may take the board in a different direction.

The solution to the investment management dilemma is two-fold. First, ***the participants must be educated about basic investment principles.*** Your board should understand the capital market history. How have small company stocks, large company stocks, corporate and government bonds and cash performed as groups over time? What impact has inflation had on this performance? What factors are the critical elements in achieving performance. How do you maximize returns while reducing risk to the lowest possible point? The answers to these questions are fairly straightforward and are important building blocks for formulating investment policy.

Once the nonprofit and its board have a basic understanding of the principles in play, ***the board must create a written plan.*** The written plan should include a spending policy and an investment policy. The written document allows the board to move through the consensus building process, and also provides an investment guide and rudder for the boards that will follow.

The Content of The Investment Policies

Written policies allow the nonprofit to withstand changes on the investment committee on an annual basis, and remain consistent in the investment philosophy. Written policies also provide clear guidance to the investment manager of the funds.

A sample set of investment policies is attached as Exhibit A to this text. These policies are offered as a sample approach. The policies provide no value to the board that does not work through the asset allocation and investment review process as a group.
Detail on the content of the policies is set out below.

The spending policy, which can be incorporated as a part of the preamble to the investment policies, is important because spending dictates the expectations placed on the cash flow from the fund. The spending policy should state whether spending is from income only, or from income and principal. The spending policy can be expressed as a dollar amount, as a percentage amount, or as a formula, i.e., a percentage of the average of the last three year's year end market values. However formulated, the policy sets direction for spending, sets direction for the money manager, and provides consistency from year to year.

The ***investment policies*** should ***state the investment objective***. For example, is capital appreciation or capital preservation more important? Is generation of income, or generation of market value more important? These are difficult issues on which to forge a consensus at the board level.

The issue of ***risk*** should be addressed as openly as possible. If the members of the investment committee do not reach consensus, the policies will be constantly subject to change and review, and constant change will have a negative impact on the overall investment portfolio.

An asset allocation questionnaire is attached to this chapter as ***Appendix B.*** This form can be used to bring the investment committee to consensus in determining and expressing risk tolerance and goals for the nonprofit.

Asset allocation bands must be included. The policies should state the percentage of equities, fixed income and cash that constitute the portfolio. The policies should also allow for some variance to these percentages. The policy might state, for example, that the ratios are 60% equities, 35% fixed income and 5% cash, but that the percentages can vary within 5% of either side of those figures. This allows for some movement in the market without the requirement that the investment manager constantly buy and sell to stay at the exact percentage limits.

There has been great debate over what constitutes the best method of producing growth in an investment portfolio. What factors are most important: market timing, security selection or asset allocation?

The Brinson/Hood/Beebower study examined earlier makes the case that investment policy makes the most significant contribution to the overall portfolio performance. In other words, making a planned

commitment to the appropriate fixed/equity/cash sectors, and managing within those set sectors, will produce the greatest return for the portfolio.

The policies should provide ***guidelines about the type of equity investments*** that are permitted. Can the portfolio hold international holdings subject to currency fluctuations? Can the portfolio hold American Depository Receipts? Are small cap stocks permissible? Are there any social investing restrictions, i.e., restrictions on companies that sell tobacco, alcohol or firearms? Can the portfolio hold mutual funds?

The policy should provide ***guidelines about the type of fixed income investments*** that are permissible. What is the average duration of the bonds? What is the minimum quality of the bonds? What is the policy on derivatives? What are the quality requirements for the cash?

The policy should address ***review of investments***. The committee should have a regular review process in which the results and structure of the portfolio are compared to the standards set out in policy. The policy should provide direction on when and how changes are made in investment managers in the event that the results do not meet expectations.

Hiring An Investment Manager

The key to successfully hiring an investment manager is to be disciplined in the way you move through the steps of the process.

STEP ONE — Begin with the ***development of a written spending policy.*** The distributions required from the invested funds – whether income or principal – have a critical impact on the underlying asset allocation of the portfolio.

STEP TWO — ***Develop written investment policies*** setting your spending rates, your asset allocation structure and any restrictions that may apply to an investment manager. (More detail in later section.) Do not begin the investment manager search until you know what you are looking for. This may appear logical, but many organizations chose a manager first, and then write the policies to fit the manager. (Don't do that!)

STEP THREE — ***Include members of the investment committee***, especially those with experience in investment matters in the development of policies and in the search. The format suggested above should eliminate the conflicts on the committee from those that serve as investment advisors and have an interest in the business themselves. You can include firms represented by your board members. However, make sure that all participants follow the guidelines and that the interested parties do not vote.

STEP FOUR — ***Get references*** from the investment management firm. Talk to other nonprofits. Find out how the manager operates, how accessible the firm is, and whether they deliver the products and services as agreed. Look for investment management firms with experience, with an understanding of the tax-exempt world, and with the flexibility to address your individual concerns.

STEP FIVE — Develop a ***format for interviewing the investment manager***, and then call for proposals. Ask the managers to come to you. Any managers who are unable to move through this process will not be responsive to you over time.

The following questions may provide the basis for an interview with a manager or for the design of a Request For Proposal (RFP):

Question	**Basis For Question**
1. How long has the firm been in the investment management business?	There are so many new firms, that the easiest way to begin to screen is through experience. Many organizations will not use a manager with less than five years of experience; some organizations require ten years of experience.
2. How would you classify your style of management?	Managers come in all styles. Is the manager a balanced manager? If so, the manager should describe the philosophy that governs the balancing. Is the manager a large cap value manager? Or a small cap growth manager? Each style has a different level of risk and return associated with it. In your risk assessment, you will select a risk exposure. Do not select a manager that does not manage at the risk level you select.
3. What is the average asset allocation (stocks, fixed income, cash) of your portfolio?	This answer should confirm the style described in question 2.
4. What benchmark is most appropriate to measure your management style? How did your portfolio perform against that benchmark?	For example, small cap growth stocks are generally measured against the Russell 2000 rather than the S & P. The two indexes, while both equity indexes, perform very differently. Make sure that your manager's performance compares favorably with the appropriate benchmark.
5. Ask to see 1, 4, 5 and 10-year performance figures. Make sure that those figures are through the most recent quarter end. And then ask the following questions: ***Is the performance representative of the broader group of accounts that are managed? Is the performance net or gross of fees?***	You will find it difficult to compare apples to apples unless you are specific about what you want to see. Ask these questions, and make sure that you compare each of the managers for the same time period. Make sure that the manager does not show you the performance of one portfolio. Ask him for the number of average size of the portfolios that make up a composite figure.
6. Ask to see the quarterly returns for as many periods as possible. Compare them to the quarterly returns for the benchmark.	Review the quarterly returns against the benchmark to see more about the total return figures. If you see the manager's returns vary too widely from the benchmark returns, this generally means that the manager is taking more risk than the benchmark.
7. Ask to see a copy of the performance reports that they will provide you.	You want to make sure that the reports make sense and provide you with useful, comparative data.
8. Ask the manager to provide you with a report showing their performance among their peer group.	Most nonprofits will set a standard that the manager must be in the top 25% or top 33% of the peer group for a certain period – for example, the last three years. You must set this standard yourselves. However, be sure to get the manager to provide this data and to source the data.

Management of the investment manager is a logical extension of the process of hiring the manager. These simple rules will help you remain focused:

Ask that the manager provide quarterly reports for review by your investment committee. These reports should show:

- Current positions, with cost and market values.
- Performance for the current period, against selected benchmarks for the current period
- Performance for the 1, 3, 5 and 10 year periods, against selected benchmarks for that period (this number will obviously be restricted to the number of years that the manager has been involved with your account.)
- A list of sales and purchases during the period.
- The manager's ranking within the universe of other like managers

Ask the manager to make a personal presentation of the report on an annual basis. Create a forum in which you can educate the members of your investment committee as well as get to understand the performance and philosophy of the manager.

After the review, discuss the performance, the presentation and the responsiveness of the manager, and compare the performance to the standards set in the investment guidelines. Has the manager fallen below the benchmarks set in your written investment policy? For how long?

Review the results for the year. If the manager has failed to meet the nonprofit's expectations, begin the process of hiring a new manager. Warning signals include:

- Major changes on the investment staff,
- Radical changes in investment management style,
- Failure to meet the performance standards set in the nonprofit's investment guidelines
- A sharp increase in the portfolio risk level, indicating that the manager may be taking more risk than the benchmark in an attempt to "catch up"

As a caveat, make sure that the investment policy does not require action at the end of each quarter if the manager fails to meet investment targets. Review results each quarter, but set longer-term performance goals. Frequent movement from manager to manager is damaging since there is enormous risk in moving in and out of positions in the market on short time lines.

Making Changes

Ongoing monitoring of your investment manager is important. You may select managers for reasons based on responsiveness, particular money managers internal to the organization, or responsiveness only to find that things change. The ongoing reporting described above should help you focus on the key issues.

Sometimes a change is necessary. Frequent changes will adversely affect your performance as you move in and out of the equity and fixed income markets and incur numerous transaction charges. It is a good idea, however, to periodically make a call for proposals so that you can compare the work of your investment manager to others in the market. This is also a good way to keep your manager responsive to your needs. There's nothing like a periodic try-out to keep their attention. You will find that this process also keeps your volunteers focused on the important issues. In making the periodic review, I suggest that you use the same methodology used to select your original manager.

Selecting a Trustee

Sometimes the decision in selecting an investment manager must be combined with the decision of selecting a trustee. If you need both services, you may find that it is more economical to use one provider for both services. If you use this approach, make sure that you separate the responsibilities of the functions in order to assess the best choice from a cost and relationships perspective. Here is some insight on the role of the trustee.

Selecting a trustee is as important for the long-term success of the nonprofit's development efforts as the selection of any other investment professional. Trustees can provide:

- Custodial/safekeeping services
- Income and Principal accounting
- Master Trust accounting
- Clearing for securities transactions
- Statements to interested parties
- Distributions of income payments (for CRTs, CLTs, Pooled Income Funds, Gift Annuities)
- Investment management

In addition, the fiduciary may provide special services for the nonprofit organization. Those services include:

- Assistance in gift planning
- Knowledge of nonprofit sector management
- Seminars and training services

A bank or trust company should be experienced and accessible and should exhibit the highest level of confidentiality and integrity in delivering the service. The fiduciary should be experienced in investment management and should understand the special issues associated with management of nonprofit planned giving programs. Select a fiduciary that has expertise in gift program management issues and that can serve as a resource to the nonprofit's development efforts.

A number of fiduciaries have special charitable management units that provide services for the nonprofit. These units can be extremely valuable, especially to the smaller nonprofit.

- Trust officers knowledgeable in the planned giving and endowment management process staff the units. The trust officers have participated in many investment review searches. The officers can work the board through the process of establishing risk tolerance, setting long term goals, and adopting written spending and investment policies.

- In addition, the trust charitable units have personnel with ***experience with a variety of gift forms*** representing formidable allies in working with donors to discuss gift options. Ultimately the donor must have outside counsel to complete the gift. But in many cases, the donor's exploration of gift options begins in a low-key atmosphere with experienced planners.

- The charitable trust officers may be ***extremely knowledgeable about sources of funding in the community***. The officers often handle private and community foundations, and have been long-term observers of the grant making process. While the trust officers can not share confidential information with the nonprofit, the officers can share general observations on success in the application process.

- Finally, the ***fiduciary may represent an excellent partner for seminars and workshops for your common donors/customers***. They may be willing to sponsor seminars, or simply to provide the space. They may agree to serve as speakers, and in some instances may agree to provide training to your board. Look at the special charitable units as a unique resource.

Fiduciary service options include:

Banks/Independent Trust Companies	These organizations are regulated by state and/or federal agencies and provide a high level of care. These organizations have sophisticated reporting (statement) capabilities. Banks and trust companies charge a fee for safekeeping services.
Brokerage Firms	The SEC and several securities regulation organizations regulate brokerage firms. Brokerage firms are audited. Brokerage firms do not charge a fee for services. Statements from brokerage firms are far more limited. These firms have SIPC insurance. Ask the firm to provide you with information on those limits.
Insurance companies	Some insurance companies can provide custody through their brokerage arm. The advantages and disadvantages cited above are appropriate.

The following services are available from fiduciaries:

Custodial/safekeeping services. The nonprofit should identify one institution that can custody, or take physical custody of, the assets of the nonprofit and the endowment. The fiduciary must have a positive public image of safety and accountability.

The following institutional alternatives are available, and have the advantages and disadvantages noted in the comment section:

Income/principal accounting. Income and principle accounting may be important in the management of the nonprofit's assets. Instances in which the income and accounting separation are important include:

- Management of endowed funds where principle spending is restricted.
- Management of charitable remainder trusts, where the income beneficiary is entitled to income only.
- Management of pooled income funds, where income only may be distributed.
- Any self-imposed set of circumstances in which the income stream must be segregated for reporting purposes.

Banks and trust companies generally have the software to provide this accounting services. Brokerage firms keep up with annual income figures, but generally do not provide year over year accounting, or income available balances.

Master Trust Accounting. Master Trust accounting is important for the organization that must maintain numerous sub-accounts for gift accounting or expenditure purposes, but wants one or more pooled accounts for investment and reporting purposes. Many large banks or trust companies have this service. The service is provided for a fee. But for the organization that needs this accounting, there is no substitute.

Clearing for securities transactions. The fiduciary must be able to clear securities transactions for their own trades as well as for outside traders. The fiduciary should be asked to explain their clearing costs.

These costs may vary from a set fee to a fee such as $25 per transaction. The fiduciary should explain any limits on these services, if any, or any advantages to using their institution for those services, if any.

Production of statements to interested parties. One of the most visible roles that a fiduciary has in the management process is that of statement production. Ask for a copy of the statements. Can you read it? Does it make sense? Do they have a booklet explaining the key fields? Remember that your donors and committee members will get these statements. If you can not understand them, even with explanation, you will have a difficult time explaining them to your members. Do not expect income and principle accounting to look the same as single cash accounting. You will find that all double cash accounting statements take a little work. But some are clearer than others are.

Determine if the fiduciary offers statement alternatives that are more appropriate for your institution. Ask if the fiduciary fee varies with the frequency, the number and the type of statement.

Distributions of income payments. The fiduciary will likely make the distributions of income from charitable remainder trusts, gift annuities and pooled income funds. If the nonprofit handles these functions internally, consider sending these duties to a fiduciary. The funds are already held at the institution. The statements will provide a clear record of all transactions. And the nonprofit office will not have to handle the funds a second time.

Request that the fiduciary process the payments on checks with the nonprofit's logo, and print statements on paper with the nonprofit's name. Ask the fiduciary to send the payments through the mail in your envelopes with letters. There are ways to coordinate distribution that will keep the nonprofit's name in front of the income beneficiary, while letting the fiduciary handle the transaction.

Note, the nonprofit should expect to pay for the service and the costs of the stationary and checks. However, this cost will likely be less than the cost of processing the transactions inside the nonprofit office, and the audit trail may reduce the cost of annual audits.

Investment management. Fiduciaries provide a wide range of investment options to their trust customers. Although most fiduciaries have long been viewed as too conservative, or as poor money managers, this image is not supported by the investment returns. Do not overlook your fiduciary when considering investment managers. Invite the fiduciary to join the RFP process in your search for the investment management team. Consider the fiduciary on the same basis that other managers are considered. There is an advantage to the nonprofit concentrating management in one fiduciary at one location.

The selection process

The selection of the trustee is similar to the selection of the other professionals. The nonprofit must begin by determining what the needs of the nonprofit. Use the list of services outlined above as a starting point, and list, in order of priority, the services that are required. In addition, note those services that are not important. If, for example, the nonprofit has decided to take a portion of its business to another institution, make that clear. Get pricing on only the services that are needed.

Incorporate the list of needs in a Request For Proposal and submit the RFP to a variety of fiduciary institutions. Present the RFP questions in a clear, concise manner so that the responses are easily compared. Take special care in collecting pricing information. Some fiduciary fees are based on the market value of assets and include all services in the fee. Other fiduciaries charge based on transactions. The nonprofit will get the best estimates on cost if the types and numbers of transactions, as well as the market values, are included on the RFP.

Request biographical information for the individuals that provide administrative and investment management services. Request information on the length of service of each fiduciary manager.

Chose the three or four fiduciaries that look the best in the written responses to the RFPs. Invite those fiduciaries to the nonprofit to make a presentation. Make a list of required services and score each

applicant. Proper use of a scoring sheet will eliminate the tendency to chose the best salesman. ***Remember, the person selling the account may not be the person administering the account.***

Once a fiduciary is selected, evaluate performance on a regular basis. Make the requests and needs of the nonprofit clear. Communicate problems quickly. And if the institution is not responsive, or cannot provide the service, consider a change to another fiduciary.

Costs Of Investment Management And Administration

Management costs vary widely depending upon the type of services and the amount of money under management. Use the chart below for a rough guide. 100 BP = 1%

Type of Service	Less than $1,000,000	$1,000,000 - $5,000,000	$5,000,000+
Custody Only	20 BP	10-15 BP	8-10 BP
Custody and Administration	75-100 BP	50-75 BP	35-60 BP
Investment Management Only*	100-300 BP	100–250 BP	75-125 BP
All Services*	100-300 BP	50-250 BP	35-100 BP

- These numbers look somewhat skewed because investment management firms generally have higher cost bands that banks and trust companies, and they do not have the accounting software or custody authority. Therefore, the costs are greatly affected by how the various services are purchased. Banks and trust companies handle many funds because of the ability to provide all services in a cost-effective manner.

Conclusion

The most important element of these tasks is a sound process. Gather your committee. Discuss and set your priorities. And then make a checklist of those services and qualities that are important to your nonprofit. Call other nonprofits to get recommendations on solid providers. Ask those providers to submit a proposal. And then have personal interview with the finalists. This approach will give you far more control of the aspects of investment management that are important to you, while leaving the money management functions with the experts.

APPENDIX

SAMPLE
ENDOWMENT FUND INVESTMENT POLICIES

INVESTMENT OBJECTIVES

- To achieve a moderate capital appreciation on investments held for endowment, and to protect those assets for the long-term use of the XYZ Nonprofit Organization and its programs, while achieving a moderate level of current income.

- To pool the various endowed funds for investment purposes to achieve efficiency in costs and management. Although funds may be pooled for investment purposes, underlying fund balances directed to specific programs shall be accounted for individually in reporting balances and in assigning expenses and distributions for the specific program or agency.

- To provide a steady stream of funding to provide for the XYZ Charitable Organization and designated programs for which the endowment is held. Projected distributions shall be ____ of the beginning market value of the endowment fund. This distribution amount is set as an outside range for distributions, and shall not be considered a required distribution. Distributions from the endowed funds shall be made at the direction of the authorized Trustees of the XYZ Charitable Organization.

INVESTMENT GUIDELINES

The principal of the pooled endowment assets shall be divided as follows:

Equity Investments:	__%
Fixed Income Investments:	__%
Cash	__%

Investment holdings may vary within 5% of either side of these ranges. Additions to the fund shall be invested in like ratios as quickly as possible upon receipt. Where gifts are received as stock, or as in kind contributions, those gifts should be sold as quickly as possible upon receipt, and the proceeds thereof invested in a like manner, provided however that there may be some exceptions where the donor of a particular gift makes a gift subject to certain direction relating to sale or retention.

The following guidelines shall apply to each type of investment:

Equity Investments

- The portion of the portfolio committed to equity investments shall be assigned to a professional equity manager(s) selected by the trustees.

- These investments may consist of domestic or international equity holdings, and may include American Depository Receipts.

- To the extent possible, equity holdings should not contain holdings in companies whose earnings are generated primarily by alcohol, tobacco, gambling or manufacture of commercial firearms.

- Portfolios may contain cash as part of an asset allocation strategy of a manager.

Fixed Income Investments

- The portion of the endowment funds committed to fixed income may be assigned to a professional investment manager, or may be managed by the Trustees within the guidelines set out in this section.

- The investments will be limited to domestic fixed income instruments to include certificates of deposit, U. S. Government Agency instruments, Treasury instruments, A or better rated corporate bonds, A-1 or P-1 rated commercial paper, or money market funds.

- The average maturity of the holdings of the portfolio shall be 7 to 10 years, with a portion of the portfolio maturing periodically over the term.

- The portfolio shall not hold any collateralized mortgage obligations, or derivatives of any form.

Cash

- Receipts of income, donations or maturities shall be moved to money market funds as quickly as possible to await distribution or reinvestment.

INVESTMENT REVIEW

The Trustees shall be responsible for the annual review of the assets and the investment performance of the investment managers. This review shall be based upon a performance report prepared by an organization other than the investment manager used to manage the funds, and shall focus on the performance of the funds relative to other managers with similar goals and similar allocations.

Review of investment performance shall be based upon an investment horizon of _____ (___) years. The Trustees are responsible for the regular review of the Investment Objectives, Investment Guidelines, and the retention of the investment managers.

APPENDIX B

ASSET ALLOCATION DISCUSSION

1. Which of the following statements best describes your investment objectives for your endowment assets? Circle one:

A. **Income** — Maximum current income. Need to grow funds is negligible.

B. **Income & Growth** — Modest current income. Some emphasis on capital preservation and limited capital appreciation.

C. **Balanced** — Equally balanced need for current income, capital appreciation and capital preservation.

D. **Long Term Growth** — Moderate capital appreciation, and low level of current income.

E. **Aggressive Growth** — Maximum capital appreciation and negligible current income.

2. Which of the following Investment Objectives best describes your preference or attitude towards investment volatility and risk? Circle one:

A. **Income** — Low risk, conservative income-oriented, low volatility

B. **Income & Growth** — Moderate risk, consistent returns, income-oriented limited capital appreciation

C. **Balanced** — Exposure to higher level of volatility with expectations of growth, with income as secondary objective

D. **Long Term Growth** — Little concern for volatility, high expectations, can tolerate periodic negative returns, low level of income

E. **Aggressive Growth** — Maximum capital growth, no concern for periodic volatility, can tolerate negative returns, negligible income

3. ***What investment horizon is most appropriate for these managed assets? Circle one:***

Greater than 10 years
5-10 years
2-5 years
Less than 2 years

4. ***Are there any stocks, industries and/or sectors in which the portfolio should be prohibited from investing?***

If yes, what type stocks do you feel you should avoid? ____________________

____

____

5. ***Please indicate the portfolio that represents the maximum gain or loss trade off that you are willing to accept during one investment year. (Assume an initial investment portfolio of $200,000). Circle one:***

A.	**Income**	$200,000 - 0 -	$205,000 + 5%
B.	**Income & Growth**	$190,000 - 5%	$220,000 + 10%
C.	**Balanced**	$180,000 -10%	$240,000 + 20%
D.	**Long Term Growth**	$170,000 -15%	$260,000 +30%
E.	**Aggressive Growth**	$160,000 -20%	$280,000 +40%

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Ms. Miree is a past President of the Estate Planning Council of Birmingham, Inc., a past President of the Alabama Bankers Association Trust Division, a Past President of the National Committee on Planned Giving and a past member of the Board of the National Association of Estate Planners & Councils. In addition to those professional associations, she currently serves on the Boards of the United Way, the Alabama Symphony Endowment, the Capstone Foundation, the University of Alabama President's Council, the Arthritis Foundation, the Horizons Foundation, the Boy Scouts, The Baptist Health Foundation and the UAB President's Council. She is a graduate of both Leadership Birmingham and Leadership Alabama.

Ms. Miree is the author of a three-book series entitled ***Building a Planned Giving Program***. These books are designed as a practical step-by-step guide for the nonprofit or church starting a program to build endowment. She is currently working on a book entitled ***The Family Foundation Deskbook*** with Jerry McCoy for Aspen Publishers.

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MAKE THE MOST OF YOUR BEQUEST PROGRAM

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Make the Most of your Bequest Program
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I Identification and cultivation — who are your bequest donors?

A) For most charities, the largest source of planned gifts will be from bequests. Identifying and communicating with bequest donors <u>before</u> they die may be the easiest way to make the most of your planned giving program.

B) How do you find out who has included your charity in his will? The easiest way is to ask.
   - i) Include response cards in your mailings to allow donors to self-identify.
   - ii) Add a link on your web site for bequest donors and let them submit the details of their bequest electronically. Give sample bequest language on your web site.
   - iii) When visiting with outright gift donors and prospects, share some of the reasons for notifying your organization of estate commitments. Share anecdotes with your bequest donors of botched estate gifts that could have been avoided through notification of the charity.

C) Let your constituency know your organization is interested in encouraging bequests. If you hold a planned giving seminar, don't limit the presentation to complicated life income arrangements. Discuss the importance of estate planning and how charitable bequests can play a role in every estate plan no matter how modest the estate.

D) If life income or outright gift prospects decide against a current gift, consider soliciting them for bequest gifts.

II "Closing" the bequest — proactive intervivos drafting issues.

A) Once you have identified your bequest donors, if you are to carry out their wishes and avert administration problems later, they must share their estate planning documents with you.

B) Inaccurate name. Use your marketing program to disseminate the correct name of your organization along with sample bequest language.
   - i) If an executor is unable to identify the charity the donor intended to benefit, the probate court will give the charitable bequest to an organization it feels carries out the donor's intent. This is the doctrine of *cy pres*.
   - ii) For example, if a donor leaves a bequest for "higher education" but no institution can be identified from the estate planning documents, the court could direct the gift to what they consider a worthy institution.
   - iii) Give examples of bequest language and how to name your organization "I give the rest of the property I own at my death to Prestigious University, Cambridge, Massachusetts for its general educational purposes."

C) Bequest Intentions. If a donor wants to support a specific program or make a gift for a specific purpose, encourage language that will keep the gift relevant and carry out the spirit of the donor's intention. Endowments are forever. If circumstances change, your organization should be able to keep the gift relevant.
   - i) For example: "I give $100,000 to The Safety Hospital Foundation, Cambridge, Massachusetts which I prefer to be used for research into the treatment and cure of polio myelitis. If the Board of Trustees of The Safety Hospital Foundation determines it is not feasible to use this bequest for the purpose stated, the bequest can be used for such general charitable purposes of the Hospital as the Board directs."

D) Gift Minimums. Charitable organizations typically place minimum amounts on gifts to endow or name a fund or building. The limitations prevent an unmanageable proliferation of restricted funds. They also permit

equity between donors who know that other donors made equivalent gifts in exchange for naming opportunities. These minimums change over time depending on a variety of factors including the needs of the institution and prevailing financial conditions.

i) Encourage bequest donors to include language that is responsive to your gift minimums.

ii) For example, "If the amount of my gift is insufficient to meet the then current minimums for establishment of a named endowed fund, this bequest may be added to the general endowment of Prestigious University to be used for its general charitable purposes."

E) Gift Restrictions. Bequest donors often want to direct their gifts to support specific programs of interest to them. However, institutional priorities change.

i) Encourage restricted bequests to be in the broadest terms possible consistent with the donor's intention.

ii) Suggest including a preference, rather than directive language.

III Stewardship — how do you keep them once you have found them?

A) Invite your constituency to join your bequest society.

i) A "membership application" for bequest society membership either in print or on your web site can discreetly request the details of estate commitment as a prerequisite of membership.

ii) The benefits of membership in your bequest society should appeal to your constituency. Think beyond pins, plaques and mementos, although this is a good place to start.

iii) Offer access to facilities normally off limits to the public; make officials and staff of your organization available to bequest society members.

iv) A research hospital can hold briefings by its research staff; university faculty can present symposia on topics of interest to alumni; religious groups can hold special ceremonies for society members.

B) Converting bequests to irrevocable gifts.

i) Once you have identified bequest donors, you can teach them about the benefits of lifetime giving through the same publications and events that inform them about the mission of your organization.

ii) Resistance to lifetime giving is typically due to of a fear of running out of money during life, a hesitancy to self-identify as a major donor, the desire to retain the right to change their minds, or just based on a lack of knowledge about planned gift vehicles.

(a) A life-income arrangement is an antidote to concerns about income in later years, but clearly, the donor must understand the terms of the arrangement. Be sure your elderly supporters have full capacity to make decisions in conjunction with outside professional advisors.

(b) Treat your bequest donors with respect and do not pressure them to convert their bequests to irrevocable commitments. Planned giving is a long-term commitment and some donors may require long deliberation and exposure to your organization before making a decision.

(c) A supporting organization or donor-advised fund at a community foundation allows donors to retain some discretion as to how their funds are directed. An outright gift to such a vehicle allows the donor to enjoy the greatest tax benefits, the assets are irrevocably set aside for charitable purposes and through proper stewardship, your organization can enjoy grants from those funds.

(d) You can educate your bequest donors about planned giving through exposure to your planned giving brochures and seminars.

C) Ensuring the donor's wishes.

i) Unidentified bequest donors are unlikely to know your organization's fund raising priorities. Communicate in print and electronically about ongoing projects and institutional priorities to as wide an audience as possible. You never know when you are going to reach someone who has plans to remember your charity.

ii) Someday you are going to receive a bequest for purposes that are illegal, impractical, frivolous, or which inaccurately names your organization. Frequent, early communication with bequest donors during their lives can minimize these problems.

iii) If you and your bequest supporters get to know one another, it is less likely there will be surprises

once the bequest arrives.

iv) While the donor's estate planning documents will control, your records should reflect what the donor has shared about their bequest.

D) Participation in your mission.

i) Through bequest/planned giving society events, special mailings, tours, briefings and stewardship, bequest donors can learn about the workings of your charity. Donors will feel like "insiders," increasing their affinity to your organization.

ii) Bequest donors can learn more about how they can help your charity with this inside knowledge.

iii) The closer these donors feel to a charity, the less likely they are to revoke a charitable bequest from their estate plans.

iv) However, poor stewardship or insensitive treatment of these donors can result in lost bequests.

IV **Realized bequests — managing the executor once the gift comes in.**

A number of items in bequest administration may be at the discretion of the executor including what assets are used to pay taxes, debts and expenses, timing of distributions and whether assets are sold or distributed in kind. How to handle these issues is sometimes not addressed in estate planning documents. Thus, a good working relationship between your organization, the family, and te executor can be critical. Well-drafted estate planning documents give instructions as to these matters. Absent direction from the donor, state law controls how these expenses are apportioned.

A) In virtually every estate, the donor has surviving family members. Communicate with the survivors early on. Express your condolences for their loss and your charity's gratitude for the donor's generosity. Ask the executor to provide the names of surviving family and send notes of condolence and thanks. In those cases where the donor has no family, there is often a companion or friend who is deserving of your condolences and thanks.

i) Once you receive the bequest, again send notes of thanks to surviving family, the executor, and the attorney for the estate. Tell them how you intend to use the money and the difference that the donor has made for your organization.

ii) Depending on the size of the gift, you may visit family members or companions personally to thank them. You may want to consider holding a memorial service in the donor's honor or a recognition event once you receive the gift.

iii) There may be opportunities for additional gifts from family and friends in honor of the donor. Gifts to named endowment funds are a suitable way to honor the donor's memory and generosity.

B) Taxes and expenses. Taxes, debts of the estate and other expenses can diminish charitable dispositions unless there are specific directions how to handle them. Make sure your donors know that without proper planning, your charity may not get what they intend.

i) Absent instructions in the will or controlling state law, suggest to the executor that taxes and expenses come from the residuary estate if your organization is to receive a specific bequest.

ii) Alternatively, suggest all beneficiaries share estate expenses, but that estate taxes be levied only on the non-charitable beneficiaries since your organization is exempt from taxation. Some state laws specifically prohibit apportioning taxes and expenses against a charitable bequest except to the extent the bequest is part of the residuary estate.

C) Debts. If property subject to debt passes to charity, request that the debt be paid from other assets of the estate. If a non-charitable beneficiary is to receive debt-encumbered property, suggest the debt be transferred along with the property.

D) Asset distribution. The timing of the distributions from an estate is frequently at the discretion of the executor. An executor may hold off making any distributions, charitable or otherwise, until he is sure the estate tax return is not going to be audited and the time for claims against the estate has lapsed.

i) In many cases, the executor has discretion to make early/periodic distributions and hold back sufficient funds to cover claims or expenses that may arise. Request a proposed asset distribution schedule early. Suggest reasonable partial distributions, particularly if the administration is going to

be lengthy.

ii) <u>Specific Bequests:</u> If the will sets forth a specific amount to pass to charity, the executor can generally make these distributions early in the probate process, particularly if the amount is relatively small. Encourage the executor to satisfy these bequests early in probate.

iii) <u>Residuary Bequests:</u> These are gifts of what is left in the estate after satisfying specific bequests, taxes, and expenses. While the exact amount of these gifts is more difficult to determine, the executor can make partial distributions during probate as the approximate size of the residuary becomes clear.

iv) Object to the disposition of property at less than fair market value or transactions that are not at arms-length. This can become an issue if the executor is trying to quickly liquidate assets or selling parts of the estate to friends or family.

v) Ask the executor how he intends to distribute problem assets such as real estate, limited partnerships, and closely held stock. Inform him of your preferences or concerns as to disposition of these assets.

E) Bequests of Real Estate

i) Anyone, including a charity, in the chain of title of contaminated real estate is potentially liable for exorbitant clean up costs. Liability is not limited to those who made the mess! A charity does not have to accept every gift that comes to it by bequest. You have the discretion to refuse or disclaim the property. Complete the necessary due diligence before accepting real estate. This includes at least a Phase One environmental survey and a title search. You may want to disclaim the bequest depending on the results.

ii) If there are environmental or title concerns, consider asking the executor to sell the real estate and distribute the proceeds. Once again, absent state law or direction in the documents as to the payment of expenses, suggest broker's fees and closing costs be satisfied from non-charitable assets.

F) Income taxes

i) An estate must pay income taxes earned while the estate is pending. The tax brackets for estates are compressed. An estate need only earn $8,450 in 1999 to be subject to income taxes at 39.6%. The longer the estate is pending, the higher these taxes can go.

ii) Encourage the executor to make annual distributions of estate income to satisfy charitable bequests. The estate is entitled to unlimited charitable deductions so this technique will reduce income taxes during the administration of the estate.

V Fact pattern — a case study

Mrs. Sarah Nichols, formerly of Cambridge, MA and a resident of Naples, Florida, passed away on March 29 of last year. She was a member of the bequest societies at Prestigious University, your employer, and the Safety Hospital Foundation. She notified both organizations of her intention to include them in her estate plans during her life, but never indicated the amount of the bequest. She resisted efforts by development professionals to meet with her to discuss her intentions. Neither organization saw her estate planning documents before her death. She was divorced and had two children, Martha Toms and John Nichols.

In August, on behalf of Prestigious University, you received official notification from the Collier County, Florida Probate Court that Mrs. Nichols had included your organization in her estate plans. However, there is some concern as to whether she intended to benefit Prestigious University. The executor writes requesting your tax exemption letter and copies of any communication you may have had with her.

You send a copy of the response card notifying you of the bequest, in her handwriting and a copy of the thank you letter you sent to her. You write her attorney and request the addresses of next of kin for preparation of condolence letters, copies of her relevant estate planning documents and an inventory and appraisal. You receive a copy of her will from her executor.

> *"I, Sarah Nichols, being of sound and disposing mind, do hereby make, publish and declare the following to be my Last Will and Testament, revoking all previous will and codicils made by me.*

<u>Specific bequests</u>: I leave my Naples, Florida condominium along with all its furnishings, to my son, John Nichols. I leave my art collection to Prosperous University, Cambridge, to create the Sarah Nichols Undergraduate Scholarship Fund at that institution. I give my condominium in Cambridge to my daughter, Martha Toms.

<u>Residuary</u>: I give, devise and bequeath all of the rest, residue and remainder of my estate, of whatever kind and character, and wherever located, to be divided equally between Prestigious University and Safety Hospital. These funds should be used to create endowed funds in my name for the benefit of needy patients."

/s/ Sarah Nichols

Last week you received the following inventory of estate assets:

	Appraised Value
<u>Real estate</u>	
Naples Condominium	$500,000
Newbury Street Gallery, Boston, MA	$900,000
<u>Personal Property</u>	
7 paintings, on display in Naples condominium	$1,200,000
12 paintings and sculptures, on display in Boston, MA	$2,000,000
Household furnishings	$50,000
<u>Securities</u>	
400 shares Cisco Systems	$50,000
2100 shares Walmart	$100,000
27 units Newbury Street Limited Partnership	$500,000
<u>Debts</u>	
Unpaid federal income taxes and penalties, 1998	$500,000
Mortgage on Newbury Street Gallery, Boston, MA	$250,000

What are the potential administration issues in the Nichols' estate?

A) Who are the intended beneficiaries of the estate?
   i) Prestigious University is located in Cambridge, MA. However, Mrs. Nichols will leaves her art collection to "Prosperous University, Cambridge." There is a Prosperous University in Cambridge, Ohio. The attorney who drafted the will attended Prosperous. A review of the records of that school revealed Mrs. Nichols was not a student there nor was she a member of the Prosperous University bequest society. Prestigious University will provide whatever records they have in their files as to Mrs. Nichols intentions.
   ii) The Massachusetts Secretary of the Commonwealth lists 17 active corporate entities, some for profit, some non-profit, with Safety Hospital in them including "The Safety Hospital Foundation and The Safety Hospital Educational Foundation." Safety Hospital operates facilities in Cambridge, Massachusetts, Ft. Lauderdale and Naples, Florida. Mrs. Nichols had been a patient in Cambridge and Naples. Which "Safety Hospital" entity did Mrs. Nichols intend to benefit?

B) Are the paintings on display in Naples included in the household furnishings?
   i) The specific bequest to Prestigious University includes her "art collection." Does that include all of the artwork owned by her at death regardless of where it is located?
   ii) The artwork on display at the Newbury Street Gallery was owned by Mrs. Nichols but was placed there on consignment. Is the gallery entitled to a commission if sold or distributed in kind by the executor?

C) Who are the intended beneficiaries of the "Sarah Nichols Undergraduate Scholarship Fund" and with what is it supposed to be funded?
   i) The scholarship is funded with "stocks and bonds." Mrs. Nichols owned publicly traded securities and a limited partnership interest. It is unclear whether the limited partnership is included in the term

"stocks and bonds." If not, where is this asset supposed to go?

ii) Prestigious University has no idea what selection criteria to use for the scholarship. Is selection based on scholarship, need, athletics, or something else?

iii) What will the school do if the bequest amount is insufficient to meet Prestigious University's minimum for funding a named scholarship fund?

D) What real property will pass under Mrs. Nichols' will?

i) Mrs. Nichols retired to Florida and sold her Cambridge residence years ago. The will directs the Naples condominium to pass to her son and the Cambridge condominium to go to her daughter. Did she intend to disinherit her daughter in this way?

ii) The will is silent on disposition of the Newbury Street Gallery property. However, she directs "the residue of her estate" which includes all her "real estate" to be divided between the two charities. Does the residue of Mrs. Nichols estate include the Gallery?

iii) The will is silent on whether the trustee is to sell the Gallery and donate the proceeds or issue a joint deed in the name of Prestigious University and Safety Hospital.

iv) Real property has carrying costs associated with it including taxes, maintenance, and insurance. In addition, since Mrs. Nichols rented the Gallery to the Partnership, someone will have to collect rent until the property sells. If the property itself passes to charity, who will collect rent, pay expenses and attend to administration until the property sells?

v) Years ago there was a gas station on the site of the Newbury Street Gallery. The station has long since been torn down and the area paved over. What will the charities do to protect themselves from environmental liability?

E) How will the executor pay the debts of the estate?

i) Will the unpaid taxes be apportioned between the specific bequests or the residuary or from the residuary only?

ii) Will the Newbury Street Gallery be transferred in kind or will the executor sell the Gallery and donate the proceeds?

iii) Does the debt transfer with the Gallery?

iv) Did Mrs. Nichols intend that the charitable beneficiaries satisfy her debts?

F) What did Mrs. Nichols intend the charities do with the residue of her estate?

i) The residue of the estate is divided evenly between the two charities. The only direction as to these funds is that they "be used to create endowed funds in my name for the benefit of needy patients." The document does not specify to which of the two organizations this language is directed.

ii) The bequest references creation of "funds" in her name. It is unclear whether Safety Hospital is supposed to create multiple funds for the benefit of needy patients. What would be the criteria for receiving these funds?

iii) Prestigious University operates a teaching hospital in conjunction with its medical school. Does Mrs. Nichols want Prestigious University to add these funds to her named endowed scholarship or create funds at its hospital for needy patients?

iv) As with the scholarship fund, the amount of the bequest may be insufficient to meet the minimums for an endowment at one of the institutions.

VI **Policies and Procedures — Checklists**

Document flow and procedure. Careful attention to the administration process can ensure that your organization gets all to which it is entitled in a timely manner. Centralize the administration of estates with someone in your organization who is familiar with the probate process. If you process a large number of estates, you might consider hiring a probate paralegal with experience in this area. Executors should know whom to contact at your organization to discuss the estate. They need to know you are paying attention to what is happening. Your internal administrator should know the critical dates in the probate process and what to do at each step.

A) Checklists

i) The best way to organize your bequest administration is to make sure you have a reliable way to

remind yourself of all documents and events associated with the probate process. This includes everything from letters of condolence, probate court filing deadlines and letters of thanks to the survivors.

ii) Consult a checklist for each estate to make sure the executor is carrying out his duties and that you have all documents you need and are entitled to.

iii) A reminder system is critical. Long periods of time can pass on an estate between significant events. It is not unusual for the probate process to take at least a year and sometimes much more. Failure to act in a timely manner can result in a waiver of your rights or the dissipation of estate assets intended for your charity. Either create a tickler on your paper calendar or, better yet, on your computer to make sure the estate is proceeding smoothly.

iv) If you do not receive timely notifications, contact the executor.

v) Consider using outside counsel to assist you. While you can handle day-to-day events internally, contact your counsel if you do not understand the notifications or if have any doubt your organization is getting everything to which it is entitled.

vi)

B) Procedures.

i) Establish a policy as to who is to receive notification of bequests in your organization. Typically, these kinds of notices are mailed to the attention of the office of general counsel. Everyone in the organization must know who is responsible for bequest administration. Make it known if notices regarding estates should go to the development office. Once notified that your organization is a beneficiary of an estate, immediately contact the executor and let them know who will be handling administration.

ii) Sometimes you will take issue with how executors are handling estate administration. Non-profits have to be very careful about being perceived as greedy or overreaching, even though it is not unusual for families and executors to feel that charities should be happy with whatever they get. Your organization can suffer bad publicity and hard feelings if you do not handle these disputes delicately. Adopt a policy as to when to turn the matter over to outside counsel.

iii) Many bequests are not restricted as to their application. Bitter internal political struggles frequently occur over how to apply these funds. Religious organizations, universities, social service agencies, and hospitals have all been wracked by controversy over how to spend these funds. One way to reduce these conflicts is to develop a written policy as to the application of unrestricted bequests endorsed by your Board and disseminated to everyone in the organization

iv) Nearly the last step in bequest administration is signing a release as to all claims against the estate. This is usually a prerequisite to receiving distributions. Follow a written policy regarding who has authority to release the rights of your organization. It is a good idea that this authority rests with someone other than the person responsible for bequest administration. This gives an opportunity for checks and balances to make sure you have missed nothing. A final release is exactly that: make sure you know what you are giving

Gary M. Pforzheimer, PG Calc Incorporated, 888-497-4970, gary@pgcalc.com, www.pgcalc.com

Sample Estate Administration Worksheet and Checklist

Estate of: ____

Date of Death: ____________________ **Decedent's SSN:** ____________________

Executor/Administrator:

____
(Name) **(E-Mail)**

____
(Street Address)

____
(City, State, Zip)

____
(Phone number) **(Fax number)**

Attorney for the Estate:

____
(Name) **(E-Mail)**

____
(Street Address)

____
(City, State, Zip)

____
(Phone number) **(Fax number)**

Document Checklist

- ❒ **Copy of Will or Trust Instrument**
- ❒ **Estate Inventory**
- ❒ **Appraisal**
- ❒ **Estate Tax Return**
- ❒ **Waiver/Release**

Administration Timetable

Event	Date
Date of Death	____________
Notice of Appointment of Executor/Administrator (1 month after Appointment)	____________
Will Contest Period (4 months after date of death)	____________
Alternate Valuation Date (6 months after date of death)	____________
Estate Tax Return Due (9 months after date of death, unless extended)	____________
Claims Against Estate Due (1 year after date of death)	____________

ADMINISTERING YOUR GIFT ANNUITY FUND FROM "A" TO "Z"

Presented by:
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ADMINISTERING YOUR GIFT ANNUITY FUND FROM "A" TO "Z"

James B. Potter
Consultant, Planned Giving Resources, Inc.

Perhaps you have been told that you learn best from your mistakes rather than your successes. It would be my hope that I can share enough of what I have learned over the years, through both developing and administrating thousands of annuity gifts and more than 30 gift annuity funds from start-ups to many tens of millions of dollars in size, that I can simplify your education in Gift Annuity Fund Administration, and save you from learning some important lessons the hard way.

Administrating your gift annuity fund is not really difficult. While much of it is common sense, your lack of knowledge in some areas could cause pitfalls for your organization without your realizing their possible ramifications. Gift annuity funds are regulated by the Insurance department of the ten states whose statutes require the charity to obtain a Permit or Certificate of Authority to offer gift annuity agreements to residents of their states. (See also the "Report On State Regulations", made to the Conference on Gift Annuities in April, 2000.)

While time does not permit me to share with you everything you will need to know on this subject, I will attempt to cover enough subjects, that, hopefully, every participant here will learn at least a couple of new facts, regardless how much experience you may have with Gift Annuity funds. If you are relatively new to the subject, or are just now considering starting a Gift Annuity Fund, this workshop will dramatically shorten your learning curve. I am unaware of any published source that covers many of these subjects. While we have listed some 40 items in total, we have grouped most of them by subject categories and have labeled them from "A" to "Z", and numbered the balance for a baker's dozen plus one, for easy reference. There are multiple points listed in some of the 40 subjects covered. So let's get started.

Investing the Annuity Gift

a) Invest the entire gift, not just the "Required Legal Reserve" Portion of it. The maximum suggested rates of the Committee on Gift Annuities assumes the investment of the entire gift. Even then, you should expect to net 50% of the gift, on average, unless you can invest your fund to earn more than 6.0%. If you spend the Gift Portion before the demise of the last annuitant in the agreement, you run a real risk of having insufficient assets to make the required annuity payments. The income on the invested Gift Portion as well as the Reserve Portion is necessary to make the annuity payments.

b) No state regulations speak to investing the Gift Portion of your Annuity Fund. To make the assumed investment return of 6% on your gift annuity fund, you will need to invest the Gift Portion or Excess Reserve Account (the portion of your fund that is NOT the Required Legal Reserve) in growth equity investments and be fairly aggressive with this part (25-35%) of your Fund. But, you should also know and follow the investment rules of the regulated states for the Reserve Portion of your Annuity Fund. Consider following those in the State of New York Insurance Law No. 1110 (the strictest state law that regulates Gift Annuity Funds by statute).

   To avoid the long list of investment restrictions in the NY State Insurance Law, invest the Reserve Portion of your Fund solely in Federal Government obligations (Treasury Bills, Notes, Bonds,). While money market funds can be an important part of your investment mix, to permit liquidity in providing a source for making payments without selling bonds, before maturity, they are also viewed as mutual funds, which have restrictions in NY. Invest no more than 5% of the Reserve Account of your Annuity Fund in any one mutual fund, even money market funds. If you determine that, say, 15% of your Fund should be invested in money market funds, to provide sufficient cash flow for making annuity payments, etc., find three appropriate money market funds and invest up to 5% of the Reserve Account of your Annuity Fund in each one. Avoid money market funds with "L.P." (Limited Partnership) in their name.

Making Annuity Payments

c) For ease of administration and eventual computerization, make every payment other than the first one, the same, even if rounding annual amounts upwards by a few cents to accomplish this. Always round up, never down.

i.e.: $5,000 x 9.1% - $455.00 a year, payable monthly - $ 37.917 a month.
$37.92 x 12 - $455.04 a year. Write agreement for $455.04 a year.

Be sure that your planned giving tax calculation software is set to round each payment upward to the next penny (some programs can be set to do this or not), so that your periodic payment, when multiplied by the number of payments in the year will agree with the annual annuity amount calculated by your software. Test your software with a problem like the one shown above and make sure that 12 monthly payments calculate at $37.92 each and total an annual annuity of $455.04 and not some lesser amount.

d) Mail payments to ARRIVE on payment due date. Do NOT mail on payment date. Mail checks from 1 to 7 days prior to payment due date, depending on distance from your office to the annuitant's address. This builds donor / annuitant good will and improves chances of obtaining another gift. Never miss a payment. Your Development Office should the control payment handling, not your Business or Accounting Office. Which office do you think will be more interested or affected should a payment be late or missed? Count each payment as an important opportunity for a donor cultivation contact. Use your organization's check forms, and be sure that the name of your organization and "Gift Annuity Fund" are prominently displayed on the face of the check, not the name of your bank or insurance company. Send a personalized letter with each payment. Make it count as a development contact, not just a legal obligation. It will increase the number of your additional annuity gifts.

e) Date your annuity checks on the payment due date, so they cannot be cashed sooner and advise annuitant of that fact when you start to send payments. Do not date them the date you print the check, so you can mail then a few days early to arrive on the payment due date.

f) If annuitant dies on the payment date, the payment belongs to the annuitant.

g) If annuitant dies just prior to payment date and the annuity payment has been mailed, the Insurance Commissioners of regulated states will require charity to make a "reasonable effort" to obtain a refund of the payment from the estate. It is a legitimate claim against the estate. Make no less than three (3) documented efforts to obtain a refund from the annuitant's estate. If necessary, send executor a copy of agreement and send final request by Certified Mail, Return Receipt Requested.

h) Make every effort to locate a lost or missing annuitant who moves and does not advise you of their new address. If your checks/letters are returned, marked with "forwarding privileges expired" or 'forwarding address unknown" etc., send a letter to Postmaster of last known town. Enclose a check for $3.00, payable to "Postmaster," with a letter to the Postmaster requesting annuitant's new address under the Federal "Freedom of Information Act". If it is known, they must supply it to you.

If still unknown, you can write a letter to addressee (the annuitant), advising that you need their new address to fulfill your annuity payer obligations. Place in an outgoing envelope bearing only their name in address location. Do not seal envelope and send to Social Security Administration, Washington, D.C. with a letter providing Social Security Number of Payee and requesting that if annuitant is alive, that they forward your unaddressed/unsealed envelope to the annuitant/addressee. Social Security Administration does not charge for this service.

Reporting Annuity Payments

i) Charity must report taxable annuity payment amounts (paid in prior calendar year) by January 31 each year to ALL annuitants, (using the 1099R Form, for 1991 and later payments; for 1990 and earlier, it was a W2-P Form), regardless of amount paid (not just those receiving $600.00 or more annually). This was a former requirement not followed since the early 1990s. Report the information (using copy of 1099R Forms and cover Form 1096) to IRS through the Social Security Administration, by February 28 each year. Payment data to more than 250 persons, (total of annuitants and employees of charity), are to be reported electronically, not with paper forms. The IRS can advise how to do this.

j) Provide the annual Capital Gains reporting amount to donor/annuitant that may be reported ratably over donor's lifetime, using space provided on Form 1099R. This has been mandatory since annuity income reported for 1992 (reported 1-31-1993). Maintain ongoing records of all data you have reported annually to each annuitant. Also, maintain records of recurring multiple addressees, like a summer home, and know which annuity checks should be mailed to each. Be aware that a Post Office Notice of a new address could be just a temporary one, not a permanent change. Post Office never identifies one from the other. Consider establishing Direct Deposit for those annuitant's that want it, or offer to send checks direct to annuitant's bank for deposit in their account. Send a "Notice of Deposit" to the annuitant's home to advise that payment has been made, as a courtesy to the annuitant.

k) Provide donor and annuitant with appropriate tax reporting data (charitable deduction, capital gains, tax-free and taxable annuity payments for all years of their life expectancy at the same time gift annuity agreement is established. Do it in chart form by groups of years, so annuitant may prepare their annual tax return without waiting to get your 1099R Form.

Drafting Agreements

l) Be sure to have the donor sign the Gift Annuity Agreement. It is a contract, not a trust, and needs to be signed by both parties to the contract, the charity and donor(s). some 22 states presently require state mandated Disclosure Statement language (or other specific language unique to each state) either in the agreement or in a document signed by the donor, and kept on file for the life of the annuity agreement. All states that require a Disclosure Document allow the state mandated wording to be placed in the agreement, as long as it is in separate paragraph in type no smaller than that used in the rest of the annuity agreement. Some states even require such wording to start on the first page of the agreement.

m) The gift annuity agreement may only say the gift is for ". . . the general use" of the charity. Do not describe any restrictions or designations for use of remainder (residuum) of the gift in the Gift Annuity Agreement.

n) If remainder of annuity gift is for a designated or restricted purpose of the charity, create a separate Special Agreement that takes effect at the death of the last annuitant (termination of the Gift Annuity Agreement). Describe any restrictions on the use if the residuum of the gift (including investment and use of only the income) in the Special Agreement. This could be done with a letter, but will mean more to a donor (because they perceive it as being more legally binding) if incorporated into a Special Agreement. Have donor sign (approve the terms of) the Special Agreement before charity's officers sign it. If charity executes agreement first, problems will develop if donor fails to return a signed copy to the charity promptly. Never start making payments until a signed agreement is in place.

o) Always provide secondary wording in Special Agreement to provide for final use of gift, if donor's first or other choices for designation cannot be met. If necessary, provide for several alternatives in sequence, but always end with a use that will permit gift or the income from its investment to be used as determined by the charity's Board. Never leave the final terms so restrictive, that gift or its income cannot be used, if the donor's designation is no longer part of the charity's program some 100 years from now.

p) Type multiple original copies of all Gift Annuity and Special Agreements for all donors, annuitants and charity. Include separate copies for annuitants who are not donors. Identify in body of agreements the number of original copies prepared, describing each as an original. Allow donors to decide if they wish to give other annuitants a copy of gift annuity agreement or let charity do it. Charity should NOT send a copy of Gift Annuity agreement directly to a successor annuitant, if donor's "right to revoke" wording is included in agreements. Send copies of Special Agreements ONLY to donors, not to annuitants who are not also donors.

Withdrawing Gift from Fund

q) Determine your Gift Annuity Fund Withdrawal policy before first termination (death of last annuitant to an agreement). Be sure your policy will withstand scrutiny for accuracy and appropriateness of amount to be withdrawn. State Insurance Law only speak of amount of legal reserve required to be held to cover annuitants who are alive at end of each year. There is no guidance on deciding how much to withdraw from the fund at termination of an agreement. (See Exhibits 2 and 6.)

Reinsurance of Gift Annuity Obligations

r) Determine charity's policy on reinsurance of gift annuity payment obligations before embarking on Gift Annuity program. If charity is domiciled in New York or has annuitants residing in New York, and may opt someday to file for a Permit to write gift annuities in New York, be aware of New York State's Insurance Commissioner's view of what constitutes legal "reinsurance" of the annuity obligation in that state. Their view applies to total Annuity Fund, not just the NY State agreements. (See Exhibit 3.)

Filing for Permits in Regulated States

s) Be aware that if your charity is domiciled or has offices, OR has annuitants in any of those ten states that regulate Gift Annuity Agreements and Gift Annuity Funds by State Statute (AR, CA, HI, MD, NJ, NY, ND, OR, WA, and WI), You need to investigate the need for complying with those applicable statutes. It is not an "either or" situation, it is BOTH. Charity's location AND annuitant's residence governs the need for compliance of these state statutes. The issuance of Gift Annuity agreements is a state regulated industry. If you have a legal opinion that indicates you need only comply with the state laws of your own state, you need to obtain a second opinion pronto. Do you think that a commercial insurance company can do business in any state outside of its own because it handles everything by mail and has no sales force in the annuitant's state? With the National Association of Insurance Commissioners (NAIC) suggested uniform regulatory language to all 50 state legislatures in January 1999, the days of a charity being able to claim it did not know it was in violation of a state's gift annuity regulations is fast coming to an end.

If you have annuitants living in any of those ten (10) states, or in any of the ten other states that require you to "notify" then that you are issuing gift annuity agreements to their residents, it would be wise to administer your Fund as if you planned to file (even if you don't), in the strictest state (NY) tomorrow. This will help minimize the time you will need to make the changes necessary in your fund administration to comply with the appropriate state insurance statutes (if you later decide to file for a Permit) and will minimize the time your fund will be prevented from accepting new gifts while you get your fund into legal compliance. This could be a problem for 3 to 6 months or even longer, during which time you will be prevented (by the regulating state) from accepting any new annuity gifts in that state.

You should be aware that if you are dealing with NY, and if you reinsured any of your annuity obligations, you will not be able to comply with the NY law unless you add sufficient new assets to your Annuity Fund to cover the Required Legal Reserve amounts of the "reinsured" annuities (possibly from 60 – 75% of the face value of the reinsured agreements) unless you used a "treaty" agreement with the insurance company. Your non-treaty type reinsurance policies will not qualify as Admitted Assets in your Gift Annuity Fund.

t) Whether you plan to file for a Permit or Certificate in any of the ten states regulated by statute or not (see list of states above), be aware of the rules for investing, wording in agreements, etc., in each state's Insurance Law. Without identifying your organization to the state regulators, have your legal counsel or planned giving consultant obtain a copy of the appropriate section of each state's Insurance Law, together with filing forms, etc., and become aware with what is involved with complying in each of those states. See the present status of the State Regulations of Gift Annuities at web site: http://www.pgresources.com. Check that source regularly for updates. See the "New Information" button for changes since last visit.

u) To register or not with any of the Insurance Commissioners of the ten (10) states that regulate annuities by issuing permits, is a legal and ethical decision that each charity must make only after reviewing all of the facts on a state by state basis and obtaining advice from your charity's own legal counsel. Rather than contacting regulators directly, Network with other non-profits or have your outside legal counsel or planned giving consultant deal with the state regulators until you are ready to file for a permit in that state.

v) Before filing for a Permit, be sure your Fund will qualify to receive it. Once you have filed, you will be advised of what (if anything) needs correction and at the same time, you may be told to stop accepting new annuity gifts until you have the permit in hand. This might take from 3 to 6 months or even far longer, so expect to be "out of business" to new gifts from that state during this period. Therefore, don't file for a permit with any state regulator until you are reasonably sure you will obtain it. Work with an attorney or advisor who has direct experience in this area (See Exhibit 4).

w) Most regulated states (not NY) allow the reinsurance of the annuity payment obligation that is above the initial $100,000 Required Legal Reserve amount (about $150,000 in face value annuity agreements). Since you must obtain the minimum $100,000 Fund and file an annual report in most regulated states, it becomes a question of whether there is a benefit of reinsuring agreements above that minimum.

x) After you obtain your permit(s), be sure your administrative, legal and/or accounting staffs are prepared to handle the annual state reporting requirements or obtain help from qualified professionals who have experience in annual reporting to the Insurance Departments of these regulated states.

y) Be prepared to compute the actuarial value of each agreement annually, or obtain actuarial or other professional help in computing this data. Charity must report Required Legal Reserve data for all agreements in your Annuity Fund, based on formulas, annual annuity amounts, ages of annuitants, actuarial tables and interest rates approved by each regulated state in which you hold a permit or certificate. Each state's rules are different. (See Exhibit 5 for sample of NY State Report).

Gift Annuity Records

z) Maintain detailed records of each annuity agreement, each gift and the ongoing periodic earnings, investment and market value data for your Annuity Fund, so that periodic analysis of both gifts and your fund can be made for your management staff, your Board and if necessary, the state regulators. Do NOT assume that your business/accounting office has this well in hand. Unless you specifically establish a means to track its changing value, each annuity gift looses its identity once its admitted to your Fund. You will not know how much to withdraw from your Fund when the agreement terminates.

Because your Annuity Fund is a dynamic, constantly moving target, with gifts moving in and out of the Fund, invested assets with changing market values, income being earned and expenses being incurred at different rates, a withdrawal policy that removes an inappropriate fund balance at the termination of an agreement, etc., is easy to accomplish. It is possible to be in trouble with the values in your Annuity Fund for a considerable time before you become aware of it, if you ever do. The bigger and more active the Fund, the more likely this will be.

It is important to establish a means to track each gift within your Fund early on, so you won't be caught unaware with problems that either you cause or inherit. Do NOT assume that others have established appropriate rules or policies under which your Gift Annuity Fund operates. Do NOT assume that your business or accounting office knows how to administer your annuity fund. It is unlike any other fund they handle.

Correctly handled, a Gift Annuity Fund can be an important vehicle for long range funds development for your charity's future programs. For both small and large donors alike, it can be a vital tool to provide high income to older donors that is not possible through other gift plans.

A Baker's Dozen (Plus One) of More Ideas

1) **Knowledge**: Be sure someone in your Development Office knows all about gift annuities and gift annuity funds, or that you have access to someone who does. Do not rely on your Business Office. Your organization is responsible once it starts to accept annuity gifts, even if it reinsures its annuity obligations with a commercial insurance company. Be aware that if the insurance company goes bankrupt, the charity that issued the agreement is still responsible for the payments.

2) **Stopping Payments**: Unlike separately invested charitable remainder annuity trusts or unitrusts, where the trust ceases once all the trust's principal assets have been expanded, a gift annuity agreement is a contract, not dependent on the income earned by investment of the gift. All annuity payments must continue as long as the charity itself has any assets. Bankruptcy is the only legal way a charity can get out of its contractual obligation to make the annuity payments on the agreements it has issued.

3) **Gift Tax Return**: When giving the donor the tax information about the annuity gift, also advise the annuity gift donor about the need to file a federal Gift Tax Return (Form 709) as an informational return, for the charitable deduction amount is a reportable but not a taxable gift.

4) **How to File Form 709**: Advise donor to attach a photo copy of agreement and tax computation sheets to Gift Tax Return and attach a copy of the Form 709 and its attachments to his/her 1040 Federal Income Tax Return in the first year donor reports the gift. This identifies the donor as a "full disclosure" taxpayer and makes their tax return less likely to be audited, solely due to their reporting a large charitable deduction for the annuity gift.

5) **AFR and tax consequences**: Advise donor of need to also attach statement to their Tax Return if the AFR (Applicable Federal Rate) or CMFR (Charitable Midterm Federal Rate) they choose to use in the charitable deduction calculation for the gift annuity is from or two months prior to the gift month, rather than the month of the gift. Also, advise them tat failure to attach that statement, will disallow the use of the AFR rate and for any month other than the current month of the gift. The higher the AFR rate, the larger the charitable deduction.

6) **Additional wording**: Be sure any additional wording required by state insurance statutes is placed in any gift annuity agreement where charity is domiciled in, and/or annuitant lives in any of the regulated states (i.e.: CA, NY, OR, WA and 18 other states) that requires additional specialized wording, such as: agreement number, the actuarial age of the annuitant(s) , reasonably commensurate value, and state mandated disclosure language, etc. See web site: www.pgresources.com for details.

7) **Annuity Rates:** Be sure that your Board and staff understands that the Suggested Maximum Annuity Rates of the Committee on Gift Annuities are based on the assumption that the charity will, on average, net only 50% of the gift, and that the Gift Annuity Fund need only earn a total return of 5.5% a year on average (See Exhibit 1).

8) **State Regulations**: For summary of the State regulations on Gift Annuity Funds and contacts within the State Insurance Departments for the ten states that regulate annuities by issuing permits, see the web site: http//www.pgresources.com Click on "State Regulations" button and then on "Summary Report" and print out the 6 page report for all 50 states. Then click on "State Contacts" button and print the same.

Federal vs. State Data: The Contribution Deduction and the Investment-in-the-Contract are the federal calculation equivalents of the state calculations of the Gift Portion and the Reserve Portion of the gift. The state calculation for the Reserve Portion for any annuity gift is always LARGER than the federally computed Investment-in-the-Contract. The federal calculations for the Contribution deduction are more liberal (larger) than the state computations for the Gift Portion, even though the same actuarial table (1983 "a" Table) is used in both computations, the formulas and interest rates are used different.

9) **Investing**: Use a "buy and hold' approach to investing the Reserve Portion of your Annuity Fund in Treasury Bills, Notes and Bonds. The maturity dates of the fixed income obligations should be chosen with some sensitivity to the life expectancy of the annuitant(s), the need to have some asset in the Fund mature every few months, and a portion of the Fund (say 15 – 20%) invested in Federal Government Money Market funds (a maximum of 5% of the Reserve of Fund in any one mutual fund). Arrange for each mutual fund to have its income reinvested back into itself.

10) **Checking Account**: Establish a separate checking account just for your Gift Annuity Fund. The checking account, the mutual funds and other investments constitute your Segregated Gift Annuity Fund. Obtain check writing privileges for each Money Market Mutual Fund, so you can write check(s) for the amounts needed to cover the annuity payments for the month. Deposit the checks into the Gift Annuity checking account to cover the annuity checks issued that month. Deposit the interest and dividend income checks from the invested assets in the checking account.

11) **Investing Each Gift**: As each new gift is received or as each fixed income obligation matures, make a decision on how much should be invested in the money market funds and how much in longer term fixed income obligations. You want to avoid having to sell a bond, bill or note before it matures. Therefore, review the maturity dates of the investments in you r gift annuity fund every time you have proceeds to invest and you need to make a new investment decision.

12) **Gift File Records**: Be sure you have a copy of the tax calculations of each annuity gift, not only in the Donor and annuitant file, but in a separate file which contain a copy of each set of tax calculations for donors/annuitant in your Fund. There will be times when you will be thankful you maintained that separate file, so you won't have to find the donor file for each and every gift. I have been thankful many times that I established such a file as a backup source of tax and payment data for each gift.

13) **Join ACGA**: And finally, join the Conference on Gift Annuities. As a supporter of the American Council on Gift Annuities, you or your organization will have access to information on the Gift Annuity, Deferred Payment Gift Annuity and Pooled Income Fund. In addition you get access to the latest information on gift annuity rates and access to copies of 350 plus page printed proceedings of the most recent Conference and the ability to network with other Conference members who might help you resolve any gift annuity oir planned giving problem you may have. All this and the largest biennial planned giving conference in the nation, for just $75.00 a year!

And there you have 40 subjects relating to the correct administration of a Charitable Gift Annuity Fund. While it is not rocket science, it is very detailed, and any one of these subjects, if incorrectly handled, could cause you serious problems at some point in time. I suggest that those charged with the administration of your gift Annuity Fund read and reread this paper from time to time. It is surprising how much you will find that you did not see before when you review this from time to time. New staff members should be given their own copy as well. And while networking with charities experienced in this field is helpful and to be encouraged, do not assume that just because you are networking with either a large or experienced charity, that they must be doing it right. That is not a given.

If you become a student of Gift Annuity Administration, you will be able to use this gift plan with success in an overall planned giving development program. If correctly handled, your organization should be able to realize as a remainder of your annuity gifts, at least fifty percent of the value of the total annuity gifts that you receive over time.

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EXHIBIT 1

How Gift Annuity Rates Are Computed
by the
American Council on Gift Annuities
(Formally the Committee on Gift Annuities)

- -

Example: A Person age 75 (using 1977 Rates)

A. CALCULATION

			Rate Basis
1.	Amount of Principal donated		$ 1,000
2.	Expense Loading to be deducted	(5% x line 1)	- 50
3.	Balance for annuity payments AND Gift Residuum	(1 – 20	950
4.	Gift Residuum to be set aside with interest thereon Available	(50% of line 1)	–500 *
5.	Balance available for annuity payments	(line 3 – 4)	450
6.	Cost of $1.00 per year of life annuity		$ 8.68
7.	Annuity provided by balance in line 5	(5 / 6)	51.84
8.	Interest provided by interest residuum in line 4 : (Line 4 x assumed interest rate of 5%)		+ 25.00 **
9.	Total annuity income available	(7 + 8)	76.84
10.	Annuity Rate	(line 15 / $1,000)	7.7 %

B. ALTERNATE CALCULATION AS A CHECK

11.	Balance for annuity payment and residuum (line 3 in A)		$ 950.00
12.	Cost of $500 residuum payable at death		283.03
13.	Balance for annuity payments	(11 – 12)	666.97
14.	Cost of $1 per year for life of annuity	(line 6 in A)	8.68
15.	Annuity provided by balance in 13	(line 13 / 14)	76.84
16.	Annuity Rate	(line 15 / $1,000)	7.7 %

Notes:

* Annual Interest earned by investment of remainder of gift used to pay part the annual annuity payment. ($500 x 5% - $25.00) .

** Portion of annual annuity represented by interest earned on residuum (remainder of gift) : $25.00 / $76.84 – 32.54 % . If any part of remainder (residuum0 of gift is withdrawn from Annuity Fund BEFORE demise of annuitant, the remaining residuum and the amount Withdrawn early CANNOT equal 50% of original gift.

The state laws of 11 states that regulate charitable gift annuities by statute ALL stipulate that the Annuity rates offered by any charity must be proven actuarially to net the charity at least 50% of the original gift.

If part of the gift principal is withdrawn before the demise of the annuitant, thew charity will not be able to prove that 50% or more of the gift will accrue to the charity (if Committee on Gift Annuity rates will be utilized).

Source: Printed Proceedings of 1977 Conference on Gift Annuities (with explanatory notes by James Potter).

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EXHIBIT 2

Determining Remainder Amount at Death of Annuitant

An Annuity Gift looses its identity upon its admission to a Gift Annuity Fund. There are at least two ways that charities determine how much to withdraw from the Annuity Fund at the termination of any particular contract.

1. Charity could administer the Annuity Fund as if it were a pooled Income Fund, by utilizing the fund and assigning units (shares) to each gift based on the units in the fund and the market value of the fund on the date each gift is admitted to the Fund. This method costs more than other methods administratively, but is extremely accurate.

2. The charity would maintain fund records by determining the net income of the fund each year as a percent of the total face (book) value of the annuity agreements in the Fund (see Exhibit 6).

   Then at then death of the annuitant, make the following calculations :
   1) Start with market value of gift (net proceeds) of gift.
   2) Add income for the number of days gift was in Fund for first year.
   3) Subtract annuity payments for the first partial year.
   4) Determine book value balance of gift in fund.
   5) Add income and subtract payments for each full year gift is in Fund.
   6) Follow steps 2 and 3 for final partial year.
   7) Adjust new balance by percentage of face (book) value of agreements in Fund to its market value and remove only the revised adjusted book value which is adjusted to its proportionate share of market value.

   Example of Terminated Gift Annuity using Method No. 2

Gift: $ 10,000
Annuity Rate: 8.5%
Gift Date: 6-30-88
Date Died: 3-30-91

Income Rate: 1988 - 6.75%
1989 - 7.10
1990 - 7.25

Steps			Balance Totals
1	Original Gift	10,000	10,000
2	Income 1st Yr	+ 337	
3-4	Less Payments	- 425	9,912
5	1989 Income	+ 704	
5-4	1989 Payments	- 850	9,766
5	1990 Income	+ 708	
5-4	1990 Payments	- 850	9,624
6	1991 Income	+ 156	
6-4	1991 Payments	- 212	9,568
7	72% of 9,568 -		6,889 (Market Value to be Withdrawn)

Adjustment of Book to Market

Fund Book Value:	1,250,000
Fund Market Value:	900,000
Market to Book	72 %

EXHIBIT 3

Reinsurance of Gift Annuity Agreements

Many conservative Boards of non-profits assume that by reinsuring their annuity agreements with annuity contracts issued by commercial insurance companies licensed to do business in the domiciled state of the charity, they are protected them from any future liability. This is simply not true.

1. If the charity purchases a single premium "refund Type' policy, it pays a single premium [generally from 60 – 75% of the total gift, depending on the age(s) of the annuitant(s)] and receives periodic annuity payments from the insurance company for the life of the annuitant(s).

2. At the end of the life expectancy of the annuitant(s), the single premium amount paid by the charity will have been returned to the charity in the form of annuity payments. Further payments will be the insurance company's money.

3. If annuitant dies before his/her normal life expectancy, insurance company will either refund the balance of the premium paid, or, more likely, will continue to make the annuity payments to the charity until the premium amount paid has been returned to the charity.

4. The charity loses its use of the income of the investment of the premium paid, but it gains the payments above and beyond the premium paid if annuitant lives that long.

5. If insurance company goes bankrupt, the charity still owes annuity payments.

6. Reinsurance of annuity agreements by charity with commercial insurance company in New York State is acceptable (to NY State Dept. of Insurance) only if using a "treaty agreement" (terms negotiated between charity and insurance company). See the State Regulations Report in the printed proceedings of 20th Conference on Gift Annuities (1989) , Toronto, Canada. Obtain from CGA office, Dallas, TX.

7. Charity can realize more money from annuity program by being a "self insurer", investing the entire annuity gift for life of the annuitant(s) and investing the assets of their Gift Annuity Fund conservatively in assets acceptable to the Insurance Commissioners of the regulated states. Maintain the Required Legal Reserve portion of Fund in U.S. Government obligations (Treasury Bills, Notes and Bonds), and no more than 5% of the Fund in any one mutual fund. Follow investment rules found in New York (most restrictive) Law. Fund need only earn 6.5% of book (total gifts) value of fund to net 50% of the amount of the gifts received for the benefit of the charity.

EXHIBIT 4

Sample Gift Annuity Agreements for Regulated States Requiring Permits

List of six (6) sample gift annuity agreements to be filed with Insurance Commissioner's Office when filing for a Special Permit or Certificate of Authority, to write gift annuity agreements in the states of AR, CA, HI, MD, NJ, NY, ND, OR, WA or WI.

1.	One Life,	Immediate Payment	
2.	Two Lives,	Immediate Payment,	Successive Annuitants
3.	Two Lives,	Immediate Payment,	Joint and Survivor Annuitants
4.	One Life,	Deferred Payment	
5.	Two Lives,	Deferred Payment,	Successive Annuitants
6.	Two Lives,	Deferred Payment,	Joint and Survivor Annuitants

Variable Wording or Special Information to be Included:

1. Two lives: the right of Donor to Revoke by Will, the right of survivor annuitant to receive payment after death of donor
2. Payments are non-assignable if gift funded with appreciated property.
3. Market value of gift, if funded with other than cash.
4. Agreement governed by laws of (state of domicile of charity or domicile state of annuitants, if annuitant state regulates by issuing a permit). Regulations of more stringent state governs on any issue, if both states claim jurisdiction.
5. Each agreement numbered for control (required in state of Washington).
6. Reasonably Commenserate Value written into body of Agreement (CA, OR and WA).
7. Corrective action wording if age of annuitant is discovered to be wrong.

EXHIBIT 5

XYZ Charity, Address, City, State — Report Date: 12/31/1999 — Page 1 of 1

Gift Annuity Valuation as of 12/31/1999 using the 1983 A Table

Gift Date	Freq		Sex	Age	DOB	Gift Amount	Annuity	Factor	Reserve
Interest Rate: 6.%									
12/28/1990	quar def	1st paym 09/30/2016				$10,000.00	$1,820.00	6.01132391	$10,940.61
Melinda Jones			F	51	09/03/1948				
Christopher Jones			M	21	11/30/1978				
12/19/1995	quar	1st paym 12/31/1995				$500,395.00	$40,031.60	5.36591942	$214,806.34
Ruth Smith			F	86	09/14/1913				
Totals for 6.% Interest:						**$510,395.00**	**$41,851.60**		**$225,746.95**
Reserve amounts on this page above recognize modal periods									
Interest Rate: 6.%									
12/24/1985	ann	1st paym 12/31/1985				$150,000.00	$11,400.00	6.23296936	$71,055.85
Carol Johnson			F	83	03/13/1917				
12/15/1986	ann	1st paym 12/31/1986				$10,000.00	$770.00	6.54100057	$5,036.57
Loretta samuelson			F	82	02/11/1918				
Totals for 6.% Interest:						**$160,000.00**	**$12,170.00**		**$76,092.42**
Reserve amounts on this page use mean reserve factors									
Grand Totals:						**$670,395.00**	**$54,021.60**		**$301,839.37**

Number of Contracts: 4

Calculated using PG Calc's Gift Annuity Organizer v.3.1 Release date: 12/97

EXHIBIT 6

Computing Net Annual Income Rate of Gift Annuity Fund for Year (19xx)

XYZ Charity
Address, City, State, Zip

1. **MONTHLY NET INCOME COMPUTATION**

(a)	(b)	(c)	(d)	(e)	(f)
	- - Expenses - - -	Expenses - - -		Gross	Net Income
Month (199xx)	Administrative Expenses	Misc. Expenses	Total Expenses	Income Earned	Earned (e) – (d)
Jan	$ 311.27	0.00	$ 311.27	$ 3,995.64	$ 3,684.37
Feb		$ 25.00	$ 25.00	3,772.39	3,747.39
Mar		13.00	13.00	4,315.83	4,302.83
Apr	305.03	13.00	318.03	3,941.40	3,623.40
May		5.00	5.00	4,209.73	4,204.73
Jun		5.00	5.00	4,132.21	4,127.21
Jul	276.91	0.00	276.91	4,302.47	4,025.56
Aug		8.00	8.00	4,226.54	4,218.54
Sep		5.00	5.00	3,707.67	3,702.67
Oct	280.78	5.00	285.78	3,686.75	3,400.97
Nov		5.00	5.00	3,518.87	3,513.87
Dec		5.00	5.00	3,550.23	3,545.23

2. **AVERAGE INCOME RATE**

(g)	(h)	(I)	(j)	(k)	(l)	(m)
	Periodically Revised * -- Book (Original Gift) Values -- (NOT Fund Market Value)			Net Income	Average Net Income Rate	
Month (19xx)	Start	End	Average	Earned (f)	Monthly (k) / (j)	Annual (1) x 12
Jan	615,615.06	619,850.73	617,732.90	3,684.37	.0059643	7.1572%
Feb	619,850.73	660,388.15	640,119.44	3,747.39	.0058542	7.0251
Mar	660,850.73	662,552.64	661,470.40	4,302.83	.0065049	7.8059
Apr	662,552.64	660,866.49	661,694.57	3,623.40	.0054759	6.5711
May	660,866.49	661,904.47	661,385.48	4,204.73	.0063575	7.6289
Jun	661,904.47	674,760.66	668,332.57	4,127.21	.0061754	7.4105
Jul	674,760.66	673,263.70	674,012.18	4,025.56	.0059725	7.1670
Aug	673,263.70	669,885.72	671,574.24	4,218.54	.0062816	7.5379
Sep	669,885.72	580,360.76	625,123.24	3,702.67	.0059231	7.1077
Oct	580,360.76	584,580.87	582,470.82	3,400.97	.0058389	7.0066
Nov	580,360.76	584,580.87	592,671.32	3,513.87	.0059696	7.1635
Dec	592,671.32	611,832.56	602,251.94	3,545.23	.0058866	7.0640
		Average:	637,899.49			7.2263%
		Total:		46,096.77		

Notes: * Monthly changing Fund Book Value: Total invested proceeds of gifts, plus income, less expenses, payments and withdrawn principal – net book value.
** Total Net Income divided by Average Monthly Book Value – Average Annual Income Rate ($ 46,096.77 / $ 637,899.46 = .072263).

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PLANNING OPPORTUNITIES USING 509(a)(3) SUPPORTING ORGANIZATIONS

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PLANNING OPPORTUNITIES USING

509(a)(3) SUPPORTING ORGANIZATIONS

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INTRODUCTION

Entrepreneurs who are at all interested in making significant charitable gifts are often attracted to private foundations. However, the disadvantages of private foundations now make them considerably less desirable than in 1994. The relatively little known but effective "supporting organization" format can offer a far more attractive substitute, and one which also ensures the supported charity a continuing source of revenue.

1. The Private Foundation. Entrepreneurs wishing to benefit charity and generate charitable contribution deductions found that the private foundation affords them many advantages, including the following:

a. Control. The entrepreneur who created a private foundation maintained control over management and disposition of the assets contributed. If the private foundation were created during lifetime, then the entrepreneur would continue to manage the gifted assets held in the foundation, and could decide each year which public charities would receive funds. Upon the founder's death, his or her children or grandchildren could assume control on behalf of the family.

The level of control afforded by the private foundation was (and is) probably its most attractive feature for the entrepreneur. If he or she made an outright gift to a charity, then the charity would take over management of the assets, which the entrepreneur typically believes he or she can manage far more effectively. In effect, the private foundation could constitute yet another enjoyable business venture for the

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ADVANCED TOPICS IN THE USE OF 509(a)(3) SUPPORTING ORGANIZATIONS

Attorneys, financial advisors, and charitable organizations are becoming increasingly aware of the dramatic advantages of "supporting organizations" over private foundations, particularly in planning for successful entrepreneurs and other individuals of very high net worth. As more and more well-endowed supporting organizations are created, they are being named as remainder beneficiaries in charitable remainder trusts created by the founders and their families.

The successful professional will need to become more familiar with the supporting organization as an effective tool in CRT planning. The following materials place the supporting organization into context, summarize the complicated regulations governing their organization and operation, and suggest applications through CRTs.

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b. Low Deductibility Thresholds. Contributions of cash to private foundations are deductible only to 30% of the donor's adjusted gross income, with a five-year carryover. Contributions of other assets (limited to cost basis) are deductible only to 20% of adjusted gross income, again with a five-year carryover basis.

c. Excise Tax Prohibitions. Perhaps most troublesome to entrepreneurs, private foundations are closely regulated by the Internal Revenue Service, which, in light of past abuses, views private foundations with considerably more suspicion than public charities.

The following are the excise taxes applicable to private foundations:

- Code Section 4940 -- flat 2% (or 1%) excise tax on investment income;
- Code Section 4941 -- excise tax on self-dealing;
- Code Section 4942 -- excise tax on failure to distribute income;
- Code Section 4943 -- excise tax on excess business holdings;
- Code Section 4944 -- excise tax on jeopardy investments; and
- Code Section 4945 -- excise tax on taxable expenditures.

2. The Supporting Organization. A relatively little-known alternative to the private foundation, the "supporting organization" described in Internal Revenue Code ("Code") Section 509(a)(3), affords a number of considerable advantages over the private foundation. In addition, it has the potential for meeting the entrepreneur's most urgent demand--it keeps the entrepreneur in control.

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a. Overview. As the supporting organization is treated as a "public charity" rather than as a private foundation, many of the disadvantages of the private foundation format are absent, and a number of other advantages are created through the use of a supporting organization. Gifts to the supporting organization are deductible up to 50 percent of adjusted gross income, as is the case for contributions to other public charities. The supporting organization can be named for the individual or family who creates it. The supporting organization is not subject to the excise tax penalties on self-dealing, excess business holdings, jeopardy investments or taxable expenditures, nor to the flat excise tax on net investment income. And, depending upon the structure of the supporting organization, the format can provide the entrepreneur and his or her family with opportunities for long-term management and control of the charitable assets.

One reason for the relative rarity of supporting organizations is the length and opaqueness of the Byzantine regulations which the Internal Revenue Service has promulgated governing the organization and activities of such institutions. One federal judge has characterized the supporting organization regulations as "fantastically intricate and detailed." *Windsor Foundation v. United States*, 77-2 U.S.T.C. ¶ 9709 at 88, 396 (E.D. Va. 1977). Few practitioners would disagree with the judge's characterization. Nevertheless, familiarity with the supporting organization rules can help the planned giving officer catalyze charitable contributions from entrepreneurs who might otherwise lack charitable motivation.

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Fortunately, the highlights of the supporting organization rules can be summarized in relatively brief fashion. The donor creates a supporting organization, typically as a charitable trust, but occasionally as a nonprofit corporation under local state law, and designates one or more public charities, such as universities, symphony orchestras or museums, and identifies them in the organizing instrument as the recipients of the new organization's support.

Depending upon what choices are made by the creator, the affiliation with the supported public charity organizations can be tight or loose, and the supporting organization's function may vary from actually carrying on its own charitable activities, to the more passive (and more common) paying out of income to the supported organizations from year to year. The creator and his or her family frequently serve as trustees or directors of the new supporting organization.

(1) Basic Requirements--Applicable to All Supporting Organizations.

(a) Code Section 509(a)(3). Code Section 509(a)(3) sets forth three broad requirements which all supporting organizations must satisfy.

First, the organization must be "organized, and at all times thereafter . . . operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations" described in Code Section 509(a)(1) or (2).

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Second, the organization must be "operated, supervised, or controlled by or in connection with one or more organizations" described in Code Section 509(a)(1) or (2).

Third, the organization must not be "controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations" described in Code Section 509(a)(1) or (2).

(b) Organizational Test. The supporting organization must meet the following organizational test. The governing instrument of the supporting organization must satisfy all four of the following requirements relating to the organizational test:

First, the governing instrument must limit the purposes of the organization to one or more of the purposes set forth in Code Section 509(a)(3)(A).

Second, the governing instrument must not expressly empower the supporting organization to engage in activities not in furtherance of the purposes referred to in Code Section 509(a)(3) (A).

Third, the governing instrument must designate the supported organizations on whose behalf the organization is to be operated.

Finally, the governing instrument must not expressly empower the organization to operate to support or benefit any organization other than the specified supported organizations.

(c) Operational Test. The supporting organizations must satisfy the following operational test.

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The first aspect of the operational test relates to permissible beneficiaries of the supporting organization. The supporting organization must be "operated exclusively" for the support of the specified supported organizations, including the making of payments to or for the use of or providing services or facilities for individual members of the charitable class benefited by the specified publicly supported organizations.

The second aspect of the operational test relates to permissible activities of the supporting organization. The supporting organization need not pay over its income to the supported organization in order to meet this aspect of the operational test. Instead, it may satisfy the test by using its income to carry on "an independent activity or program which supports or benefits the specified publicly supported organizations." There has been little development concerning what constitutes "an independent activity or program" for these purposes.

(2) Three Sub-Classes of Supporting Organizations. Three types of permissible relationships between the supporting and supported organizations are recognized. At least one of these relationships must be present in order to satisfy the requirements of Code Section 509(a)(3).

A supporting organization may be any one of the following: (1) "[o]perated, supervised, or controlled by" one or more publicly supported organizations; (2) "[s]upervised or controlled in connection with" one or more publicly supported organizations; or (3) "[o]perated in connection with" one or more publicly supported organizations. More than one type of relationship may exist in any one case.

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Each of these three subcategories of supporting organizations carry their own particular sets of requirements.

(3) Relationship Type #1--"Operated, Supervised, or Controlled By."

(a) General Requirements. The distinguishing feature of the "operated, supervised, or controlled by" type of relationship is the presence of a "substantial degree of direction by the publicly supported organizations over the conduct of the supporting organization." The required relationship "is comparable to that of a parent and subsidiary."

(b) Governing Body. The existence of the "operated, supervised, or controlled by" relationship is established by the fact that a majority of the "officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations."

(c) Organizational Test--Purposes Requirement. For purposes of the organizational test, the supporting organization's purposes as set forth in its governing instrument may be "similar to, but no broader than, the purposes set forth" in the governing instrument of the controlling publicly supported organizations.

(d) Organizational Test--Specified Organization Requirement. Supporting organizations which are "operated, supervised, or controlled by" publicly supported organizations may "specify" the publicly supported

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organizations in one of three ways.

First, the articles of the supporting organization can designate each of the specified organizations by name.

Second, the governing instrument of the supporting organization can require that the organization be operated to support or benefit one or more beneficiary organizations designated by a class or purpose, which include publicly supported organizations that are closely related in purpose or function to the principal supported organization.

Third, the governing instrument need not name the specified organizations if two conditions are satisfied: (1) there has been an historic and continuing relationship between the supporting organization and the supported organization; and (2) by virtue of such relationship, there has developed a substantial identity of interest between such organizations.

(4) Relationship Type #2--"Supervised or Controlled in Connection With."

(a) General Requirements. In order for a supporting organization to be considered "supervised or controlled in connection with" one or more supported public charities, there must exist "common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organizations to insure that the supporting organization will be responsive to the needs and requirements of the supported organizations." In order to

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meet this requirement, "the control or management of the supporting organization must be vested in the same persons that control or manage the publicly supported organizations."

(b) Other Requirements. The requirements relating to the purposes requirement and the specific organization requirement of the organizational test may be satisfied by a "supervised or controlled in connection with" supporting organization in the same manner as an "operated, supervised or controlled by" organization.

(5) Relationship Type #3--"Operated in Connection With." In order to be considered an organization "operated in connection with" one or more publicly supported organizations, the supporting organization must meet both of two tests: (a) the responsiveness test; and (b) the integral part test.

(a) Responsiveness Test. The responsiveness test is satisfied if the supporting organization "is responsive to the needs or demands of the publicly supported organizations."

In order to meet the responsiveness test, the supporting organization must meet either of the following two alternative sets of requirements.

The first set of requirements is as follows. The governing bodies of the supported organizations must have a significant voice in the investment policies of the supporting organization, the timing and making of grants, and the selection of recipients, and in otherwise directing the use of income or assets of the supporting

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organization. In addition, the first set of requirements provides that the supporting organization must meet <u>any one</u> or more of the following requirements: First, one or more members of the governing body of the supporting organization must be elected or appointed by the governing body of the publicly supported organizations. Second, one or more of the members of the governing bodies of the publicly supported organizations must also be members of the governing body of the supporting organization. Third, the governing body of the supporting organization must maintain a close and continuing working relationship with the governing bodies of the supported organizations.

In lieu of meeting the first alternative set of requirements under the responsiveness test, the supporting organization may satisfy a second set of tests. Under this second set, the supporting organization must satisfy <u>all three</u> of the following requirements. First, the supporting organization must be a charitable trust under state law. Second, each supported organization must be a named beneficiary under the charitable trust's governing instrument. Third, the supported organization must have the power to enforce the trust and to compel an accounting under state law.

(b) <u>Integral Part Test</u>. The integral part test is deemed satisfied if the supporting organization maintains a significant involvement in the operations of one or more supported organizations and each supported organization is in turn dependent upon the supporting organization for the type of support which it provides.

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In order to meet the integral part test, the supporting organization must satisfy either of the following conditions:

First, the activities engaged in by the supporting organization must be activities to perform the functions of, or carry out the purposes of, the supported organizations. In addition, but for the involvement of the supporting organization, these activities would normally be engaged in by the supported organizations themselves.

Second, the supporting organization must make payments of substantially all of its income to or for the use of one or more of the supported organizations. In addition, the amount of support received by such supported organizations must be sufficient to insure the attentiveness of such organizations to the operations of the supporting organization. In addition, a substantial amount of the total support of the supporting organization must be paid to the publicly supported organizations which meet the attentiveness requirement. "Substantial" for these purposes means at least 85 percent.

DISCUSSION

In brief, the regulations provide for an organizational test, Treas. Reg. § 1.509 (a)-4(c); operational tests, Treas. Reg. § 1.509(a)-4(e); and several alternative tests regarding the nature of required relationship between the "supporting" organization and the supported public charity, Treas. Reg. § 1.509(a)-4(f)(g)(h), (i). An organization must meet both the organizational test and the operational test, or it cannot qualify as a supporting organization. Treas. Reg. § 1.509 (a)-4 (b)(1).

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1. Overview Points. The following broad requirements apply to supporting organizations under Code Section 509(a)(3):

a. Organizational/Operational Tests. The organization must be "organized, and at all times thereafter, operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of" one or more 509(a)(1)/(2) organizations. [509(a)(3)(A); 1.509(a)-4(a)(2)]

b. Relationship Types. The organization must be "operated, supervised, or controlled by or in connection with" one or more 509(a)(1)/(2) organizations. [509(a)(3)(B); 1.509(a)-4(a)(3)]

c. Control. the organization "must not be controlled directly or indirectly by disqualified persons (other than foundation managers or organizations described in" 509(a)(3). [509(a)(3)(C); 1.509(a)-4(a)(4)]

2. Organizational/Operational Tests. If the organizations flunks either the organizational or the operational test, it does not qualify under 509(a)(3). [1.509(a)-4(b)]

a. Transitional Rule. If a supporting organization is created "prior to January 1, 1970," then the organizational/operational tests shall apply as of 1/1/70; the organizing instruments need to be amended prior to that date. [Id.]

b. Organizational Test.

(1) General. The "articles of organization" must:

(a) "Limit the purposes of such organization to one or more of the purposes set forth in section 509(a)(3);

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(b) "Do not expressly empower the organization to engage in activities which are not in furtherance of the purposes" in (i);

(c) "State the specified publicly supported organizations on whose behalf such organization is to be operated" per 1.509(a)-4(d); and

(d) "Do not expressly empower the organization to operate to support or benefit any organization other than the specified publicly supported organizations" in (iii). [1.509(a)-4(c)(1)]

(2) Purposes. The organization's purposes per the articles "may be as broad as, or more specific than" the purposes set forth in 509(a)(3). Examples of satisfactory purposes:

- formed "for the benefit of" a supported organization;
- formed "to perform the publishing functions" of a specified university.

As to "operated, supervised, or controlled by" or "supervised or controlled in connection with" organizations [Types I and II], the articles are satisfactory if the purposes therein set forth are "similar to, but no broader than" the purposes set forth in the articles of the supported organizations. [1.509(a)-4(c)(2)]

(3) Limitations. The articles cannot "expressly permit it to operate to support or benefit" organizations other than the specified supported organizations. [1.509(a)-4(c)(3)]

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c. Specified Organizations.

(1) General. Manner of acceptable "specification" will depend upon the relationship type. [1.509(a)-4(d)(1)]

(2) Nondesignated Publicly Supported Organizations. Ordinarily, the supporting organization's articles must designate each of the supported organizations "by name."

(a) Exceptions for Types I and II SOs. Exceptions:

- Type I or II relationship, and
- The SO's articles "require that it be operated to support or benefit one or more organizations "designated by class or purpose" and which include:
- the supported organizations themselves, by not by name; or
- publicly supported organizations "closely related in purpose or function to" the above.

In addition [in the alternative?] there is no need to designate by name if:

- "there has been an historic and continuing relationship" between the SO and the S'dOs; and
- "by reason of such relationship, there has developed a substantial identity of interests between such organizations". [1.509-(a)-4(d)(2)]

If these principles are met, an SO will not fail the "specified " portion of the organizational; test "solely because its articles:

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- "Permit the substitution of one publicly supported organizations within a designated calls for another publicly supported organization either in the same or a different class designated in the articles:"

- "Permit the [SO] to operate for the benefit of new or additional publicly supported organizations of the same or a different class designated in the articles; or

- "Permit the [SO] to vary the amount of its support among different publicly supported organizations within the class or classes of organization designated by the articles." Examples given. [1.509(a)-4(d)(3)]

(b) Exceptions for Type III SOs. The articles of Type III SOs must designate the S'dO "by name," except in cases of "an historic and continuing relationship" etc., under 1.509(a)-4(d)(2)(iv). [1.509(a)-4(d)(4)(i)]

If a Type III SO's articles designate the S'dO by name, then it will not fail the "specified" portion of the test "solely because" it articles:

- "permit a publicly supported organization which is designated by class or purpose, rather than by name, to be substituted for the publicly supported organization or organizations designated by name in the articles, but only if such substitution is conditioned upon the occurrence of an event which is beyond the control of the [SO], such as loss of exemption, substantial failure or abandonment of purposes, or dissolution";

- "Permit the [SO] to operate for the benefit of a beneficiary organization which is not a publicly supported organization, but only if such [SO] is currently operating for the benefit of a publicly supported organization and the possibility of its operating for the benefit of other than a publicly supported organization is

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a remote contingency"; and

- "Permit the [SO] to vary the amount of its support between different designated organizations, so long as it meets the requirements of the integral part test . . . with respect to at least one beneficiary organization". [1.509(a)-4(d)(4)(i), cont.]

d. Operational Test.

(1) Permissible Beneficiaries. The SO must engage "solely in activities which support or benefit the specified publicly supported organizations." Activities may include "making payments to or for the use of, or providing services or facilities for, individual members of the charitable class benefited by the specified publicly supported organizations." The SO may also, for example, "make a payment indirectly through another unrelated organization to a member of a charitable class benefited by" the S'dO, "but only if such a payment constitutes a grant to an individual rather than a grant to an organization." Apply the standard in 53.4945-4(a)(4) for this purpose.

In addition, the SO may support or benefit an organization, other than a private foundation, which is described in 501(c)(3) and has an SO relationship with the S'dO, or is described in 511(a)(2)(B) (state colleges and universities).

But, an SO cannot qualify "if any part of its activities is in furtherance of a purpose other than supporting or benefiting one or more specified publicly supported organizations." [1.509(a)-4(e)(1)].

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(2) Permissible Activities. An SO "is not required to pay over its income to the publicly supported organizations in order to meet the operational test. It may satisfy the test by using its income to carry on an independent activity or program which supports or benefits the specified" S'dOs. "All such support must, however, be limited to permissible beneficiaries" per (1) above.

"The [SO] may also engage in fund raising activities, such as solicitations, fund raising dinners, and unrelated trade or business to raise funds for the [S'dOs], or for the permissible beneficiaries." [1.509(a)-4(e)(2)]

(3) Examples. See 1.509(a)-4(e)(3).

3. Overview of Relationship Types. "Although more than one type of relationship may exist in any one case, any relationship described in section 509(a)(3)(B) must insure that:

a. "The [SO] will be responsive to the needs or demands of one or more publicly supported organizations; and

b. "The [SO] will constitute an integral part of, or maintain a significant involvement in, the operations of one or more publicly supported organizations." [1.509(a)-4(f)(3)]

In the case of Type I relationships, "the distinguishing feature . . . is the presence of a substantial degree of direction by the publicly supported organizations over the conduct of the [SO]."

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The "distinguishing feature" of a Type II relationship "is the presence of common supervision or control among the governing bodies of all organizations involved, such as the presence of common directors".

The "distinguishing feature" if a Type III relationship "is that the [SO] is responsive to, and significantly involved in the operations of, the publicly supported organization". [1.509(a)-4(f)(4)]

4. <u>Type I Relationships--"Operated, Supervised, or Controlled By."</u> "Each of the items "operated by," "supervised by," and "controlled by" . . . presupposes a substantial degree of direction over the policies, programs, and activities of a [SO] by [the S'dOs]. The relationship required under any one of these terms is comparable to that of a parent and subsidiary, where the subsidiary is under the direction of, and accountable or responsible to, the parent organization. This relationship is established by the fact that a majority of the officers, directors, or trustees of the [SO] are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more [S'dOs]." [1.509(a)-4(g)(1)(i)]

A Type I relationship may exist "even though" the "operating body" of the SO "is not comprised of representatives of the specified [S'dOs]."

A Type I relationship may exist in which the SO is "operated, supervised or controlled by" the S'dOs, but operated "for the benefit of" one ore more different organizations "only if it can be demonstrated that the purposes of the former organizations are carried out by benefiting the latter organizations." [1.509(a)-

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4(g)(1)(ii)].

<u>See</u> examples, 1.509(a)-4(g)(2).

5. <u>Type II Relationships--"Supervised or Controlled in Connection With"</u>. For a Type II relationship to exist, "there must be common supervision or control by the persons supervising or controlling both the [SO] and the [S'dOs] to insure that the [SO] will be responsive to the needs and requirements of the [S'dOs]. Therefore, in order to meet such requirement, the control or management of the [SO] must be vested in the same persons that control or manage the [S'dOs]." [1.509(a)-4(h)(1)]

A Type II relationship will not exist if the SO "merely makes payments (mandatory or discretionary) to one or more named [S'dOs], even if the obligation to make payments to the named beneficiaries is enforceable under State law by such beneficiaries and the [SO]'s governing instrument contains provisions whose effect is described in section 508(e)(1)(A) and (B)." [exempting from income tax a private foundation whose governing instrument includes 4941-4945 protective provisions] "Such arrangements do not provide a sufficient "connection" between the payor organization and the needs and requirements of the [S'dOs] to constitute supervision or control in connection with such organizations." [1.509(a)-4(h)(2)]

<u>See</u> Examples, 1.509(a)-4(h)(3). Some selected points: in Example (1), the final statement is: "The fact that the same persons control both X and Y insures Y's responsiveness to X's needs."

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In Example (3), the following circumstances satisfy the Type II relationship requirements. "All of the original named trustees of T [trust] are members of C [church], are leaders in C, and hold important offices in one or more of C's related institutions. Successor trustees of T are by the terms of the charitable trust instrument to be chosen by the remaining trustees and are also to be members of C. All of the original trustees have represented that any successor trustee will be a leader in C and will hold an important office in one or more of C's related institutions." That is, the trust provisions required that T's trustees be members of C, and the trustees have added to this requirement the condition of "leadership" and "important office" holding.

6. Type III Relationship--"Operated in Connection With". A Type III relationship exists only if the SO meets the responsiveness test and the integral part test. [1.509(a)-4(i)(1)(i)]

Exception #1 -- Responsiveness test transition rule: If the SO was supporting or benefiting the S'dO or Os before 11/20/70, "additional facts and circumstances, such as a historic and continuing relationship between the organizations, may be taken into account," in addition to the other "responsiveness test" factors, to establish compliance with the responsiveness test. [1.509(a)-4(i)(1)(ii)]

Exception #2 -- Integral part test 5-year period rule: If an SO can establish it has met the integral part test "for any 5-year period" but cannot meet the test for its current year "solely because the amount received" by the S'dOs "is no longer sufficient" to satisfy the 85% or more/significant rule, and "[t]here has been a historic and continuing

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relationship of support between such organizations between the end of such 5-year period and the taxable year in question," then the SO will be deemed to have met the integral part test for such taxable year. [1.509(a)-4(i)(iii)]

a. Responsiveness Test. This test is met "if the organization is responsive to the needs or demands" of the S'dO. Either of these alternative tests must be met:

(1) First alternative test:

- "[o]ne or more officers, directors, or trustees of the [SO] are elected or appointed by the officers, directors, trustees, or membership" of the S'dOs; OR
- "[o]ne or more members of the governing bodies of the [S'dOs] are also officers, directors, or trustees of, or hold other important offices in, the [SO]"; OR
- the "officers, directors or trustees of the [SO] maintain a close continuous working relationship with the officers, directors, or trustees" of the S'dOs; AND
- by reason of the above, "the officers, directors or trustees of the [S'dOs] have a significant voice in the investment policies of the [SO], the timing of grants, the manner of making them, and the selection of recipients by such [SO], and in otherwise directing the use of the income or assets of such [SO]." [1.509(a)-4(i)(2)(ii)]

(2) Second alternative test:

- the SO "is a charitable trust under State law;" AND
- each specified S'dO "is a named beneficiary under such charitable trust's governing instrument;" AND
- "[t]he beneficiary organization has the power to

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enforce the trust and compel an accounting under State law." [1.509(a)-4(i)(2)(iii)]

b. Integral Part Test. This test is satisfied, in general, if the SO "maintains a significant involvement in the operations of one or more [S'dOs] and such [S'dOs] are in turn dependent upon the [SO] for the type of support which it provides." [1.509(a)-4(i)(3)(i)]

To meet the integral part test, EITHER of these tests must be met:

(1) First alternative test:

- "The activities engaged in for or on behalf of the [S'dOs] are activities to perform the functions of, or to carry out the purposes of, such organizations, and, but for the involvement of the [SO], would normally be engaged in by the [S'dOs] themselves"; [1.509(a)-4(i)(3)(ii)] OR

(2) Second alternative test:

- the SO "makes payments of substantially all of its income to or for the use of one or more [S'dOs], and the amount of support received by one or more of such [S'dOs] is sufficient to insure the attentiveness of such organizations to the operations of the [SO]." IN ADDITION, "a substantial amount of the total support of the [SO] must go to those [S'dOs] which meet the attentiveness requirement". "[T]he amount of support received by a [S'dO] must represent a sufficient part of the organization's total support so as to insure such attentiveness." If a gift is to a department of a school, e.g., then the department's total support, not the school's, is to be considered.

- BUT "[e]ven where the amount of support received by a [S'dO] does not represent a sufficient part of the beneficiary organization's total support, the amount of support received from a [SO] may be sufficient to meet the requirements of this subdivision if it can be

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demonstrated that in order to avoid the interruption of the carrying on of a particular function or activity, the beneficiary organization will be sufficiently attentive to the operations of the [SO]. This may be the case where either the [so] or the beneficiary organization earmarks the support received from the [SO] for a particular program or activity, even if such program or activity is not the beneficiary organization's primary program or activity so long as such program or activity is a substantial one." [1.509(a)-4(i)(3)(iii)]

<u>See</u> Examples at 1.509(a)-4(i)(3)(c).

(3) Other Factors:

- To insure sufficiency for attentiveness, all pertinent factors will be considered, including:
  - number of beneficiaries;
  - length and nature of relationship; and
  - purpose to which funds are put.

"Normally the attentiveness of a beneficiary organization is motivated by reason of the amounts received from the [SO]. Thus, the more substantial the amount involved, in terms of a percentage of the [S'dO]'s total support the greater the likelihood that the required degree of attentiveness will be present. However, in determining whether the amount received from the [SO] is sufficient to insure the attentiveness of the beneficiary organization to the operations of the [SO] (including attentiveness to the nature and yield of such [SO]'s investments), evidence of actual attentiveness by the beneficiary organization is of almost equal importance. An example of acceptable evidence of actual attentiveness is the imposition of a requirement that the [SO] furnish reports at least annually . . . to assist such beneficiary

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organization in insuring that the [SO] has invested its endowment in assets productive of a reasonable rate of return (taking appreciation into account) and has not engaged in any activity which would give rise to liability for a tax imposed under section 4941, 4943, 4944, or 4945 if such organization were a private foundation. . . . The imposition of such requirement is, however, merely one of the factors in determining whether a [SO] is complying with this subdivision and the absence of such requirement will not preclude an organization from classification as a [SO] based on other factors." [1.509(a)-4(i)(3)(d)]

"However, where none of the beneficiary organizations is dependent upon the [SO] for a sufficient amount of the beneficiary organization's support . . ., the requirements of this subparagraph will not be satisfied, even though such beneficiary organizations have enforceable rights against such organization under State law." [1.509(a)-4(i)(3)(e)]

For transitional rules regarding the integral part test, see 1.509(a)-4(i)(4). These transitional rules apply if the organization on November 20, 1970, has met and continues to meet several requirements:

- for taxable years after October 16, 1972, the trustee makes annual written reports to all beneficiary organizations, including a detailed list of assets and income;
- all the unexpired interests in the trust are devoted to charity;
- the trust was created prior to November 20, 1970, and did not receive any grant, contribution, bequest or other transfer on or after that date (for purposes of "this subdivision" a split-interest trust under 4947(a)(2) irrevocable on November

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20, 1970, and which becomes a charitable trust under 4947(a)(1) after that date "shall be treated as having been created prior to such date";

- the trust is required by its governing instrument to distribute all net income currently to a S'dO (or, if more than one S'dO, all net income must be distributable in fixed shares under the governing instrument);

- the trustee does not have discretion to vary either the beneficiaries or the amounts payable thereto; AND

- none of the trustees would be disqualified persons under 4946(a), other than foundation managers, as to the trust if it were a private foundation. [1.509(a)-4(i)(4)]

See Examples, 1.509(a)-4(i)(5), covering the nature of the Type III relationship.

7. Control Issues. Under 509(a)(3)(C), an SO "may not be controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more publicly supported organizations."

"If a person who is a disqualified person with respect to a supporting organization, such as a substantial contributor to the [SO], is appointed or designated as a foundation manager of the [SO] by a publicly supported beneficiary organization to serve as the representative of such publicly supported organization, then for purposes of this paragraph such person will be regarded as a disqualified person, rather than as a representative of the publicly supported organization."

"An organization will be considered "controlled" . . . if the disqualified persons, by aggregating their votes or positions or authority, may require such organization to perform any act which significantly affects its operations or may prevent such organization from performing such act. This includes, but is not limited to, the right of

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any substantial contributor or his spouse to designate annually the recipients, from among the [S'dOs] of the income attributable to his contribution to the [SO]."

Except per subparagraph (2) discussed below, an SO "will be considered to be controlled directly or indirectly by one or more disqualified persons if the voting power of such persons is 50 percent or more of the total voting power of the organization's governing body or if one or more of such persons have the right to exercise veto power over the actions of the organization."

So, "if the governing body of a foundation is composed of five trustees, none of whom has a veto power over the actions of the foundation, and no more than two trustees are at any time disqualified persons, such foundation will not be considered to be controlled directly or indirectly by one or more disqualified persons by reason of this fact alone. However, all pertinent facts and circumstances including the nature, diversity and income yield of an organizations's holdings, the length of time particular stocks, securities, or other assets are retained, and its manner of exercising its voting right with respect to stocks in which members of its governing body also have some interest, will be taken into consideration in determining whether a disqualified person does in fact indirectly control an organization." [1.509(a)-4(j)(1)]

However, "an organization shall be permitted to establish to the satisfaction of the Commissioner that disqualified persons do not directly or indirectly control it." Example--"in the case of a religious organization operated in connection with a church, the fact that the majority of the organization's governing body is composed of lay

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persons who are substantial contributors to the organizations will not disqualify the organization under section 509(a)(3)(C) if a representative of the church, such as a bishop or other official, has control over the policies and decisions of the organization." [I.509(a)-4(j)(2)]

8. Supporting Organizations and Supported Community Foundations. An attractive plan for many entrepreneurs will be to designate a community foundation as the supported organization.

Community foundations, which are accorded special status under the Code, are public charities which serve the community by identifying needs and allocating charitable resources appropriately. Typically, community foundations hold "advised funds," under which the donor or family members advise the community foundation as to which institutions in the community should receive distributions from the fund from time to time. The community foundation is not (and cannot be) bound by this advice, but the wishes of the donor or family members are frequently followed.

The entrepreneur may not wish to surrender control over his or her assets by contributing them directly to the community foundation, or even to an advised fund. He or she would likely prefer to manage the funds, as well as decide upon the recipient charities in the community.

Designating a community foundation as the supported organization recreates the control over charity selection which is such an attractive feature in a private foundation. The entrepreneur can achieve some measure of continuing control not only over the

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management of the assets of the supporting organization, but also over which charities will receive distributions. An entrepreneur unwilling to select one or two supported public charities may well find attractive the opportunity to vary the list of recipient charities from year to year, in a manner afforded by linking with a community foundation.

Of course, the community foundation may well be less than comfortable with a supporting organization structure that leaves it without a voice on the governing body. Consequently, there may well be tension between the desire of the entrepreneur to achieve as much autonomy as possible, and the need for the community foundation to oversee the activities of the supporting organization.

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- Private Foundations

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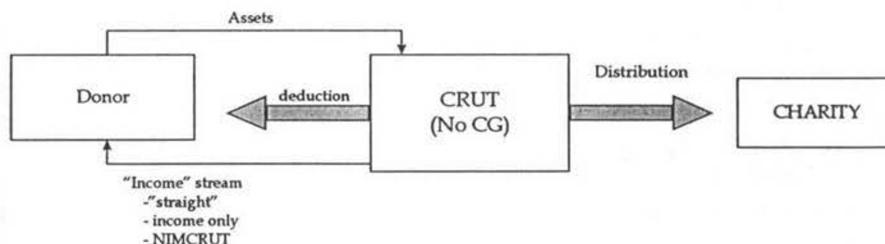

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PRIVATE FOUNDATIONS

ADVANTAGES:

- Control
  - Asset Management
  - Recipient Charities
- Charitable Deduction
- Carries Family Name
- "Perpetual
- Provides Compensated Employment for Children, Grandchildren

DISADVANTAGES:

- High Level of Suspicion and Scrutiny by IRS
- 2% (1%) Excise Tax Under I.R.C. § 4940
- Excise Taxes
  - Self-Dealing
    § 4941
  - Failure to Distribute Income
    § 4942
  - Excess Business Holdings
    § 4943
  - Jeopardy Investments
    § 4944
  - Taxable Expenditures
    § 4945
- Low Deductibility Thresholds
- Basis Limitation (Now including qualified appreciated stock)
- Passive Role

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SUPPORTING ORGANIZATIONS
(I.R.C. §509 (a)(3))

ADVANTAGES:

- Autonomy
  (Depending on structural format)
- Charitable Deduction
  - Highest, Public Charity Thresholds
- Carries Family Name
- "Perpetual"
- Provides Compensated Employment for Children, Grandchildren
- Excise Taxes Do Not Apply
- No Basis Limitations
  (Except "ordinary income property")
- (Potentially) More Active Role
- Not Required To Meet Public Support Tests

DISADVANTAGES:

- Some Limits on Control
  (Depending on structural format)

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TYPE I
"Operated, Supervised, or Controlled By"

- Low Autonomy
- Supported organization appoints a majority of board of supporting organization

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TYPE II
"Operated, Supervised, or Controlled With"

- Generally least autonomy
- Supported and supporting organizations have identical boards

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TYPE III
"Operated in Connection With"

- Potentially greatest autonomy
- Must satisfy BOTH the "responsiveness" test AND the "Integral part" test

"Responsiveness" Test AND "Integral Part" Test

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"Responsiveness" Test

Must satisfy EITHER of these prongs:

1. Managers of supported organization must have a "significant voice" in supporting organization

AND

ANY ONE OF THESE:

(a) Supported organization appoints one or more directors;

OR

(b) One or More of supporting organization's board must be members of supported organization's board;

OR

(c) "Close and continuing working relationship" exists between two organizations

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OR

2. Must meet ALL THREE of the following:

(a) Supporting organization is "charitable trust" under state law,

AND

(b) Supported organization is named in supporting organization's organizing instrument,

AND

(c) Supported organization can enforce the trust and compel an accounting under state law

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"Integral Part" Test

Must meet EITHER of the following:

1. But for involvement of supporting organization, supported organization would normally be engaged in supporting organization's activities

OR

2. Substantially all income of supporting organization must be paid to or for use of supported organization, AND the amount of support received must be sufficient to ensure attentiveness of supported organization

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American Council on Gift Annuities
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DONOR IDENTIFICATION AND CULTIVATION

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Donor Identification and Cultivation

I. Background

The identification of donors for planned gifts is an important – and often challenging – aspect of the planned giving process. As a part of this endeavor it is important to keep in mind that donors make gifts because they care about your organization and its mission – not because they receive tax breaks or financial benefits from giving. Also, donors give to causes where they can *see specific benefits* to society – not just to organizations "doing good works". Therefore, a critical aspect of your job as a development officer is to find the connection between what your organization wants to do – and what your donors have an interest in supporting. It is important to make sure that you re-examine your case statement and other outreach materials to make sure that you have developed and articulated a menu of specific programs that will attract individuals to support your organization. Then, and only then, can you start building your base of planned gift donors.

In addition, it will be important to *involve* donors and prospects in your organization and its programs and get them personally committed to your important mission. Once your donors are involved in a mission that they care about, and are committed to help sustain the important work that you do into the future, then you can talk with them about the ways that they can give their support – the various planned gift opportunities that can maximize their gifts.

Finally, you will need to find out something about the *circumstances* of your individual donors – what are their desires, needs, and concerns – if you are going to be able to structure planned gifts that will serve to benefit both the donors and your organization.

Our discussion today will examine these and other issues related to the identification and cultivation of your donors.

II. Who are your best prospects for Planned Gifts?

As indicated above, the best prospects for planned gifts are individuals who have a personal connection with an organization and its mission – so you should always look to your own donor base and constituency to find YOUR best prospects.

III. Some of the characteristics of planned gift prospects include:

- **Long term consistent donors** – even of small amounts. Donors who have given to you consistently over at least the last five years – even if their gifts are relatively small – have shown a continuing interest in your organization and your mission. These folks are the most likely to include your organization in their wills and estate plans – if they are *asked.*

- **Board members and former board members**. These individuals not only have a personal interest in your organization and its mission but also a fiduciary responsibility to ensure its future.

- **People who are unmarried, married without children, or couples whose adult children are already well taken care of.** These folks may not have to be concerned about leaving assets to family members, and can focus on making a lasting difference by contributing to worthy causes that they consider important.

- **People with a long-term relationship to your organization** who believe in its mission. Since most long term gifts are made by people who are involved with and are connected to the organizations they support, getting your donors and prospects involved in your organization and its mission can start building the relationship that can lead to later planned gifts.

- **People who have received services from your organization** or been involved in its programs – for example, alumni, former patients, museum members, theater subscribers, etc. These people already know about your mission, since they have experienced it first-hand, and can be educated to believe that their financial support is important to ensure your future.

- **Donors age 55 and older**. These people often have more disposable income so they can devote money/assets to charitable causes that they care about. Also, these folks will likely be in the financial/estate planning phase of their lives – so that they can think about what they want to accomplish, and how and where they want to make a difference. Getting them involved in your organization and your programs can give them a focus for their philanthropy.

- **Volunteers** – people who have shown interest, commitment and involvement in your organization and its programs. These folks are also likely to give financial support, if asked.

- **Women** in all of the foregoing categories. Since women outlive the men of their generation on an average of 7 to 9 years, be sure to include the women in your constituency in all of your outreach efforts. Be sure to get them involved with your organization and its mission. They are the ones who will make planned gifts, now and in the future.

If your organization has a constituency that includes many individuals with the characteristics outlined above you are in an enviable position. These people are already involved. They have shown their commitment – and they have given personal and/or financial support. The next step is for you to find ways to help these donors leverage their gifts – to maximize benefits both to the donors and to your organization – so that they can make the largest gifts possible. This is the time to discuss life income gifts, bequests, lead trusts, gifts of retirement plan assets, etc. with these folks – to help them make gifts that will exceed their own giving expectations.

If your organization does not have a solid donor base – a group of loyal donors who have been contributing regularly, or a large group of donors with many of the characteristics outlined above, the chances of your being able to mount a successful planned giving program at this time are relatively small. Talking with people about beneficial ways to give will only be successful when people *want to give* in the first place. Therefore, you will have to build a loyal donor base of consistent donors first – and then talk with them about the many different ways that they can give – after they are committed to supporting your cause.

IV. Patterns of Giving

It may be helpful to note *in general* – when and how donors have been giving over the years. (Keep in mind that, as the population ages and people live longer, they are becoming more fearful about parting with assets irrevocably during their lifetimes. Therefore, life income gifts and bequests will undoubtedly become more important than ever in the fund raising arena as we move into the 21st Century.)

- **Donors under the age of 45** generally give to causes of special interest – usually in the form of outright cash or marketable securities. You will certainly want to get to know these donors, to find out about their circumstances, and to get them involved in your organization. Your objective should be to cultivate these folks and to create a pattern of regular unrestricted gifts to your organization...to get them thinking about regular on-going support.

- **Baby Boomers** are showing very interesting giving patterns. Many of these people have done well financially, enjoy living well, and have very definite ideas about what is important – and what causes they will support. If they are going to support an organization they need to be shown that the mission of that organization has value – not only to society in general – but also to themselves personally. Just "doing good works" or "being the charity that Dad always supported" is not enough. You will have to demonstrate to these folks that your organization is providing specific programs of benefit – that are relevant to *their* interests and concerns. This will often mean that you will have to review your case, review your events, your existing outreach, and your

entire way of doing things – to make sure that what you are doing is relevant to these folks – if you want their support.

- **Donors ages 55 to 65** (the pre-baby boomer generation) generally continue their regular giving – but often make special (often major) gifts for specific purposes. These folks often have the maximum capacity for giving (children out of college; mortgage is paid off; etc.) and they often have appreciated assets available for gifts. You should talk about major outright gifts and lead trusts – as well as gifts of retirement plan assets, gifts of business interests, and other special kinds of assets – with this group. Also, since these folks also often are concerned about the welfare of elderly parents – talking about life income gifts for their *parents* can often be helpful in generating gifts.

- **Donors over the age of 65** may still be motivated to give, but their ability and willingness to give outright gifts during their lifetimes gradually declines as they become more concerned about financial security during the retirement years ahead. Large gifts are less likely, since assets are now needed for their own security. These folks are the best prospects for life income gifts and bequests – and you should focus your marketing efforts on these kinds of gifts.

V. **How to discover some of YOUR prime prospects for planned gifts**. (With thanks to Leonard G. Clough, whose advice in Chapter 1 of our book, ***The 1998 Practical Guide to Planned** Giving*, is reproduced in this section.)

- "Make a list of everyone who has contributed annual gifts to your organization in at least four of the last five years. The size of their gifts is less important than the regularity of their giving. Many substantial planned gifts have come from people whose annual gifts were in the $5 to $50 range.

  If your organization does not have an annual giving program, the chances of your being able to mount a successful planned giving program are very small. It is unlikely that a planned giving program will generate many gifts from people who have never before supported your organization.

- Make a list of volunteers who, whether or not they have been financial donors, have given generously of their time and talent over a period of several years. Even if they have not contributed financially, they have shown that your institution's work is important to them.

- Delete from the two lists above anyone that you are *sure* has no disposable assets.

  Please note that I said "assets," not "income." It is easy to make the mistake of assuming that everyone who lives modestly or seems to depend on a small pension or Social Security checks is too poor to be considered a potential donor. You have undoubtedly read newspaper reports of multi-million dollar bequests being left to charities by persons whose neighbors and friends considered them indigent.

- Assign a code name to the names of individuals who have no family or close friends who are financially dependent upon them. Consider such people as prime prospects. Chances are that you will find them more interested in making a planned gift than they would be if they had children, grandchildren or close friends who would get priority over your institution.

- Assign another code to those on your list who appear to be fifty-five years of age or older. That is the time in life when many people begin to think seriously about their financial plans for the years ahead. Some of them will have accumulated financial assets. They may also be in their high earning years and looking for tax deductions. Because their children are probably financially independent, parents can now concentrate on planning for their retirement years.

It is quite possible that you will find sympathetic ears when you describe how planned gifts can help to reduce their income tax bills and increase their income from certain accumulated assets, while at the same time permitting them to enjoy the satisfaction of making a substantial gift to benefit their favorite programs.

If they have already retired, your prospects may welcome being reminded how important it is for them to make plans to assure that whatever they own will go where they want it to go at the time of their death. Most would probably prefer to leave assets to support the work of your organization rather than having their executor pay unnecessary "death taxes" to Uncle Sam and their state government. Inviting them to attend an estate planning or a personal financial planning seminar might lead to a generous gift...

- Friends of your organization who are between the ages of fifty-five and ninety will be your best prospects for a planned gift (life income gift or bequest) but do not write off those who are between thirty-five and fifty-five. Assign a code to those on your list who are between the ages of thirty-five and fifty-five whose annual income may have pushed them into a high tax bracket.

  Give special attention to those who have no children. It is not unusual these days to find two-income, childless couples who could benefit from planned gifts becoming part of their personal financial plans. Deferred payment gift annuities and retirement trusts can often be very attractive for such people.

  Watch also for people in this age group who have financial responsibility for aged parents. They may not know that they can fund a life income gift that will pay lifetime benefits to parents and provide a tax deduction for the donor.

- If your development records list people who have notified you that they have remembered your organization in their wills, code those names. They may be glad to know that by making their gift now through a life income gift they could increase their income, lower their tax bills, and still benefit your organization at the time of their death. Your CEO and trustees will not be at all unhappy to have you exchange a potential gift by will for an irrevocable signed contract."

VI. **Communicating with your prospects about planned gifts – marketing opportunities – where to start.**

As stated at the outset, unless you can convince potential donors that you really need their gifts to accomplish things that *they* think are important – your promotional methods will not produce gifts. All of the tax and financial benefits in the world will have no meaning unless donors can feel that they are supporting programs of real interest to themselves.

How can you, as a development officer, build the connection between what your organization wants to do – and what your donors will be interested in supporting?

- **Review your existing case statement** in light of the changing needs and expectations of society. Think about ways to make your case more relevant and compelling for *your* donors. Develop a menu of specific programs that you can use to interest prospects in supporting your cause. The details of these specific programs will depend upon the type of organization you are – and what you hope to accomplish that will make a critical difference in the lives of people in your community. You will need to develop a menu of *specific funds or programs* that will be attractive for your donors to support, and you will want to revise your case statement and other outreach materials to articulate these options in a clear, compelling and interesting way.

Remember that different folks will be interested in different aspects of your mission. Some people will want to give only to a specific fund or project; others may be interested in bricks and mortar, and stills others may want to help you build endowment. Therefore your marketing materials should present several different kinds of gift opportunities to get the attention of people with different interests. On the other hand, you do not want to overwhelm your constituents by presenting so many gift options that they are confused. The challenge is to try to

find a balance between presenting interesting projects for different people to support, and providing so much information that your message just gets lost.

Keep in mind that your marketing program should be designed to be an education program – providing a continuing flow of information about the important things that your organization is doing – and ways that your donors can further your cause. Your marketing materials should inform your constituents about the ways that they can make gifts to your organization that will benefit themselves, as well as your cause. You should keep reminding your constituents about giving opportunities so that they will have the information fresh in their minds when they are ready to make their own gifts.

Remember, too, that your materials should be interesting, informative, simple, and above all, non-technical. For example, when discussing ways that people can support your mission, tell the story of a donor who was able to increase her annual income and save taxes by making a life income gift that will ultimately benefit a cause that is dear to her. Human interest stories tend to be most effective. Resist the urge to initiate your marketing program by sending out a detailed description of all of the planned gift options and opportunities. This will only confuse and overwhelm people. Instead, start by encouraging donors to use appreciated stock in making their annual gifts. Also, talk to your donors about remembering your organization in their wills and estate plans. Start simply – and you can then expand your discussions about other kinds of gifts both in personal visits and in later outreach materials.

Personal visits. The most effective way to obtain a major gift of any kind is by talking with a donor face to face. This is true whether the gift is an outright gift of $50,000, or a gift that will pay income for life. Being in the room and talking with a donor gives you the opportunity to discuss the donor's interest in your organization and its programs – to learn, first hand, what the donor considers to be important in your organization's work. You may also be able to learn more about the donor's family and financial situation and goals. This discussion will help you to analyze the donor's situation and intentions and make it easier for you to suggest a gift plan tailored to the donor's needs, wishes, and goals.

Existing written materials. Review all of the written materials that go out of your organization to individuals – for example, your annual appeal, special appeals, newsletter, magazine, annual report, special bulletins, etc. Think about ways to include information about planned gifts in each and every one of these materials. For example, in an annual appeal, remind your donors that they can benefit by making a gift this year using appreciated stock – and describe the benefits in simple terms; in a newsletter remind your donors that it is important to have a will – and that you hope that they will include your organization in their wills and estate plans; include a vignette about a donor who set up a charitable remainder trust – and how that trust worked to benefit both the donor and your organization – in a newsletter or magazine; go back into your records and write a story about a bequest that your organization received in the past – and what that gift allowed you to accomplish. Be creative in highlighting interesting ways to make gifts – and keep repeating your message. (See sample materials at the end of this outline.)

Targeted Mailings. At some point you may want to do mailings – targeted to the specific donor groups that you have identified. Each promotional item should discuss one specific kind of gift and should be targeted to a particular audience. At first you will want to send out a mailing about bequests to all of your planned giving prospects over the age of 55, reminding them about the importance of having a will and suggesting that they consider including your organization in their wills and estate plans. Later on, depending upon the kinds of individuals you have identified in your planned giving prospect pool, you may want to send out information about life income gifts, such as charitable remainder trusts, charitable gift annuities and/or the pooled income fund. It probably makes the most sense to talk about only one kind of life income gift at a time – and you may want to start by discussing the benefits of charitable gift annuities with your donors (assuming that you have already fulfilled any regulatory or filing requirements of the state in which you are located.) Be sure to include examples of how these gifts can work. (If you don't have the in-house expertise to produce these materials, you can purchase pre-printed materials from one or more of the fine vendors in the field. See list of vendors at end of this outline.)

Always include a reply mechanism. Make it easy for people to respond and indicate interest in your program. Include a coupon or reply card to encourage people to respond. Be sure to ask for the prospect's telephone number. Once a person sends back a coupon or reply card, send them the information requested and then **follow up with a phone call within two weeks**. The purpose of the call is to find out more about the prospect's interest in your organization and to get a dialogue going to start building the relationship.

Presentations at regularly scheduled meetings. Regular meetings of groups such as your board, corporators, alumni, physicians, nurses, teachers, church members, auxiliary members, etc. sometimes offer opportunities for presentations about the advantages of participating in your planned giving program.

Seminars. At some point you may want to sponsor an estate planning seminar – to provide information about the basics of estate planning, and to describe some of the ways that charitable giving can enhance the overall estate plan. Seminars can often be great ways to inform your prospects about what's happening today at your organization, they can provide a service in sharing information about estate planning, and they can be a way to cultivate your donors and bring them closer to your organization and its mission.

Leave a Legacy Program. Make sure to get involved with the Leave a Legacy (LAL) project in your area. Participation in LAL can be especially beneficial if you wear many hats and planned giving is only one of your development responsibilities. LAL can give you marketing ideas, and also enables you to join with other organizations that are talking about bequests and other planned gift options to members of your community – to help raise the awareness of everyone.

Keep it simple! In all of the outreach that you do – make sure to observe the KISS principle (keep it simple, stupid!) Make sure that your materials are written for ordinary people – not for technical tax buffs. Be sure to use real life examples as often as possible, and don't overwhelm the reader with technical details. If you present seminars, make sure that the presenter provides information in an interesting, simple, non-technical format. The whole point of marketing and promotion is to engage the listener/reader – and encourage him/her to ask for more information. You can get into more technical details later, as the discussions about a particular gift proceed.

Keep in mind that your marketing efforts should provide an on-going, continuous flow of information about ways to support your organization. Since donors make planned gifts on their own time frame – not necessarily when you ask for a gift – continuing marketing and outreach is essential – so that a donor will have your organization in mind when he or she is finally ready to make a gift.

Through your marketing and outreach efforts over time you will discover specific prospects who have indicated an interest in making gifts – and an interest in maximizing what they can do for your organization. These folks, obviously, are your prime planned giving prospects – and many of them will have identified themselves!

VII. Once you have identified a group of planned giving prospects – how do you research them to find out more about their circumstances?

In doing research on your prospects, keep in mind that you want to focus on two basic things: **information about their wealth** (income, assets, stock holdings, family wealth, etc.) and **information about their connections** (interest and involvement in your organization; connections with *your* constituents and friends – who might be able to make an introduction; interest in organizations with a similar mission to yours; interest in your area of philanthropy – such as the performing arts, a specific disease like cancer or arthritis, working with the homeless, etc.) It would also be helpful to find out something about their philanthropic inclinations. Some people don't give to charity – no matter how much they care about a given cause.

Where should you look to find this information?

- First look to your own database – to find out what information already exists on each prospect.

- Talk with the prospect personally. It is often amazing what a person will reveal during a personal visit.

- Set up in-house screenings or rating sessions. Invite a select group of your donors who may know others in your constituency. *On a confidential basis*, go over a list of prospects with these invitees to find out more about the prospects on the list: family situation? financial situation? are these folks likely to give? at what level? This can be a time-consuming process, but it can produce valuable information that would not be available any other way. Be sure to validate this information independently before entering it into your database.

- Do research on the internet. There is now a wide variety of information about individuals available on the internet. The challenge is to find the information you need, without having to spend an inordinate amount of time doing it. The list of handy addresses for internet research at the end of this outline gives you an idea about where to look. Keep in mind, however, that whatever information you learn through these sources must be verified. You should to do your own validation of the information before you enter it into your own database.

- Employ a company to research individuals on your database. Make sure to limit the scope of the search – and to keep control of the project at all times. These searches can be expensive, as well as time-consuming. Here again, you will have to assess the information you receive: just because a person lives in a large home – does not mean that he or she owns it free and clear. There may be a large mortgage or other encumbrances, and it may not even be owned in that person's name. Just because a person makes a large salary – does not mean that he or she gets to keep it all. The prospect may have children in college, or be supporting elderly parents, or be involved in a divorce and paying alimony, or have other financial responsibilities that can greatly effect the ability to give – so make sure that you validate the information before entering it into your database.

VIII. Having learned something about the circumstances of your prospects – what gift options might you want to suggest?

Donors with special circumstances require different approaches. If a donor wants to support your organization, but feels that he or she can't make a large gift because of a personal, financial, or family "problem," that is the time for you to think creatively – to try to tailor a gift plan that will overcome the obstacles in the donor's situation – and help facilitate a gift. **People with one or more of the following circumstances are often excellent prospects for planned gifts:**

- **Donor with a portfolio of highly appreciated securities that produce a relatively low income**. Suggest an outright gift of appreciated stock. Or, if the donor needs more income, (or wants to provide income to someone else) suggest a life income gift, funded with appreciated stock.

- **Donor who owns his or her own business** – and all assets are tied up in that business. Suggest a gift using stock in the donor's company – either as an outright gift, or to fund a life income gift. If the donor is concerned about passing the business on to children later, possibly a charitable lead trust, funded with the company stock, would be an attractive option.

- **Donor who owns a vacation home or other residential property that the family is not interested in inheriting**. Suggest a gift of the property to your organization where the donor retains the life estate – the right to live in and enjoy the property for the rest of his or her lifetime – after which the property belongs to your organization free and clear. Alternatively, the donor could give the property to your organization by will.

- **Donor who has large amounts invested in retirement plans.** Suggest a gift of plan assets to your organization after the lifetimes of the donor and his or her spouse – with other estate assets going to the family. Giving retirement plan assets to charity – and providing for the family by using other assets – can often save substantial estate and income taxes for the family and the estate.

- **Donor who owns a life insurance policy that is no longer needed to protect the family.** Suggest an outright gift of the policy, making your organization the owner and the irrevocable beneficiary. This gift will remove the value of the policy from the donor's estate – and also produce a current income tax deduction.

- **Donor who owns valuable collectibles, such as art works, antiques, coin collections, and the like.** If you organization is a museum – or other kind of organization whose mission is related to the collection and display of such items – suggest an outright gift of these items to your organization. Alternatively, suggest that the donor give these items to you by will.

- **Donor who has substantial assets that he or she would like to transfer to heirs later at a reduced gift and estate tax cost.** Wealthy donors often have concerns about the large estate taxes that will be imposed on their estates when they die. You might suggest to such donors that they set up a charitable lead trust – a trust that will pay income to your organization for a specified period of time, after which the trust ends, and the assets are distributed to the donor's family. Charitable lead trusts can often reduce substantially the estate and gift taxes the donor's family will pay – and at the same time provide an immediate stream of income to your organization.

- **Donor who is concerned about the welfare of elderly parents.** Suggest a life income gift that will provide income to the donor's parents for their lifetimes, after which the assets come to your organization to be used for programs the donor cares about. Such gifts can generate additional income for the donor's parents and also provide an income tax deduction for the donor.

- **Donor who is concerned about the welfare of a handicapped child or other family member who is disabled.** Suggest a charitable remainder trust that will provide income for the benefit of the disabled person for life, after which the trust assets come to your organization to be used as the donor wishes. This gift can provide additional financial security for the disabled family member, as well as a tax deduction for the donor.

- **Always keep your eyes open for potential donors who would like to rid themselves of an asset which they consider a problem.** You can often find a way for these donors to give such assets to your organization thereby saving taxes and, in some cases, increasing income.

In addition to the individual prospects you have identified who have special circumstances, you may want to target certain other groups and provide them with information about specific giving opportunities. For example,

- **Donors under age 45 who have assets:** You might suggest outright gifts for projects of special interest to the donor; outright gifts of special assets, such as appreciated stock, interest in a family business, valuable collectibles, real estate, life insurance that is no longer needed to protect the family, etc.

- **Baby Boomers who have assets:** You might suggest outright gifts for projects of special interest to the donor; life income gifts for parents; education trusts for children; lead trusts to save transfer taxes for the family; deferred charitable gift annuities and/or FLIP trusts for retirement.

- **Donors age 55 to 65:** You might suggest outright gifts for projects of special interest to the donor; life income gifts – to provide for elderly parents or to provide personal security in retirement years; education trusts for grandchildren; lead trusts – for donors of wealth who want to reduce transfer taxes; bequests – to leave a legacy and make a lasting difference; gifts of retirement plan assets at death of donor and spouse – to maximize gift to charity at least tax cost to family.

- **Donors over age 65:** You might suggest outright gifts for donors of wealth; lead trusts – for donors of wealth; life income gifts for donors of more modest means to increase financial security for life; gifts of retirement plan assets – for people with large amounts in such plans; bequests – for everyone – to make a lasting difference – the ultimate gift.

IX. Donor Recognition and Cultivation

Recognizing and cultivating donors is, of course, critical to the success of any fund raising effort – and planned gift donors are no different in that regard. As we all know, happy donors are enthusiastic ambassadors for future gifts – their own and others.

Donors like to be recognized and thanked for their gifts, so it is important to send acknowledgements promptly and to recognize your donors in your annual report and other publications (with their permission). Make sure that you spell their names correctly, and that you include (or exclude) the name of the spouse, if the donor wishes. The more you can publicly thank donors who want recognition, the better. It not only shows your appreciation to *this* donor, but shows potential donors that their future gifts will be recognized appropriately.

Also, instead of the same old plaque or coffee mug, try to think of another tangible way to thank your donors for their gifts. For example, an artist's rendering of the new facility that is still in the design stage; postcards with copies of art works drawn by children in the children's hospital; a scrap book with photos of a special production at a theatre...something that reminds the donor about your organization's successes. (For examples of some creative ways that charities are recognizing donors – see article, "Beyond Recognition" in the *Chronicle of Philanthropy*, November 18, 1999 issue, page 25.)

Another important thing to keep in mind (as my colleague, David G. Clough, discusses in our book, *The 1998 Practical Guide to Planned Giving*) is that you should **be in touch with your top planned gift prospects personally** – by letter, telephone, or personal visit – **at least once every two months.** You can do this by adding a personal note or cover letter to newsletters and other materials that you send out; by sending a personal invitation to a seminar; by putting personal notes on prospect solicitation materials. In addition, you should "send them something every once in awhile that has absolutely nothing to do with making a gift to your organization, such as the school's football schedule, an article about a medical breakthrough, or a favorable review of the symphony." You may also want to send them birthday or holiday cards, to show that you care. Also, you should visit with your donors personally whenever you can – to thank them for their past support – and to bring them up to date about the exciting things that are happening in your organization today.

You may wish to establish a Heritage Society to recognize and cultivate planned gift donors – donors who have made irrevocable life income gifts, donors who have made irrevocable gifts of life insurance, donors who have created lead trusts, and donors who have told you that your organization is included in their wills and estate plans. You may want to include an invitation to join your Heritage Society with each annual fund receipt – and highlight the Society in other outreach materials. Promoting and highlighting your Heritage Society can be a way to honor and thank donors who have already made planned gifts – and encourage and motivate others to "join the club."

Involving your prospects in events that interest them can be a way to generate interest and enthusiasm for your organization – and continue to cultivate and build the relationship. Many organizations these days are becoming quite creative (and effective) in this regard. Some examples include:

- Having a special meeting with the CEO for selected donors to get an "insiders view" about new programs and plans for the future.

- Holding a "thank you" reception for selected donors at the home of a board member – or at a special club or location that donors would like to see (and be seen in).

- One hospital I know invited donors to a special lecture by the chief surgeon who discussed the latest advances in joint replacement technology.

- A regional theatre invited donors to attend a rehearsal and experience a "behind the scenes" look at a new production at the theater.

- Invite selected donors to tour a new facility (large or small) that that was the object of a campaign (for example, the new green room of the theatre, the new birthing center at the hospital, the new gallery at a museum.) Having the staff person who is involved with managing the new facility give a special guided tour can add interest and give the donors a special feeling of "belonging".

Try to be sensitive and creative and think about what is special about *your* organization that your donors might want to get closer to – and then provide that special something to give them access and a feeling of belonging. Remember, ongoing cultivation is critical – to keep your donors involved and interested in your organization and its mission.

X. Conclusion.

One of the special pleasures of working in the nonprofit world is having the opportunity to get to know donors and prospects – people who have an interest in your organization and it's mission. If you are passionate about your organization's mission – and enjoy working with people – you have a golden opportunity to continue to build relationships with these folks.

The ultimate way to cultivate prospects is to share your enthusiasm for your mission – and to communicate your pleasure in working with people. Sooner or later they will respond in kind. Then, working together, you can continue to expand the base of support that will ensure your organization's future. This entire process can be challenging, interesting, rewarding – and fun!

Ellen G. Estes, LL.B.
Estes Associates
41 Spoke Drive
Woodbridge, CT 06525
Telephone: (203) 393-3159
FAX: (203) 393-3857
e-mail: ellen.estes@juno.com

Information encouraging people to make bequests – inserted into envelope with acknowledgment of annual gift to the Brooklyn Public Library.

Will our books live forever?

The words of our favorite authors live on long after they are gone – but only if their books are cherished and preserved in places like the Brooklyn Public Library. In just the same way your generosity can live on – through a bequest by will or another planned gift.

Brooklyn Public Library

Grand Army Plaza Brooklyn, NY 11238

S96

Most people know how important it is to have a will. And once you have provided for the people you love, we hope you will consider a bequest to the Brooklyn Public Library. Bequests of any size can help insure that the Brooklyn Public Library will be here – serving our community – for generations to come.

For more information, please complete and return this reply form, or you may call Ellen Rudley at 718-780-7760.

I would like to know more about how I can include the Brooklyn Public Library in my will and estate plans. Please send me information about:

- ☐ How to include the Library in my Will.
- ☐ How I can make a gift of an existing life insurance policy to benefit the Library.
- ☐ I would like you to know that I have already provided for the Brooklyn Public Library in my Will.

Name ____________________

Address ____________________

____

Phone (Day) __________ (Eve) __________

Ad encouraging bequests – especially from women – appeared in the WNET Channel 13 Monthly Program Guide – in conjunction with TV programs about "special women" that month.

Leaving Your Own Legacy

There is a strong precedent of women in this country creating legacies that profoundly affect future generations. The programs highlighted on the opposite page are but several examples of this rich history.

All of us — women and men — can leave an enduring mark on the institutions we value. We've heard from you many times that Thirteen is your window on the world, and that you appreciate it as an invaluable source of quality educational programming.

The Women's Philanthropy Institute offers these suggestions:

Identify two or three things that mean a lot to you.

Ask yourself: What values do I want to pass on to the next generation?

Ask yourself: What people and institutions have had the most impact on my life?

Some studies show, however, that few New Yorkers make arrangements to leave a share of their resources to the organizations they have cared about. This may be because people have simply never considered it, or because they think their bequest would be too small to matter. Or perhaps...they have never been asked.

We are asking. Will you kindly consider a bequest to Thirteen in your estate plans? For complete details, please contact the Office of Planned Giving at (212)560-4989 and speak to Davida Isaacson. We'd love to help you leave a legacy.

Leaving a legacy means, as the title of one of this month's featured documentaries suggests, we act not for ourselves alone.

Vignette about a generous donor who made an important bequest – appeared in the playbills for several Long Wharf Theatre productions.

Because she cared about the community...

Johanna Sahlin, a dedicated volunteer and member of the Long Wharf Guild, died in early 1993. Through the terms of her will, Long Wharf has received a generous bequest which will help to ensure the future vitality of the theatre and assist us in presenting the high quality productions which she so loved.

Mrs. Sahlin came to America in 1938 as a refugee from Germany. She worked her way through school, eventually earning a Ph.D. from Yale. A teacher for many years, she served on the faculty of The University of Connecticut, where she taught English, German and Comparative Literature.

Because Mrs. Sahlin cared deeply about the community in which she lived, she gave generously of her time and talents to several local organizations, including Long Wharf Theatre. As a member of the Guild, Mrs. Sahlin laid the groundwork for the group's play reading series and spent many weekends "cooking up a storm" for Saturday night cast dinners. She is remembered by the many people whose lives she touched as a vibrant and energetic person and a woman of great sensitivity.

We thank Mrs. Sahlin for her foresight in leaving a bequest to the theatre and for her strong belief in the future of Long Wharf. Her gift, and her presence here, will benefit the theatre for many years to come.

For information about making a bequest or other planned gift, contact Pamela Tatge, Director of Development, (203) 787-4284.

Ad describing benefits of Charitable Gift Annuities – appeared in several issues of the Old Sturbridge Village Museum's quarterly magazine.

Preserve America's past –

Thomas Neill photo

and our future!

Give yourself – and the Village – greater security with a Charitable Gift Annuity

A Charitable Gift Annuity at Old Sturbridge Village is an easy way to make a gift to yourself while helping secure the museum's future.

Each Charitable Gift Annuity pays a lifetime annual income to you (and/or another person you choose), lessens your income tax burden, and reduces a portion of the capital gains tax when you fund your gift with appreciated long-term assets. Your donation also helps secure the future of the museum, preserving its programs — and its educational mission.

Gift Annuity rates are determined by the age of the person receiving the income payments. The accompanying chart illustrates the rate of return currently offered by Old Sturbridge Village and the annual income based on a cash gift of $10,000. (A minimum donation of $5,000 is needed to establish a Charitable Gift Annuity.)

We would be happy to provide you with information on the rate of return, annual income, and tax deduction details for a gift of your choosing. Please contact the Director of Development at (508) 347-3362, ext. 207. Help us preserve the American experience for generations to come!

Benefits of a Charitable Gift Annuity for a cash gift of $10,000*

Age of Donor	Rate of Return	Annual Income For Life	Tax-Free Income	Taxable Income	Charitable Deduction**
60	6.7%	$ 670	$310	$360	$2,522
65	7.0%	$ 700	$349	$351	$3,043
70	7.5%	$ 750	$407	$343	$3,525
75	8.2%	$ 820	$482	$338	$4,020
80	9.2%	$ 920	$580	$340	$4,546
85	10.5%	$1,050	$723	$327	$5,082
90	12.0%	$1,200	$893	$307	$5,623

* The $10,000 figure is merely a convenient multiple. We will be happy to provide you with tax information for any size gift. (The minimum CGA gift is $5,000.)

** Deduction will vary according to current interest rate.

Story about generous donors who set up a Charitable Remainder Trust – appeared in the Yale-New Haven Hospital newsletter.

FINANCIAL AND PHILANTHROPIC IDEAS FROM YALE-NEW HAVEN HOSPITAL

helping hands

VOLUME 1, NUMBER 3

Unitrust Provides Charitable Solutions

After many of years of living in the New Haven area and becoming ever more involved in community activities, both here and at their more recent residence in Florida, Dan and Nancy Kops realized that they had a problem. Their professional careers—he in broadcasting and she in travel agency—had been rewarding in many ways, including providing the foundation for indulging their desire to work for betterment of the world through a broad range of organizations addressing a broad range of worthwhile endeavors. The problem?—How best to provide meaningful financial support for the numerous charitable organizations with which they had developed strong ties. And, how this could be accomplished without unduly affecting their own and their children's future well-being.

PHOTO BY YALE BMC—JERRY DOMIAN

Dan and Nancy Kops

The answer for them was to create a charitable remainder unitrust to benefit several charitable organizations with which they have been involved over the years and to which they feel strongly connected. We are delighted that Yale-New Haven Hospital is one of them.

Under the unitrust, Dan and Nancy will receive, during their lives, payments from the trust based on a percentage of the value of the principal. Thereafter, the trust will terminate and the assets will be distributed to the charitable organizations they have supported in so many ways throughout their lives.

"This is the best way we could think of to provide our highest possible level of financial support to the various organizations with which we are involved. It allows us to make a statement about our commitment to them now and in a way that permits us to be more generous than we could otherwise be."

Accomplishment of their philanthropic goals was aided by careful planning that allowed them to use the tax incentives provided by the government to maximize their gift. They also decided to utilize income from the trust to purchase life insurance on themselves that will replace the principal that would otherwise have gone to their children. "All in all, we think everyone will benefit greatly from this arrangement.

"A person's first obligation is to provide adequately for self and family. Closely following this, however, is a responsibility to help supply the personal and financial resources needed to advance and insure the continued existence of those activities serving the public good that one feels strongly about. Whether these are related to health, education, the arts, religion, social services, or a mixture of those and other causes, we feel we have a most rewarding duty to provide time and effort when that is possible and financial support to the extent of our ability."

Yale-New Haven Hospital, and all of the other organizations who enjoy their involve-

Continued on page 2

Continued on inside cover

ment, are fortunate to have Dan and Nancy. They have been important to us for many years, and now by their actions have assured that they will continue that importance far into the future. They stand as an example for others—an example that they and we hope many others will follow. ☐

Information about Leave a Legacy Connecticut – appears in the playbills for Goodspeed Opera House productions.

LEAVE A LEGACY™ CONNECTICUT

The Goodspeed Opera House, a non-profit producing musical theatre, is proud to participate in the statewide celebration called *Leave a Legacy Connecticut.*

We encourage you to consider a gift in your will for organizations you care about. Designating part of your estate to a non-profit can have a lasting impact on the community and help ensure the future of organizations important to you.

10 Ways to Leave a Legacy

1. Prepare a will. Without one, you lose control of the possessions you worked a lifetime to acquire.
2. Leave a gift in your will for the charitable organization that made a difference in your life or in the life of someone you love.
3. Donate a specific dollar amount or a percentage of the assets in your will to your favorite non-profit. The provision can be part of a new will or added to your existing will.
4. Consider using assets for your charitable gift. These can include, but aren't limited to: stocks, bonds, real estate, vehicles, art and jewelry. Such gifts may even provide tax savings.
5. Name your favorite non-profit as the beneficiary of your IRA or pension plan.
6. Purchase a new life insurance policy naming your favorite non-profit as the beneficiary.
7. Name your favorite non-profit as the beneficiary of an existing life insurance policy.
8. Remember deceased loved ones with memorial gifts to non-profits.
9. Encourage family members and friends to leave gifts to non-profits in their wills.
10. Ask your legal or financial advisor to include charitable giving as part of their counsel to other clients.

GOODSPEED OPERA HOUSE
A NON-PROFIT ORGANIZATION

For information on Goodspeed's Planned Giving program, please contact Heidi Carlson, Director of Development.
Box A, East Haddam, CT 06423; 860-873-8664; fax: 860-873-2329; www.goodspeed.org
For general information about *Leave a Legacy Connecticut,* check the Web site at CTPhilanthropy.org/lal or call Infoline at 2-1-1.

Information about Leave a Legacy Connecticut – appeared in the Connecticut Food Bank newsletter.

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CONNECTICUT FOOD BANK
P.O. Box 8686
New Haven, CT 06531-0686

CFB welcomes questions, comments and ideas. All correspondence should be addressed to the development department.

If your name is incorrect or you are receiving duplicate mailings, please call (203) 469-5000.

Correction – We incorrectly identified the site featured in last issue's Holiday of Hope cover story photo. The holiday distribution took place at St. Matthew's UFW Church in New Haven.

Taste of the Nation
x 2

doubles the pleasure for area residents and doubles the benefits for Connecticut Food Bank. CFB is the fortunate beneficiary of a Taste of the Nation event in New Haven, which benefits the main warehouse and a Stamford event, benefiting our Fairfield branch. Organized nationally by Share Our Strength and locally by dedicated volunteer committees, Taste of the Nation raises money and awareness for anti-hunger efforts. The popular, gourmet food-tasting events take place in cities across the United States. National sponsors include Williams-Sonoma and American Express. CFB uses the funds to support our program of transporting, warehousing and distributing donated food.

Top right: *The Stamford Taste of the Nation offered attendees a sampling of Fairfield County's finest foods and beverages in an elegant setting at the Westin Hotel.*
Bottom right: *New Haven's Taste of the Nation event, held at the Omni Hotel, featured more than 50 area restaurants and specialty food and beverage vendors. Highlights included a lively chef auction and a spirited swing dance demonstration.*

LEAVE A LEGACY™
CONNECTICUT

is a statewide program to encourage people to make gifts from their estates to support causes they care about. The campaign has a simple message: "Leave something in your will for a cause that is important to you." Part of the Connecticut Council for Philanthropy's broader initiative to stimulate and diversify philanthropy in Connecticut, the goal of Leave a Legacy is to increase statewide philanthropic capital to support programs that benefit state residents.

CFB is supporting the Leave A Legacy campaign by spreading the word to our supporters. We want you to know how important your bequest or other planned gift is to us. If you have any questions or would just like to begin talking to us about how a planned gift could be made to CFB and how it would continue to benefit poor and hungry people in the state for years to come, please call the development director, Mary Johnson, at 203 469-5000.

When you include charities in your estate planning, you can make a difference in the lives that follow.

In 1998, Connecticut Food Bank distributed 6.5 million pounds of food to more than 500 feeding programs in Fairfield, Litchfield, Middlesex, New Haven, New London and Windham counties.

VENDORS OF PLANNED GIVING BROCHURES AND OTHER MATERIALS

Converse & Associates
Philip Converse, President
6363 Poplar Avenue, Suite 320
Memphis, TN 38119-4804
(800) 421-5667

Endowment Development Services
2511 East 46th Street
P.O. Box 55584
Indianapolis, IN 46205
(317) 849-9498

R & R Newkirk/Longman
500 North Dearborn Street
Chicago, IL 60610
(800) 428-3852

Pentera, Inc.
Andre R. Donikian, President
8650 Commerce Park Place, #G
Indianapolis, IN 46268
(317) 875-0910

Robert F. Sharpe & Co., Inc.
5050 Poplar Avenue
Suite 1222
Memphis, TN 38157
(800) 238-3253

Kennedy Sinclaire, Inc.
810 Belmont Avenue
P.O. Box 8304
North Haledon, NJ 07538-0304
(201) 423-9133

Stelter Company
Larry P. Stelter, President
11159 Aurora Avenue
Des Moines, IA 50322
(800) 331-6881

Taxwise Giving
Conrad Teitell, Esq.
13 Arcadia Road
Old Greenwich, CT 06870
(203) 637-4311

In addition, planned giving consultants, (Ellen G. Estes and others) often create brochures and other marketing materials designed specifically for a particular organization and its special constituency.

Handy Addresses for Internet Research

Many thanks to Kathleen J. Johnson, Director of Development Research, at Trinity College in Hartford, Connecticut, who provided this list. Kathi has advised that the list is not complete – but it will give you a general idea of where to start in your prospect research on the internet. For additional information you can reach Kathi at (860) 297-4245, or kathleen.johnson@ trincoll.edu.

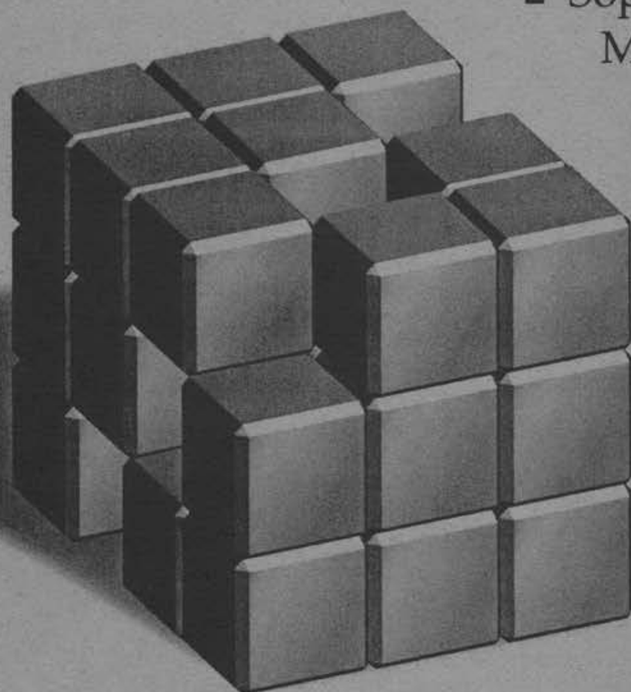
The Internet:

Hoovers: http://www.hoovers.com
Corporate Information: http://www.corporateinformation.com
Dun & Bradstreet: http://www.dnb.com
Yahoo Finance: http://finance.yahoo.com/?u
Quicken: http://www.quicken.com/
IPO Network: http://www.ipo-network.com
IPO Monitor http://www.ipomonitor.com/
Ten K Wizard: http://www.tenkwizard.com/
SEC Edgar: http://www.sec.gov/edaux/searches.htm
Foundation Center: http://fdncenter.org/
Exempt Search: http://www.irs.ustreas.gov/search/eosearch.html
Guidestar: http://www.guidestar.org/index.html
American City Business Journals: http://www.amcity.com/
New York Times: http://www.nytimes.com/
Newspaper Links: http://www.newspaperlinks.com/
Boston Globe: http://www.boston.com/globe
Forbes: http://www.forbes.com
American Medical Assoc: http://www.ama-assn.org/
Martindale-Hubbell: http://lawyers.martindale.com/marhub
Mich Electronic Library: http://mel.lib.mi.us/reference/REF-biog.html
White Pages: http://www.whitepages.com/cgi/find_person.cgi
David Lamb's Links: http://staff.washington.edu/dlamb/
APRA: http://www.aprahome.org/
Tax Assessor: http://pubweb.acns.nwu.edu/~cap440/assess.html
Yahoo Real Estate: http://realestate.yahoo.com/

Search Engines:

http://www.alltheweb.com/
http://www.google.com/
http://www.northernlight.com/search.html
http://www.altavista.com/

Bringing Together the Essential Elements for Planned Giving



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American Council on Gift Annuities
24th Conference
April 26-28, 2000 • St. Louis, Missouri

HOW TO STRUCTURE CHARITABLE BEQUESTS FROM A DONOR'S RETIREMENT PLAN ACCOUNT

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HOW TO STRUCTURE CHARITABLE BEQUESTS FROM A DONOR'S RETIREMENT PLAN ACCOUNT

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I. INTRODUCTION

A. The tax laws do not treat all charitable gifts the same. Some types of gifts get more favorable tax treatment than others.

1. Lifetime Charitable Gifts - The income tax laws generally favor gifts of appreciated stock and real estate ("long-term capital gain property") over gifts of cash or other property.

2. charitable Bequests - The income tax laws generally favor charitable bequests of property that generates "income in respect of a decedent" ("IRD"). These are inherited payments that the successor beneficiary must report as taxable income, even though most inheritances are free from income tax. Secs. 102 and 691.

B. Example of How IRD Is Treated Differently Than Other Inherited Assets.

Assume Grandpa would like to treat his two grandchildren, Thelma and Louie, equally. Upon his death, he leaves $100,000 of stock that he purchased for $60,000 to Thelma and he leaves $100,000 in his Section 403(b) custodial account (a retirement plan) to Louie. Both assets could be subject to estate tax if his estate is over $650,000. However, when Thelma receives her $100,000 of stock she will not have to pay any income tax. In fact, she gets a "stepped up" basis in the stock so that if she sells the stock for $100,000 she will pay no income tax. Sec. 1014.

By comparison, when Louie receives the $100,000 from the retirement plan, the entire amount will be subject to income tax because retirement plan distributions are IRD. Although Louie can deduct the applicable federal estate tax to lessen the tax bite (Sec. 691(c)), nevertheless Grandpa did not treat them equally since Louie will have less resources after paying income taxes than Thelma.

C. Increasing Frequency and Importance of Retirement Plan and Other IRD Assets in the Estates of the Nation's Citizens.

FEDERAL ESTATE TAX RETURNS
RETIREMENT PLAN ASSETS AND ANNUITIES; CHARITABLE DEDUCTIONS

	TOTALS		RETIREMENT PLANS & ANNUITIES				CHARITABLE DEDUCTION			
Year Filed	# of Returns	Gross Estates (millions)	# of Returns	%	Value (millions)	%	# of Returns	%	Value (millions)	%
1997	90,006	$162,251	41,788	**46**	$10,116	**6.2**	15,575	17	$14,266	8.8
1995	69,772	$117,735	30,938	44	$6,632	5.6	13,063	19	$8,707	7.4
1992	59,176	$ 98,850	22,738	38	$4,095	4.1	11,053	19	$6,785	6.9
1989	45,695	$ 77,997	14,223	31	$2,309	3.0	8,471	19	$4,925	6.3
1986	45,125	$ 59,805	11,244	**25**	$1,350	**2.3**	7,835	17	$3,573	6.0

SOURCE: IRS Statistics of Income Bulletin, Winter 1999, Spring 1997, Spring 1995, Spring 1993, Winter 1991-1992

II. LIFETIME CHARITABLE GIFTS FROM QUALIFIED RETIREMENT PLANS ("QRPs") AND IRAs.

A. OVERVIEW

It is possible to make an *outright* charitable gift from a retirement plan account, but both the retirement plan distribution and the offsetting charitable income tax deduction will have to be reported on the owner's income tax return. As is demonstrated below, the account owner will usually be better off contributing appreciated stock to charity rather than the proceeds of a retirement plan distribution.

The best way to make a *deferred* charitable gift from a company retirement plan account or an Individual Retirement Account ("IRA") is usually to leave the assets in the account and then to transfer the account to charity at death. A person will normally incur a significant income tax liability by withdrawing amounts from a retirement account and contributing it to a deferred charitable giving arrangement, such as a charitable remainder trust or a charitable gift annuity. There is a bill in Congress that would permit tax-free lifetime transfers, but current law generally discourages such gifts.

Exceptions: There are, however, two situations where an outright or deferred charitable gift of a retirement plan distribution can actually save taxes. Both involve receiving a "lump sum distribution" from a company retirement plan. The first situation is illustrated in an IRS private letter ruling that involved a lump sum distribution of employer stock: Private Letter Ruling 199919039 (Feb. 16, 1999). The second situation is if an individual receives a lump sum distribution that qualifies for the "forward averaging tax."

B. NORMAL RULES FOR TAXING DISTRIBUTIONS FROM QRPs MAKE MOST LIFETIME GIFTS LESS ATTRACTIVE THAN GIFTS OF APPRECIATED STOCK

1. *Any charitable or non-charitable gift from a retirement plan will trigger taxable income on the donor's income tax return. There are no tax-free lifetime transfers from a retirement plan to a charity or a charitable remainder trust.*

Under current laws, a person, while alive, cannot make a gift from an IRA or retirement plan account to any person or charity without having the gift be reported as taxable income on his or her income tax return. Although a person can usually claim an offsetting charitable income tax deduction for a charitable gift of the distribution so that virtually no tax will be due from the transaction, sometimes even that might not be the case if the donor is subject to the annual deduction limitation (i.e., 50% of the donor's income for the year).

2. *Lifetime Charitable Gifts Of Appreciated Stock Are Usually Better Than Gifts of Retirement Plan Assets.*

EXAMPLE: Donor owns $100,000 of XYZ stock that she purchased for $20,000. She also receives a $100,000 distribution from a retirement plan (taxable income). She is better off contributing the stock to a charity than giving the $100,000 retirement plan distribution. Either gift will produce a $100,000 income tax charitable deduction, but by giving the stock she will forever avoid paying a long-term capital gain tax on the $80,000 of appreciation. Section 170(b)(1)(C)(iv). The principles are the same for a gift to a charitable remainder trust except, of course, that only a fraction of the $100,000 contribution will be deductible. Sec. 170(f)(2)(A).

3. *An exception to the stock-is-better-than-cash principle occurs when a donor has exceeded the annual deduction limitation for gifts of stock (usually 30% of the donor's income for the year). These donors might get tax benefits from giving retirement plan distributions to charity.*

If a donor has reached the annual deduction limitation for gifts of stock (usually 30% of the donor's income), then an additional gift of stock will not provide any additional income tax benefits that year. If the donor has not yet reached the 50% of income limitation for cash gifts, the donor could receive taxable distributions from the plan and use the proceeds to make tax-deductible charitable gifts. Secs. 170(b)(1)(A) and (C) and Reg. Sec. 1.170A-9(e)(11)(ii).

4. *Except For Two Situations, Retirement Plans and IRAs Are Lousy Sources of Lifetime Deferred Gifts.*

A lifetime gift of a retirement plan distribution to a charitable remainder trust doesn't make sense. The only time when taxes can be saved is a "lump sum distribution" from a company retirement plan. The best way to make a deferred charitable gift from a QRP or IRA is usually to leave the assets in the account and then to transfer the account to charity at death.

a. *General Rules*

Generally every distribution from a retirement plan, IRA or 403(b) plan is taxed as ordinary annuity income. Secs. 402(a) and 72(a). Distributions received before age 59 ½ are also subject to a 10% penalty, although there are some exceptions. Sec. 72(t). A person could take a distribution from a retirement plan and give it to charity, but usually she or he would be better off contributing appreciated stock instead.

Example with a deferred gift - usually there are bad results: Pearl E. Gates is considering withdrawing an extra $100,000 from her IRA and contributing it to a CRT. The CRT will pay her an income stream for life and transfer the remainder to charity upon her death. Under this arrangement, she will have $100,000 of extra income from the IRA distribution but a charitable income tax deduction for the gift to the CRT of only 10%, 20%, 30% or whatever. She will therefore have to pay income tax on the non-charitable portion of her contribution to the CRT: $90,000, $80,000, $70,000 or whatever. She could avoid this result by leaving the assets in the IRA and then having IRA transfer assets directly to the charity at death.

Consequently, unless the "charitable IRA rollover" legislation is enacted by Congress, the best strategy for a deferred gift from a retirement plan or IRA is to leave as much as possible in the retirement plan or IRA and then have the account transferred to charity at death. *By comparison,* an individual who is already past age 70 ½ and is receiving large mandatory distributions from an IRA may be looking for an offsetting income tax deduction. She could use some of these distributions to contribute to a charitable remainder trust or to purchase a charitable gift annuity to generate some offsetting charitable income tax deductions.

b. Exception #1: Lump Sum Distribution of Employer Stock

Private Letter Ruling 199919039 involved an individual who wanted to make a contribution to a charitable remainder trust. He had just received a "lump sum distribution" that included "employer stock" from his company's retirement plan, and the stock had a significant amount of "net unrealized appreciation" ("NUA"). This is most likely to occur with a distribution from an "ESOP".

The transaction is basically a twist on the standard practice of contributing appreciated stock to a charitable remainder trust. Since NUA will always generate a long-term capital gain, a person who receives a distribution of employer stock from a company retirement plan can contribute the stock at anytime to a deferred charitable giving arrangement and claim an income tax deduction based on an appreciated value of the stock rather than the lower tax basis. There is no need to hold the stock for more than one year to qualify for long-term capital gain status, as is usually the case. IRS Notice 98-24, 1998-17 I.R.B. 5.

For example, if an employee of Proctor & Gamble receives a lump sum distribution from the company's retirement plan of P&G stock worth $100,000 that the plan had purchased for only $10,000, the employee only has to recognize $10,000 of income and does not have to recognize the $90,000 of NUA as income until the stock is sold. Sec. 402(e)(4)(B). If he holds the stock for only one week and sells it for $105,000, then he will have a $90,000 long-term capital gain attributable to the NUA and a $5,000 short-term capital gain from the additional appreciation. PLR 199919039 authorized the individual to base his charitable contribution deduction to the charitable remainder trust based on an appreciated value of the stock that included the NUA. In this example, if the stock was worth $105,000, the income tax deduction would be based on the $100,000 value which includes the $90,000 long-term capital gain but excludes the $5,000 short-term capital gain. Sec. 170(e)(1)(A).

For analysis, see "Tax Advantages From A Lifetime Charitable Gift Of A Company's Retirement Plan Distribution," *Planned Giving Today*, August, 1999, p. 3.

c. Exception #2: Lump Sum Distribution That Qualifies For "Forward Averaging Tax"

A person over the age of 59 ½ who receives a "lump sum distribution" from a company or Keogh retirement plan (but *not* from an IRA or 403(b) plan) can pay a special low tax rate on the distribution: the forward averaging tax. There is no requirement that the distribution include any employer stock. The entire distribution could be cash.

For example, the maximum forward averaging tax on a lump sum distribution of $100,000 is 15%, regardless of the tax rate that the recipient pays on other sources of income. The maximum rate is 20% for a distribution of $200,000 and 22.5% for a distribution of $300,000. See IRS Form 4972 to see if you qualify and how to compute the tax. *Please note that the 5 year averaging tax expires at the end of 1999, but individuals who were born before 1936 will continue to be eligible for the 10 year averaging tax in future years.* The charitable giving strategy is to take a lump sum distribution from the account, pay a low tax rate of 15%, 20% or 22.5% (or whatever), and then make a charitable contribution of the assets which will produce income tax savings at the donor's usual rate (e.g., 39.6%). It is a form of "tax rate arbitrage".

III. TESTAMENTARY CHARITABLE BEQUESTS OF RETIREMENT PLAN AND OTHER "IRD" ASSETS

A. FUNDAMENTAL CONCEPT

A. FUNDAMENTAL CONCEPT: *If a person is going to make a charitable bequest, it is usually better to transfer the taxable assets ("income in respect of a decedent" or "IRD") to a tax-exempt charity and to transfer the non-taxable assets to the heirs.* Under current practices, many people will transfer the wrong assets to the wrong people. They will transfer tax-free cash to charities and taxable income to their heirs. They do this by making specific bequests from their estates to charities and they name their heirs as the beneficiaries of their qualified retirement plan ("QRP") accounts and Individual Retirement Accounts ("IRAs"). The situation should be reversed.

The concept applies both to "conventional IRD assets" and to "qualified retirement plans and IRAs." For most people, the largest source of IRD will usually be an IRA or a QRP account.

B. DEFINITIONS

Income In Respect Of A Decedent ("IRD"): In oversimplified terms, IRD is an inherited payment that would have been taxable income to the decedent had the decedent received it the day before he or she died. IRD is an important exception to the general rule that inherited property is exempt from income tax. Secs. 102(a) & (b). When IRD is received, the estate (or if paid directly to a person, the person) will include it on the income tax return for the year it was received. Sec. 691.

Conventional IRD assets: Conventional IRD assets usually pass by way of probate or joint tenancy. These assets include installment sale notes, savings bonds, annuity contracts, deferred lottery winnings and deferred compensation payments. An attorney can draft a will or living trust in such a way that these assets will be transferred to a tax-exempt charity or a tax-exempt charitable remainder trust.

QRPs and IRAs: Qualified retirement plans and individual retirement accounts are trusts or custodial accounts that hold a person's deferred compensation. Their principal tax advantage is income tax deferral. Sec. 401(a) QRPs (profit sharing, ESOP, 401(K) and "Keogh" plans); Sec. 408 (IRAs, SEPs and SIMPLE Plans) and Sec. 403(b) (tax sheltered annuities and custodial accounts).

C. FUNDAMENTAL PLANNING POINTERS:

1. *If an individual intends to make a charitable bequest, the gift should be made with assets that generate income in respect of a decedent ("IRD").*

2. *Even people who are not normally charitably inclined should consider making a charitable bequest of retirement plan assets because of the high taxes imposed on these types of assets.*

Whereas the highest estate tax rate on standard assets is basically 55%, the combination of estate and income taxes on IRD assets triggers an effective marginal tax rate in excess of 75% for taxable estates over $3 million (see the sample computation a few pages ahead). The charitable tax deduction offers relief from both of these taxes. Thus, at a cost to the heirs of less than 25% of these type of assets, an individual can apply 100% of the assets to his or her specific charitable objectives by a grant to a charity.

3. *Use Charitable Remainder Trusts for "Rollovers" of IRD After Death.*

Because a charitable remainder trust ("CRT") is tax-exempt, it is possible to have an IRD asset transferred directly to a CRT and to defer income taxation until the CRT makes a distribution to the income beneficiary.

EXAMPLE OF A CRT THAT RECEIVES IRD: Grandmother owns Series EE and HH savings bonds with $100,000 of untaxed interest. She intends to establish a testamentary charitable remainder unitrust for her 60 year old son with a 10% payout. Assume that her estate will not be subject to estate tax because her total wealth is under $650,000.

As she chooses the assets to put in the trust, she should probably contribute the savings bonds. Had she transferred the bonds directly to her son, he would have to recognize all $100,000 as ordinary income and pay income tax on the entire amount. The original purchase price, by comparison, would be a tax-free return of capital. After paying as much as $39,600 of income tax (39.6% of the interest income), the son would have only $60,400 left to invest.

If, instead, the bonds were transferred to a charitable remainder trust, the estate would have no taxable income and the trust could redeem the bonds without paying income tax because it is tax-exempt. See PLR 9845026 (bequest to a public charity). If the unitrust could only earn 7% on the $100,000 corpus yet was required to pay out 10%, then the son would receive the 3% differential from the corpus over his life. The net result is significant income tax deferral since:

(1) the entire $100,000 could be invested to produce investment income, whereas the son might have only had the $60,400 of after-tax proceeds to invest, and
(2) much of the taxable $100,000 amount would be gradually distributed to the child over his lifetime rather than in one lump sum, which could lessen the tax liability.

a. *Compare: "Stretch Out" Possibilities By Leaving Assets in IRA.*

The principal function of retirement plan accounts is to defer income. It is often possible to structure the IRA in such a way that a family will have greater income deferral by leaving assets in an inherited IRA rather than transferring it to a CRT. *Thus, transferring an IRA to a CRT will principally be for charitable objectives rather than tax-deferral objectives.* For example, a husband may wish to provide retirement income to his wife after his death but he wants to be assured that the remaining assets will go to his favorite charity after her death.

b. *Was There Estate Tax Paid On The IRD Asset? Then An IRS Ruling Makes A Transfer Of IRD Assets To A CRT Generally Unattractive.*

Private Letter Ruling 199901023 (Oct. 8, 1998) makes it extremely difficult for the income beneficiary of a CRT to ever claim an income tax deduction for any estate tax that was paid when IRD was transferred to a CRT. Normally a person who receives IRD can claim an income tax deduction for the federal estate tax that was attributable to the IRD. Sec. 691(c). However, the IRS ruling basically prevents a person who receives an IRD distribution from a charitable remainder trust from ever deducting the estate tax. It does this by categorizing the federal estate tax as 4th tier corpus and categorizing the remaining portion of the IRD as 1st tier ordinary income. The rules are explained at the end of this paper.

D. WHAT STEPS DO YOU TAKE TO TRANSFER IRD ASSETS TO A CHARITY OR A CHARITABLE REMAINDER TRUST?

1. ***CONVENTIONAL IRD ASSETS****: There are basically three ways to draft a will or a living trust to transfer conventional IRD assets to a charity or a CRT: (1) in-kind distributions, (2) discretion to the trustee to make non-pro rata distributions of IRD assets and (3) instructions that all charitable bequests should be made, to the extent possible, with IRD property.*

   a. *What is an in-kind distribution?*

An in-kind distribution is a distribution of a particular asset to a specific beneficiary. For example, a decedent may instruct that a family heirloom pendant be given to the decedent's daughter. In order to make an in-kind distribution of IRD assets, the will can contain instructions that specific IRD assets will be given to specific charities. For example, the will could state: "all of my installment sale notes shall become the property of the Christopher R. Hoyt tax-exempt charitable remainder trust; all of my savings bonds shall become the property of charity XYZ, etc. etc."

In that case, the estate will distribute the IRD asset to the charity or CRT and it, rather than the estate, will recognize income from the IRD. Sec. 691(a); Reg. Sec. 1.691(a)-4(b)(2); Rev. Rul. 64-104, 1964-1 C.B. 223. If the recipient is a tax-exempt public charity or charitable remainder trust, no tax will be due. If the recipient is a private foundation, it will usually be liable for the 2% excise tax on the interest income. Sec. 4940; Rev. Rul. 80-118, 1980-1 C.B. 254 (IRD from savings bonds).

   b. *What is a non-pro rata distribution?*

A non-pro rata distribution is when the assets of an estate are not proportionately divided among the beneficiaries of an estate but, instead, one beneficiary receives proportionately more or less of a particular asset.

For example, suppose that a decedent had $100,000 of savings bonds (an IRD asset) at the time of his death and that his will instructed the executor to divide his $400,000 estate equally among his three children and his favorite charity. With a pro-rata distribution, each child and the charity would receive $25,000 of savings bonds. If the executor did not have the power to make a pro-rata distribution and simply gave all $100,000 of savings bonds to the charity, the IRS would conclude that there had been a taxable exchange among the beneficiaries. Rev. Rul. 69-486, 1969-2 C.B. 159. However, if either the will or state law gives an executor discretion to make non-pro rata cash or in-kind distributions, then there may be no taxable income when the executor distributes all of the savings bonds to a charity and all of the non-IRD assets to the children. Private Letter Ruling 9537011 (June 16,.1995).

c. *Most important: The will or living trust should contain instructions that all charitable bequests should be made, to the extent possible, with IRD assets.*

Every will and living trust that provides for a charitable bequest should probably contain language along the following lines:

> "I instruct that all of my charitable gifts, bequests and devises shall be made, to the extent possible, from property that constitutes "income in respect of a decedent" as that term is defined in The Internal Revenue Code."

Without this language the estate will only be able to claim an estate tax charitable deduction for its charitable bequests but *not* an income tax charitable deduction. The gifts are deemed to come from the estate's corpus at death, and not from income or from IRD assets. *Crestar Bank Et. Al., Executors Of The Estate Of James A. Linen v. IRS*, 83 AFTR2d Par. 99-839, (E.D. Virginia, April, 1999) ; *Van Buren v. Commissioner*, 89 T.C. 1101 (1987); *Riggs National Bank v. U.S.*, 352 F. 2d 812 (Ct. Cl. 1965).

With this language, there is a good argument that if the estate has any kind of IRD asset, then the estate can claim on offsetting charitable income tax deduction for the payment that was made to charity or the total amount of IRD, whichever is less.

The instructions can be particularly helpful if the decedent sold property shortly before death. There are numerous court cases involving a person who sold real estate and died before receiving the payment. The courts generally conclude that the payment will be IRD and that there was no "step up" in basis for the sold property. *Halliday v. U.S.*, 655 F.2d 68 (5th Cir. 1981); Rev. Rul. 65-217, 1965-2 C.B. 214; *Miller v. U.S.*, 389 F.2d 656 (5th Cir. 1968). See, generally, "Income In Respect Of A Decedent", BNA Tax Mgt. Port. 862-1st, Sec. III.B. With this language, a charitable bequest could produce an offsetting income tax deduction.

2. ***QUALIFIED RETIREMENT PLAN AND IRA ASSETS**: Focus On The Beneficiary Designation Forms Rather Than the Will.*

The largest source of IRD will usually be an IRA or a QRP, which is a separate trust that is <u>not</u> governed by the will or by the decedent's trust instrument. IRA and QRP assets do not pass through probate, unless the owner made the mistake of naming the probate estate as the beneficiary of these assets.

Instead, these assets are transferred directly to the beneficiary who is named as the successor beneficiary on the forms provided by the retirement plan. If the assets are to be transferred to a charity or a charitable remainder trust, then the charity or a charitable remainder trust will usually have to be named as the successor beneficiary on these forms. These forms should be carefully drafted to meet the donor's estate planning objectives.

Basic principle: If there will be multiple beneficiaries of a person's retirement plan assets (e.g., spouse, children and charities), the tax laws generally encourage people to establish separate IRAs or separate sub-accounts for each beneficiary. Separate IRAs permit greater deferral after the owner's death.

IV. COMBINATION OF ESTATE AND INCOME TAXES ON INCOME IN RESPECT OF A DECEDENT.

A. **EXAMPLE:** Assume that Mother's total taxable estate is $3,200,000 and that all of it will be transferred to her sole heir: Daughter. Assume that the probate estate will pay the entire estate tax regardless of how her daughter acquired the assets (e.g., joint tenancy, etc.). If $100,000 in an IRA is immediately distributed to Daughter and if Daughter is in a 39.6% marginal income tax bracket, then the combined estate and income taxes on the $100,000 of IRA assets would be $76,622. The amount is calculated as follows:

Beginning Balance in Retirement Plan			$ 100,000
Minus: Total Estate Tax Paid by the Probate Estate			(55,000)
Minus: Income Tax On Distribution			
Gross Taxable Income		$ 100,000	
Reduced By §691(c) Deduction for Federal Estate Tax			
Total Estate Tax	$ 55,000		
State Tax Credit*	(9,600)		
Deduction for Federal Estate Tax **		(45,400)	
Net Taxable Income ***		$ 54,600	
Times Income Tax Rate		x 39.6%	
Net Income Tax on Income In Respect Of Decedent			(21,622)
NET AFTER-TAX AMOUNT TO DAUGHTER			$ 23,378

* The deduction for estate tax attributable to income in respect of a decedent is only for the *federal* estate tax; the Section 2011 state tax credit (9.6% for an estate over $3,100,000) has therefor been eliminated. Treas. Reg. Section 1.691(c)-1(a).

** The deduction is an itemized deduction on Schedule A that is claimed on the last line of the form ("other miscellaneous deductions"). It is not subject to the 2%-of-adjusted-gross-income ("AGI") limitation that most miscellaneous deductions are subject to. Sec. 67(b)(7).

*** The net taxable income from the IRD will actually be greater than this amount The IRD will increase the recipient's AGI by $100,000 which will decrease the recipient's itemized deductions by 3%, which would be $3,000 in this example. Sec. 68. The 3% reduction was omitted from this calculation in order to simplify the computation.

V. OBSTACLES TO OVERCOME FOR CHARITABLE BEQUESTS

A. MULTIPLE AREAS OF LEGAL SPECIALIZATION

The transfer of retirement plan assets to charities and charitable remainder trusts ("CRTs") involves several fields of legal expertise. These areas include:

-- retirement plan law ("ERISA"[1]),
– estate taxation,
-- income taxation of estates, and
-- tax-exempt organizations (both charities and charitable remainder trusts).

It is not enough to solve the problems that exist solely in one area of the law. Every area could pose a significant problem that could prevent a donor or a charity from obtaining the optimal result.

B. TOTAL LEGAL AUTHORITY ON POINT: ONLY THIRTEEN IRS PRIVATE LETTER RULINGS

1. GENERAL PRINCIPLES

Neither the donor's estate or heirs will recognize taxable income if the retirement plan / IRA proceeds are paid distributed directly to the charity or to a charitable remainder trust. PLR 9723038 (March 11, 1997) (public charity); PLRs 9838028 (June 21, 1998) and 9818009 (Jan. 8, 1998) (private foundation); PLRs 9901023 (Oct. 8, 1998) and 9634019 (May 24, 1996) (charitable remainder trust).

2. TRANSFERS TO A PRIVATE FOUNDATION

PLRs 199939039 (June 30, 1999); 9838028 (June 21, 1998), 9818009 (Jan. 8, 1998), 9341008 (July 14, 1993) & 9633006 (May 9, 1996): Transfers to private foundations; neither estate nor beneficiaries have any taxable income when IRA goes to private foundation; no 2% Sec. 4940 p.f. investment income tax on the distribution, either.

PLR 9826040 (March 30, 1998): No "self dealing" private foundation tax if private foundation is required by terms of living trust to pay to the estate "IRD" assets in order to pay recomputed estate tax.

3. TRANSFERS TO A PUBLIC CHARITY

PLR 9723038 (March 11, 1997): Transfer to public charity that paid the 15% penalty tax of the estate (the 15% penalty tax was repealed later in 1997).

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[1] ERISA stands for the Employee Retirement Income Security Act of 1974.

4. TRANSFERS TO A CHARITABLE REMAINDER TRUST

a. *Lifetime Transfers*: PLR 199919039 (Feb. 16, 1999): An employee who received a distribution of "employer stock" from the retirement plan was able to report as income only the original purchase price that the plan had paid for the stock, but when he promptly contributed it to a charitable remainder trust he was able to deduct an appreciated value for the stock which included the "net unrealized appreciation" of the stock.

b. *Transfers At Death*

PLRs 9634019 (May 24, 1996), 9253038 (Oct. 5, 1992) and 9237020 (June 12, 1992): Transfers to charitable remainder unitrusts - the 1996 ruling addresses the most issues.

PLR 9820021 (February 15, 1998): Husband prepares a QTIP trust that will pay income to his wife for life and then the remainder to a charity. If he names the QTIP trust as a successor beneficiary of a retirement plan, he cannot use a joint life expectancy with his wife to reduce minimum distributions over his life beginning at age 70 ½. He must withdraw amounts over his own single life expectancy. The same rule would apply if he named a CRAT or CRUT as the successor beneficiary.

PLR 199901023 (Oct. 8, 1998) - What happens to the income tax deduction for the federal estate tax that is paid when IRD is contributed to a charitable remainder trust? The IRS concludes that it is 4th tier corpus in the charitable remainder trust and only the net amount of IRD is included in first tier income.

CHARITABLE GIFTS OF SAVINGS BONDS:

LIFETIME CHARITABLE TRANSFER TRIGGERS TAXABLE INCOME TO FORMER OWNER: Any attempt to make a gift of savings bonds will usually trigger the untaxed interest income. Reg. Sec. 1.454-1(c)(1); Rev. Rul. 55-278, 1955-1 C.B. 471; Rev. Rul. 87-112, 1987-2 C.B. 207 (transfer pursuant to divorce triggers income). An exception is a transfer to a revocable trust, in which case no income is recognized. Rev. Rul. 58-2, 1958-1 C.B. 236.

For an illustration of a lifetime charitable gift of a savings bond, see Private Letter Ruling 8010082 (December 13, 1979). Under the facts in the ruling, the taxpayer owned Series E savings bonds with untaxed accumulated interest. This individual attempted to have the bonds registered in the name of a charity. The IRS concluded that this would trigger taxation of all of the deferred income. The taxpayer could claim an offsetting charitable income tax deduction for the full value of the Series H bonds given to charity. The net effect would be a charitable deduction equal to the original purchase price of the bonds.

SAVINGS BONDS CAN BE TRANSFERRED TAX-FREE AT DEATH TO A CHARITY OR A CRT:

In 1998, the IRS released a private letter ruling that confirms that it is possible to transfer savings bonds to a charity upon the owner's death without having any income tax burden imposed on the estate: Private Letter Ruling 9845026 (August 11, 1998). To read about charitable strategies with savings bonds, see Hoyt, "Tax-Free Transfers Of U.S. Savings Bonds To Charities And Charitable Remainder Trusts," *Planned Giving Today*, (April, 1998) or for a fuller explanation see Hoyt; "Save Taxes on Savings Bonds by Transfers To Charities or Charitable Remainder Trusts" *Journal of Taxation*, Vol. 88, No. 2, p. 88 (February, 1998).

VI. OBSTACLES FOR OUTRIGHT CHARITABLE BEQUESTS

A. POTENTIAL INCOME TAX PROBLEMS FOR THE ESTATE

1. *Avoid Imputed Income To The Estate: Do Not Satisfy A Specific Bequest With A Payment From Retirement Plan or With Some Other IRD Asset.*

   Although an estate will not normally have any income if specific property is required to be distributed in kind, Treas. Reg. Section 1.661(a)-2(f)(1) provides that it can have taxable income if a distribution of property is made in satisfaction of a right to receive a distribution of a specific dollar amount (e.g., a specific bequest) or in specific property other than the property that was distributed.[2] Thus, for example, if a will provides for a specific bequest of $100,000 to a charity, the estate will have $100,000 of taxable income if the bequest is paid by a distribution from a retirement plan. Keenan v. Commissioner, 114 F.2d 217 (2d Cir. 1940); Private Letter Ruling 9507008 (Nov. 10, 1994).

2. *A Different Income Tax Problem for An Estate: Usually A Charitable Bequest Does Not Provide A Charitable Income Tax Deduction But, Instead, Only A Charitable Estate Tax Deduction.*

   a. Description of the Problem: A specific bequest to a charity usually qualifies for an estate tax deduction on the estate tax return but not an income tax deduction on the estate's income tax return. In order to qualify for an income tax charitable deduction, the gift must consist of income (e.g., "All of the net income of my estate shall be paid to XYZ charity"), in which case the deduction is usually taken only on the income tax return and not on the estate tax return.

   b. One Possible Solution: Specific Language In A Will Might Permit Both Estate and Income Tax Charitable Deductions for Gifts of IRD. "I instruct that all of my charitable gifts, bequests and devises shall be made, to the extent possible, from property that constitutes "income in respect of a decedent" as that term is defined in The Internal Revenue Code."

   c. Another Solution for Retirement Plans And Certain Other IRD Assets That Can Pass Outside Probate: Keep the IRD Off Of The Estate's Income Tax Return.

This can be done by having the assets transferred directly from the retirement plan to the charity or CRT rather than have amounts paid to the estate. This is accomplished by naming the charity or the CRT, rather than the probate estate or a testamentary CRT, as the successor beneficiary on the

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[2] See, for example, GCM 39388 (May 25, 1984) in which the IRS concluded that a trust would have to recognize gain when it distributed appreciated stock in satisfaction of a direction in the trust instrument to pay net income to the beneficiary. Section 691(a)(2). See also Rev. Rul. 83-75, 1983-1 C.B. 114, in which the IRS concluded that a distribution of appreciated securities by a trust to a charity in lieu of current income resulted in taxable gain to the trust. The trust was entitled to an offsetting charitable deduction for the amount of income. A similar result was reached in Private Letter Ruling 9044047 (Aug. 4, 1990). See also Keenan v. Commissioner, 114 F.2d 217 (2d Cir. 1940); Private Letter Ruling 9507008 (Nov. 10, 1994).

beneficiary designation forms provided by the retirement plan. The distributions will not be reported on the estate's income tax return because IRD is taxed directly to the beneficiary who receives the assets. Reg. Sec. 1.691(a)-2(a)(2). Of course, if the income is not reported on the estate's income tax return, there is no corresponding income tax charitable deduction either. Reg. Sec. 1.642(c)-3(b). For examples, see Private Letter Rulings 9341008 (July 14, 1993) & 9818009 (Jan. 8, 1998) (transfer to a private foundation) and Private Letter Ruling 9634019 (May 24, 1996) (transfer to a charitable remainder unitrust).

How is this done? Simply name a charity as the successor beneficiary on the forms filed with the retirement plan. -->>Problem: by naming a charity as the successor beneficiary, a person solves the income tax problem but the solution causes another problem under the pension laws: naming a charity as the successor beneficiary it might force the account owner to receive larger lifetime distributions from the account so that it will be nearly empty at the time of death. Thus, the charity might receive virtually nothing. PLR 9820021 (Feb 15, 1998).

B. MINIMUM DISTRIBUTIONS BEGINNING AT AGE 70 ½ MIGHT CAUSE ACCOUNT TO BE EMPTY AT DEATH.

1. PROBLEM: By naming a charity as the successor beneficiary the client must receive larger minimum taxable distributions from the plan beginning at age 70 ½ than if he or she had named any individual as the successor beneficiary.

2. BACKGROUND ON DISTRIBUTIONS BEGINNING AT AGE 70 ½.

a. Distributions Begin At Age 70 ½. The tax law requires payments to be made from a qualified retirement plan or an IRA to an employee beginning at age 70 ½. Sections 401(a)(9), 408(a)(6), 403(b)(10) and 4974.

b. General Rule: Distribute Over Person's Life Expectancy. The distributions must be made over the employee's remaining life expectancy. Thus, a person who lives a long life will be required to virtually deplete the retirement account at the time of death.

c. Exception: Use The Successor Beneficiary's Life Expectancy To Permit Successor To Inherit Assets Instead of using an individual's single life expectancy, a person can normally include the life expectancy of the successor beneficiary, subject to the minimum distribution incidental benefit ("*MDIB*")[3] limitation *if the beneficiary is more than ten years younger*, and use an extended combined life expectancy to reduce each year's minimum distribution.

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[3] The general rules are in Sections 401(a)(9)(A)(ii) and (E). The minimum distribution incidental benefit requirement ("MDIB") imposes a limitation if the designated beneficiary is someone (other than the spouse) who is more than ten years younger than the employee. Prop. Treas. Reg. Section 1.401(a)(9)-2. Distributions will be made more rapidly than over the actual joint life expectancies. This is accomplished by pretending that the designated beneficiary is exactly ten years younger than the employee. For example, if a 70 year old named a 40 year old child as the designated beneficiary, then the minimum distributions are computed over the combined life of a 70 year old and a 60 year old. By comparison, if a 70 year old is married to a 40 year old spouse, the minimum distributions are calculated over the actual life expectancies of a 70 year old and a 40 year old.

d. Problem If A Charity Or The Probate Estate Is Named As A Beneficiary. The problem is that a charity does not have a life expectancy. Consequently, a client who names a charity as a successor beneficiary must receive larger minimum distributions computed over his or her single life expectancy rather than an extended combined life expectancy. Prop. Treas. Reg. Section 1.401(a)(9)-1, Q & A C-3 and D-2A.

2. EXAMPLE OF IMPACT OF MINIMUM DISTRIBUTION REQUIREMENTS

Ann T. Emm is a 70 year old childless widow with $100,000 in an IRA. Upon her death she would like the assets remaining in her IRA to be transferred to a worthwhile charity that will apply the assets for charitable purposes in her community. Her only relative is a distant nephew who she has not seen in years.

She would like to take as little out of her $100,000 IRA as possible since her family has a history of longevity and she may need the money for nursing home care late in life (e.g., at age 90). Assume that her IRA can earn a 9% annual return. If she names a worthwhile charity as the successor beneficiary of her IRA, then the maximum amount that the IRA could hold at age 90 would be $57,525. If she named her nephew, her IRA could have $184,080.

	Minimum Distributions if **Charity** Is the Beneficiary (Single Life Expectancy)		Minimum Distributions if **Nephew** Is the Beneficiary (MDIB* Combination of Lives)	
Age	**Balance in Plan**	Accumulated Distributions	**Balance in Plan**	Accumulated Distributions
70	**$100,000**	$ 6,250	**$ 100,000**	$ 3,817
75	112,158	45,092	132,590	28,608
80	109,595	98,200	159,636	66,200
85	90,446	163,852	179,934	121,789
90	**57,525**	231,861	**184,080**	200,132

The same rules apply if a CRT is named as the successor beneficiary rather than a charity! The IRS contends that a charitable remainderman *is* considered a beneficiary of a trust for purposes of computing the minimum distributions at age 70 ½. Thus, if a charitable remainder trust, or any other type of trust with a charitable remainderman, is named as the beneficiary of a qualified retirement plan or an IRA, then distributions must be made over the single life expectancy of the account owner. See Private Letter Ruling 9820021 (February 15, 1998).

PROBLEM REQUIRES A LEGISLATIVE SOLUTION: To repeat, Section 401(a)(9)(E) could be amended to eliminate the negative results that currently exist from naming either a charity or a charitable remainder trust as a successor beneficiary. The following language, or some variation, should prevent the adverse consequences over both the owner's life and upon the owner's death:
(E) Designated Beneficiary. - For purposes of this paragraph, the term "designated beneficiary" means any individual designated as a beneficiary by the employee, **provided that any organization described in Section 170(c)(1) or (2) shall be (i) disregarded for both lifetime and testamentary distribution requirements when an individual is also a designated beneficiary and (ii) treated as an individual subject to the incidental death benefits requirements of this subsection over the employee's lifetime if no individual beneficiary is designated.** (new proposed language indicated in bold)

4. WAYS TO DEAL WITH THE MINIMUM DISTRIBUTIONS PROBLEM

a. IF DONOR IS YOUNGER THAN AGE 70 ½, THEN USUALLY THERE IS NO PROBLEM. HOWEVER, SEPARATE IRAs MIGHT BE A GOOD IDEA.

(i) IS A CHARITY THE SOLE SUCCESSOR BENEFICIARY OF THAT ACCOUNT?

Since there are no required distributions until a person attains age 70 ½, an individual who is less than age 70 ½ can name a charity as a successor beneficiary of a retirement plan without significant adverse consequences. In the event of a premature death, the charity will receive all of the assets in the retirement plan and the estate can claim a charitable estate tax deduction. As the donor moves toward the age of 70 ½, he or she can change the beneficiary.

(ii) ARE THERE OTHER BENEFICIARIES, SUCH AS CHILDREN? THEN SEPARATE IRAs MAY BE BENEFICIAL.

Basic principle: If there will be multiple beneficiaries of a person's retirement plan assets (e.g., spouse, children and charities), the tax laws generally encourage people to establish separate IRAs or separate sub-accounts for each beneficiary. Separate IRAs permit greater deferral after the owner's death.

b. NO PROBLEM IF DONOR WANTS DISTRIBUTIONS TO BE AT THE SAME RATE AS IS REQUIRED UNDER MINIMUM DISTRIBUTION RULES OVER A SINGLE LIFE.

c. "DISCLAIMER SOLUTION": NAME A COOPERATIVE FAMILY MEMBER AS THE FIRST SUCCESSOR BENEFICIARY AND A CHARITY AS THE SECOND CONTINGENT BENEFICIARY. UPON THE DONOR'S DEATH, A DISCLAIMER BY THE FIRST BENEFICIARY WILL ALLOW THE PROPERTY TO PASS TO THE CHARITY AND THE ESTATE CAN CLAIM A CHARITABLE ESTATE TAX DEDUCTION.

A solution is to name an individual as the successor beneficiary and to designate a charity as a contingent beneficiary in the event of the individual's death. Upon the employee's death, the primary beneficiary could then make a "qualified disclaimer" so that the property would pass to the charity. Section 2518(b). The estate can claim an estate tax charitable deduction for the amount that was transferred to the charity by way of the disclaimer.[4]

This solution should work, but it puts the charity at risk in case the individual chooses not to disclaim the interest or if there is a mistake (for example, the disclaimer is not made within the applicable 9 month period or it fails to meet some other requirement for a qualified disclaimer).

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[4] Treas. Reg. Section 20.2055-2(c)(1); see also Private Letter Ruling 9141017 (July 10, 1991) and 9527040 (April 11, 1995) (Estate may deduct value of remainder passing to a charitable remainder trust formed after qualifying disclaimers and reformation).

EXAMPLE: Mother could name Daughter as the first successor beneficiary and then name Charity as a contingent beneficiary. By making Charity's interest contingent upon Daughter's death, the Charity will not be considered a beneficiary. Prop. Treas. Reg. Sections 1.401(a)(9)-1, Q & A E-5(e)(1) and 1.401(a)(9)-1, Q & A E-5(b) & (c)(2). Mother could then use the smaller distribution percentages based on her daughter as a successor beneficiary because Charity's contingent interest does not affect the computation of Mother's minimum lifetime distributions. Upon Mother's death, Daughter could make a qualified disclaimer within the applicable time period and the entire interest would pass to the charity.[5] Daughter would not have to recognize any taxable income nor would she be treated as having made a gift.

d. **BASIC PRINCIPLE: IF THERE WILL BE MULTIPLE BENEFICIARIES OF A PERSON'S RETIREMENT PLAN ASSETS (E.G., SPOUSE, CHILDREN AND CHARITIES), THE TAX LAWS GENERALLY ENCOURAGE PEOPLE TO ESTABLISH SEPARATE IRAS OR SEPARATE SUB-ACCOUNTS FOR EACH BENEFICIARY. SEPARATE IRAS PERMIT GREATER DEFERRAL AFTER THE OWNER'S DEATH.**

1. WHAT HAPPENS IF THERE ARE MULTIPLE BENEFICIARIES OF A <u>SINGLE IRA</u> AND AT LEAST ONE OF THEM <u>IS</u> A CHARITY OR A CRT?

EXAMPLE: Grandpa, age 69, has $1 million in a single IRA that he would like to benefit his daughter, his three grandchildren and his favorite charity. Before he attains age 70 ½, he should consider dividing the IRA into five separate IRAs and naming each recipient as the successor beneficiary of each respective IRA.

Definition: Required Beginning Date ("**RBD**") - April 1 of the year after a person attains age 70 ½ is the first date that distributions must be made from a retirement plan, 403(b) tax sheltered annuity or an IRA in order to avoid a 50% penalty. Sec. 401(a)(9)(C).

REQUIRED DISTRIBUTIONS OVER GRANDPA's *REMAINING LIFE*: The entire IRA must be distributed over Grandpa's remaining single life expectancy. He cannot use the life expectancy of any beneficiary to reduce the distributions. Prop. Reg. §1.401(a)(9)-1, Q&A-E-5(a).

REQUIRED DISTRIBUTIONS *AFTER GRANDPA's DEATH*:

1. Grandpa dies before RBD? The entire IRA must be distributed within five years of death. Sec. 401(a)(9)(B)(ii).
2. Grandpa dies after RBD? The entire IRA must be distributed within *one year* of death! Prop. Reg. §1.401(a)(9)-1, Q&A- E-8(a) and E-5(c)(2),

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[5] The IRS has frequently approved disclaimers to transfer assets in qualified retirement plans. The usual situation involves a disclaimer by a spouse so that assets pass to the children. In each situation, the person who made the disclaimer was not liable for any income taxes attributable to the retirement plan assets but, rather, the new beneficiaries had to report the income in respect of a decedent. The clearest legal analysis of this issue is in GCM 39858 (Sept. 9, 1991). The IRS has approved disclaimers for interests in profit sharing plans (Private Letter Rulings 9319029 (Feb. 12, 1993 and 9303027 (Oct. 27, 1992)), money purchase pension plans (Private Letter Ruling 9016026 (Jan. 18, 1990)) and IRAs (Private Letter Rulings 9226058 (March 31, 1992) and 9037048 (June 20, 1990)).

2. WHAT HAPPENS IF THERE ARE <u>SEPARATE IRAs</u> (OR SEPARATE ACCOUNTS) FOR EACH BENEFICIARY, AND ONE BENEFICIARY IS A CHARITY OR A CRT?

REQUIRED DISTRIBUTIONS OVER GRANDPA's *REMAINING LIFE*
He can take reduced distributions from the IRAs that name a person as the successor beneficiary; he can take distributions over the combined life expectancies of himself and the successor beneficiary, subject to special MDIB rules if the beneficiary is more than ten years younger than the owner. Sec. 401(a)(9)(A)(ii) and (G). The only IRA where he will have to compute distributions over his single life expectancy is the IRA that names the charity or the CRT as the successor beneficiary.

Special break for multiple IRAs: Although he will have to calculate the required minimum distributions separately for each IRA, he will be permitted to withdraw the entire amount from any single IRA to satisfy the distribution requirements.

REQUIRED DISTRIBUTIONS AFTER GRANDPA's DEATH:

1. Grandpa dies before RBD? Only the IRA where the charity or CRT was named as the successor beneficiary must be distributed within five years of death. Sec. 401(a)(9)(B)(ii). That is alright: a charity and a CRT are tax exempt. By comparison, the IRAs that name the children and grandchildren as beneficiaries can be "stretched out" over their life expectancies, if distributions commence within one year of Grandpa's death. Sec. 401(a)(9)(B)(iii).

2. Grandpa dies after RBD? Only the IRA that names a charity or a CRT as a successor beneficiary must be distributed within *one year* of death. Prop. Reg. §1.401(a)(9)-1, Q&A- E-8(a). That is alright: both a charity and a CRT are tax exempt. By comparison, the IRAs that name the children and grandchildren as beneficiaries can be "stretched out" over their life expectancies. Prop. Reg. §1.401(a)(9)-1, Q&A-E-8(b) and 8(c), example (2); Q&A B-4.

VII. ADDITIONAL OBSTACLES FOR DEFERRED CHARITABLE BEQUESTS OF IRD (CHARITABLE REMAINDER TRUSTS, ETC.)

A. AVOID IRD TO POOLED INCOME FUNDS AND CHARITABLE LEAD TRUSTS; USE CHARITABLE REMAINDER TRUSTS INSTEAD.

A transfer to a pooled income fund or charitable lead trust could produce disastrous tax consequences and should be avoided under current law. Unlike a charitable remainder trust, neither a pooled income fund nor a charitable lead trust is <u>not</u> tax-exempt. A pooled income fund usually avoids paying income tax by distributing all of its net investment income (except for long-term capital gains - Sec. 642(c)(3)), so that there is no remaining income on which a tax can be assessed.

. A contribution of income in respect of a decedent causes special problems because it will generally be treated as principal under the trust instrument and state law but as taxable income under tax law. This produces a "trapping distribution". A pooled income fund or charitable lead trust will then be required to pay income tax on the contribution of income in respect of a decedent and there could be a complicated apportionment of income and tax liabilities among the accounts in the fund.

B. POTENTIAL INCOME TAX PROBLEMS FOR THE ESTATE

1. To restate the issues: (a) *Avoid Imputed Income To The Estate: Do Not Satisfy Specific Bequest With Payment From Retirement Plan or Other IRD Assets and (b) Usually A Charitable Bequest Does Not Provide A Charitable Income Tax Deduction But, Instead, Only A Charitable Estate Tax Deduction.* Note that one solution was to have the will say that all charitable bequests should be made with IRD; the other solution was to keep the assets off of the estate's income tax return.

2. <u>The potential problems are worse if transfer is to a CRT than outright to a charity:</u>

   EXAMPLE: Assume that an estate receives a $100,000 distribution from a Keogh retirement plan and that the estate is required to transfer the entire amount to a CRT that will pay income to the donor's brother. Assume that the charitable/non-charitable ratio is 70/30. The estate tax return will report the entire $100,000 as an asset of the estate and will claim a charitable estate tax deduction of $70,000; the other $30,000 will be subject to estate tax. On the estate's income tax return the entire $100,000 would be reported as income. Probably the estate could claim a $70,000 charitable income tax deduction (Reg. Sec. 1.642(c)-3(a) & (b)), but what are the income tax consequences for the $30,000 non-charitable distribution? There is no legal authority to provide guidance. Compare the detail of Sec. 2055(e) (estate tax) with the buried reference in Sec. 4947 to Sec. 642 (income tax).

3. THE BEST WAY TO DEAL WITH THIS IS TO KEEP THE IRD OFF OF THE ESTATE'S INCOME TAX RETURN. Avoid estate income tax issues by having the assets transferred directly from the retirement plan to the charity or CRT rather than have amounts paid to the estate. This is accomplished by naming the CRT, rather than the probate estate or a testamentary CRT, as the successor beneficiary on the beneficiary designation forms provided by the retirement plan.

   The distributions will not be reported on the estate's income tax return because IRD is taxed directly to the beneficiary who receives the assets. Reg. Sec. 1.691(a)-2(a)(2). Of course, if the income is not reported on the estate's income tax return, there is no corresponding income tax charitable deduction either. Reg. Sec. 1.642(c)-3(b).
   The principal complications with this strategy are the ERISA distribution rules that apply if a charity or CRT is named as a beneficiary, described above.

C. MINIMUM DISTRIBUTIONS BEGINNING AT AGE 70 ½ MIGHT CAUSE ACCOUNT TO BE EMPTY AT DEATH.

1. By naming a charity as the successor beneficiary the client must receive larger minimum taxable distributions from the plan beginning at age 70 ½ than if he or she had named any individual as the successor beneficiary. The problem is that a charity does not have a life expectancy. Consequently, a client who names a charity as a successor beneficiary must receive larger minimum distributions computed over his or her single life expectancy rather than an extended combined life expectancy

2. QUESTION: If a donor names a charitable remainder trust as the successor beneficiary of a retirement plan account with income to spouse for life and remainder to charity, does the charity's interest as a remainderman beneficiary taint the payout so that distributions must be made over the donor's single life expectancy (beginning at age 70 ½) rather than the combined life expectancies of the donor and his/her spouse?

3. CONCLUSION: *The IRS contends that a remainderman is considered a beneficiary of a trust for purposes of computing the minimum distributions at age 70 ½.* Thus, if a charitable remainder trust, or any other type of trust with a charitable remainderman, is named as the beneficiary of a qualified retirement plan or an IRA, then distributions must be made over the single life expectancy of the account owner.

   See Private Letter Ruling 9820021 (February 15, 1998): Husband names a QTIP trust as the successor beneficiary of his account in a profit sharing plan. The QTIP trust will pay income to wife and make distributions of principal to her for medical emergencies; remainder to schools and universities. Held: the charitable remaindermen are deemed successor beneficiaries and distributions must be made from over husband's single life. Husband could *not* compute minimum distributions over the combined life expectancy of himself and his spouse.

D. WHAT HAPPENS TO THE APPLICABLE FEDERAL ESTATE TAX DEDUCTION IF RETIREMENT PLAN ASSETS ARE PAID TO A CRT OR TO ACQUIRE A CHARITABLE GIFT ANNUITY?

Since only a portion of a deferred charitable gift (e.g., a bequest to a charitable remainder trust or for a charitable gift annuity) qualifies for an estate tax charitable deduction, any taxable estate over $675,000 can incur an estate tax liability for the non-charitable portion of the gift. If IRD is used for the charitable gift, what happens to the Sec. 691(c) income tax deduction for the federal estate tax imposed on the IRD?

> Note: this will normally not be an obstacle for leaving IRD assets to a charitable remainder trust for a *surviving spouse*. Usually no estate tax is due if the surviving spouse is the sole non-charitable beneficiary of a CRT. Sec. 2056(b)(8).

CHARITABLE REMAINDER TRUST: An IRS Private Letter Ruling Makes A Transfer Of Any IRD Asset To A CRT Generally Unattractive If There Was An Estate Tax Liability.

Normally a person who receives IRD can claim an income tax deduction for the federal estate tax that was attributable to the IRD. Sec. 691(c). However, IRS Private Letter Ruling 199901023 (Oct. 8, 1998) basically prevents a person who receives an IRD distribution from a charitable remainder trust from ever deducting the estate tax. It does this by categorizing the federal estate tax as 4th tier corpus and categorizing the remaining portion of the IRD as 1st tier ordinary income. Please see the example below.

CHARITABLE GIFT ANNUITY:

1. *There is no legal precedent involving a transfer of an IRA at death to a charity to acquire a charitable gift annuity for somebody else.* By comparison, there are five IRS private letter rulings for similar transfers to a charitable remainder trust.

Conservative lawyers will avoid using an IRA for a testamentary charitable gift annuity until they have legal guidance that there are no adverse tax consequences. Over a dozen lawyers and financial advisors have asked me about potential legal issues and some have told me that in their opinion the transaction would trigger taxable income to the estate or the beneficiary (e.g., "is there a bargain sale?" "Is it an 'economic benefit' transaction under ERISA?" Etc. etc.). Others feel that there is no problem. *We need legal guidance from the IRS.*

The American Council on Gift Annuities would greatly assist the field by obtaining a comprehensive private letter ruling that addresses all of the legal ramifications of transferring an IRA to a charity for a charitable gift annuity. Until there is legal precedent, many people will be reluctant to do the transaction.

2. If the transaction can be done tax-free, *a transfer of an IRA to acquire a charitable gift annuity could be superior to a transfer of an IRA to a comparable charitable remainder trust, if estate tax was paid on the non-charitable beneficiary's interest.*

EXAMPLE OF HOW BENEFICIARY DEDUCTS ESTATE TAX WHEN INHERIT IRA OUTRIGHT:
Ben Giver has a $100,000 IRA. If upon his death the entire IRA will belong to his 70 year old sister, the federal estate tax will be $50,000 (oversimplified -- using a 50% estate tax rate), which sister might be required to pay from her own assets. As sister receives the first $100,000 of distributions from the IRA, she will pay an effective income tax rate of only 20% instead of her usual 40% rate. This is because she could claim an income tax deduction of $5 for every $10 of IRD that she receives (the federal estate tax attributable to the IRD). Sec. 691(c).

EXAMPLE IF IRA IS PAID TO A CHARITABLE REMAINDER TRUST:
Assume the same facts except that all of the IRA's assets will transferred to a charitable remainder trust that will pay income to his sister for life and then transfer the assets to Ben Giver's favorite charity upon his sister's death. Assume that the CRT will generate an estate tax charitable deduction of 40%.

With a charitable deduction of $40,000 (40% times $100,000), the estate tax liability is reduced to $30,000 (oversimplified: ($100k - $40k) times 50% estate tax rate). Since sister is the beneficiary, she might be required to pay the estate tax from her own assets. Under PLR 199901023 (Oct. 8, 1998), the IRS will classify the $30,000 of estate tax as 4th tier corpus and the remaining $70,000 as 1st tier ordinary income. Since the four tier charitable remainder trust distribution rules prevent any 4th tier amounts from being distributed until all 1st tier amounts have been distributed, as a practical matter *sister will never receive any tax benefit for any of the $30,000 of estate tax that was paid.* Every distribution from the CRT could be taxed at a 40% rate instead of the 20% rate that she would pay if she inherited the IRA.

EXAMPLE IF IRA IS PAID TO A CHARITY TO ACQUIRE A CHARITABLE GIFT ANNUITY:
Assume the same facts except that all of the IRA's assets will br transferred to a charity which will use the money to acquire a charitable gift annuity for his 70 year old sister that will pay $7,500 per year. The charitable estate tax deduction under the ACGA's recommended rates would be the same 40%.

The 4 tier CRT system does *not apply* to gift annuities. Presumably the general rules for inherited joint & survivor annuity contracts would apply instead. Sec. 691(d); Reg. Sec. 1.691(d)-1. *If* this is the case, then sister could claim an income tax deduction each year over her remaining life expectancy for the estate tax that was paid: $30,000 of income tax deductions over the next 16 years -- nearly $2,000 per year of income tax deductions! *It would be very helpful if someone would obtain an IRS private letter ruling on this issue to determine whether this is indeed the actual result.*

American Council on Gift Annuities
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INVESTMENT OF LIFE-INCOME GIFTS

A PRIMER FOR GIFT PLANNERS

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Investment of Life-Income Gifts: A Primer for Gift Planners

- Context
  - Planned gifts have unique and challenging investment needs
  - Donors are more savvy about investments than every before
    - ⇒ Rise of stock market
    - ⇒ On-line investing
    - ⇒ Individual oversight of 401(k) and other retirement assets
  - Charities are increasingly aware of the needs of planned gifts
    - ⇒ The Texas Gift Annuity Lawsuit
  - Regulation is on the rise
    - ⇒ Prudent Investor Rule
    - ⇒ Philanthropy Protection Act
    - ⇒ State gift annuity regulations
    - ⇒ Uniform Principal and Income Act

- Build an Investment Plan for Planned Gifts from the Ground Up
  - Gift Plan Mechanics
  - Beneficiary Considerations
  - Remainderman Considerations
  - Accommodating the Funding Asset
  - The Regulatory Environment
  - Modern Asset Management Practices
  - Disclosure

- Gift Plan Mechanics
  - Charitable Gift Annuities
    - ⇒ Pay fixed income for life to one or two beneficiaries
    - ⇒ Taxation of payments determined by IRS Rules
    - ⇒ Beneficiary payments backed by the general assets of the charity
    - ⇒ Gift annuity rates are generally derived from ACGA tables and *usually* exceed long-term predictions of investment return

  - Pooled Income Funds
    - ⇒ Pay earned income each year to participants—in proportion to the share of the fund's assets represented by their gifts
    - ⇒ Payment is taxed entirely as ordinary income
    - ⇒ Payments will vary from quarter to quarter, *unless estimated payments are made*
    - ⇒ Short term gains realized by the fund are taxable to the fund

  - Charitable Remainder Trusts
    - ⇒ Taxation based on how the income is earned ("four tiers")
    - ⇒ Payments are supported only by the assets of the trust
    - ⇒ Unrelated business taxable income (UBTI) in any year causes all trust income and gains for that year to be taxable
    - ⇒ Payout rates are governed by IRS rules (5%-50%) and limited by deductibility tests
  - Annuity Trusts

    - ⇒ Pay fixed amount for life of beneficiaries, a term of years, or both
    - ⇒ Payout rate limited by danger of trust exhaustion
    - ⇒ As corpus shrinks, *effective* payout rate becomes important in assessing investments, rather than the nominal payout rate
  - ➢ Unitrusts
    - ⇒ Pay fixed percentage for life of beneficiaries, a term of years, or both, *revalued annually*

- ❖ Beneficiary Considerations
  - ➢ How reliant are the beneficiaries on the income?
  - ➢ Do the beneficiaries hope for growth in income over time?
  - ➢ Would the beneficiaries prefer to defer income until later (retirement)?
  - ➢ What is the beneficiaries' tax situation?
  - ➢ How old are the beneficiaries?
  - ➢ What is the level of risk with which the beneficiaries are generally comfortable?
  - ➢ Are there assets the beneficiary is opposed to holding (e.g., international or tobacco)

- ❖ Remainderman Considerations
  - ➢ What is the plan for the corpus of this charitable gift?
  - ➢ What is the investment mix and style of the organization's endowment?
  - ➢ Are there institutional investment prohibitions (countries or sectors)?

- ❖ Accommodating the Funding Asset
  - ➢ Is the funding asset illiquid?
  - ➢ Are there restrictions on the sale of the asset?
  - ➢ What are the donor's expectations about the sale of the donated asset?
    - ⇒ Capturing the gift value
    - ⇒ Diversification
    - ⇒ Exposure to market volatility

- ❖ The Regulatory Environment
  - ➢ Prudent Investor Rule
  - ➢ Philanthropy Protection Act
  - ➢ Gift annuity investment restrictions
  - ➢ Principal and Income Act

- ❖ Modern Asset Management Practices
  - ➢ Use diversification to increase risk-adjusted returns
  - ➢ Manage for total return

- ❖ Donor Disclosure
  - ➢ Gift vehicles
    - ⇒ Description of how vehicle works
    - ⇒ Discussion of payout rate options and tradeoffs
    - ⇒ Irrevocability of gift
  - ➢ Gift assets
    - ⇒ Cash versus appreciated assets
    - ⇒ Valuation problems

- ⇒ Illiquid asset issues
- ⇒ Disposition plan
- ⇒ Restricted assets

- ➢ Financial benefits of gift plan
  - ⇒ Beneficiary payments may be volatile
  - ⇒ Projected growth over time may not materialize
  - ⇒ Taxation of payments
  - ⇒ Inflation's effect on purchasing power of payments
  - ⇒ Future remainder value and the charitable effect of the gift plan
- ➢ Fees and expenses
  - ⇒ Asset management and trust administration fees
  - ⇒ Custody fees
  - ⇒ Mutual fund expense ratios (especially with manager's own funds)
  - ⇒ Loads and 12b-1 fees
  - ⇒ Broker fees
  - ⇒ Tax preparation or other miscellaneous fees

- ❖ Assessing the Options
  - ➢ Invest in separate portfolios holding individual stocks and bonds
  - ➢ Invest planned gifts in the endowment
  - ➢ Invest planned gifts in commingled pools
  - ➢ Invest in separate portfolios holding mutual funds

- ❖ Ingredients of an Effective Planned Gift Investment Program
  - ➢ Investment Policy Statement
    - ⇒ Approved by the Board or Board Investment Committee
    - ⇒ Consonant with institution's endowment policy
  - ➢ Competent and Experienced Investment Management
    - ⇒ Understands needs of both income beneficiaries and remainderman
    - ⇒ Tax-aware investor
    - ⇒ Responsive to individual needs
    - ⇒ Strong reporting and analytical focus
  - ➢ Complete Disclosure Plan
    - ⇒ Provide donors the information they need to make gift plan choices
    - ⇒ Continue to disclose issues throughout the life of the plan
  - ➢ Stewardship
    - ⇒ Frequent reporting to beneficiaries
    - ⇒ Checking in to assess changes in family's financial situation
    - ⇒ Fix errors promptly and don't repeat them
  - ➢ Establish Clear Oversight Responsibility
    - ⇒ Planned giving office
    - ⇒ Treasurer's office
    - ⇒ Board or investment committee

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Appendix

UNIFORM PRUDENT INVESTOR ACT

PREFATORY NOTE

Over the quarter century from the late 196O's the investment practices of fiduciaries experienced significant change. The Uniform Prudent Investor Act (UPIA) undertakes to update trust investment law in recognition of the alterations that have occurred in investment practice. These changes have occurred under the influence of a large and broadly accepted body of empirical and theoretical knowledge about the behavior of capital markets, often described as "modem portfolio theory."

This Act draws upon the revised standards for prudent trust investment promulgated by the American Law Institute in its Restatement (Third) of Trusts: Prudent Investor Rule (1992) [hereinafter Restatement of Trusts 3d: Prudent Investor Rule; also referred to as 1992 Restatement].

Objectives of the Act. UPIA makes five fundamental alterations in the former criteria for prudent investing. All are to be found in the Restatement of Trusts 3d: Prudent Investor Rule.

(1) The standard of prudence is applied to any investment as part of the total portfolio, rather than to individual investments. In the trust setting the term "portfolio" embraces all the trust's assets. UPIA § 2(b).

(2) The tradeoff in all investing between risk and return is identified as the fiduciary's central consideration. UPIA § 2(b).

(3) All categoric restrictions on types of investments have been abrogated; the trustee can invest in anything that plays an appropriate role in achieving the risk/retum objectives of the trust and that meets the other requirements of prudent investing. UPIA § 2(e).

(4) The long familiar requirement that fiduciaries diversify their investments has been integrated into the definition of prudent investing. UPIA § 3.

(5) The much criticized former rule of trust law forbidding the trustee to delegate investment and management functions has been reversed. Delegation is now permitted, subject to safeguards. UPIA § 9.

Literature. These changes in trust investment law have been presaged in an extensive body of practical and scholarly writing. See especially the discussion and reporter's notes by Edward C. Halbach, Jr., in Restatement of Trusts 3d: Prudent Investor Rule (1992); see also Fdward C. Halbach, Jr., Trust Investment Law in the Third Restatement, 27 Real Property, Probate & Trust J. 407 (1992); Bevis Longstreth, Modem Investment Management and the Prudent Man Rule (1986); Jeffrey N. Cordon, The Puzzling Persistence of the Constrained Prudent Man Rule, 62 N.Y.U.L. Rev. 52 (1987); John H. Langbein & Richard A. Posner, The Revolution in Trust Investment Law, 62 A.B.A.J. 887 (1976); Note, The Regulation of Risky Investments, 83 Harvard L. Rev. 603 (1970). A succinct account of the main findings of modern portfolio theory, written for lawyers, is Jonathan R. Macey, An Introduction to Modem Financial Theory (1991) (American College of Trust & Estate Counsel Foundation). Aleading introductory text on modem portfolio theory is R.A. Brealey, An Introduction to Risk and Return from Common Stocks (2d ed. 1983).

Legislation. Most states have legislation governing trust-investment law. This Act promotes uniformity of state law on the basis of the new consensus reflected in the Restatement of Trusts 3d: Prudent Investor Rule. Some states have already acted. California, Delaware, Georgia, Minnesota, Tennessee, and Washington revised their prudent investor legislation to emphasize the total-portfolio standard of care in advance of the 1992 Restatement. These statutes are extracted and discussed in Restatement of Trusts 3d: Prudent Investor Rule § 227, reporter's note, at 60-66 (1992).

Drafters in Illinois in 1991 worked from the April 1990 "Proposed Final Draft" of the Restatement of Trusts 3d: Prudent Investor Rule and enacted legislation that is closely modeled on the new Restatement. 760 ILCS § S/5(prudent investing); and § 5/5.1 (delegation)(1992). As the Comments to this Uniform Prudent Investor Act reflect, the Act draws upon the Illinois statute in several sections. Virginia revised its prudent investor act in a similar vein in 1992. Virginia Code § 2645.1 (prudent investing) (1992). Florida revised its statute in 1993. Florida Laws, ch. 93- 2.57, amending Florida Statutes § 518.11 (prudent investing) and creating § 518.112 (delegation). New York legislation drawing on the new Restatement and on a preliminary version of this Uniform Prudent Investor Act was enacted in A994. N.Y. Assembly Bill 11683- B, Oh. 609 (1994), adding Estates, Powers and Trusts Law § 11- 2.3 (Prudent Investor Act).

Remedies. This Act does not undertake to address issues of remedy law or the computation of damages in trust matters. Remedies are the subject of a reasonably distinct body of doctrine. See generally Restatement (Second) of Trusts § § 197- 226A (1959) [hereinafter cited as Restatement of Trusts 2d; also referred to as 1959 Restatement].

Implications for charitable and pension trusts. This Act is centrally concerned with the investment responsibilities arising under the private gratuitous trust, which is the common vehicle for conditioned wealth transfer within the family. Nevertheless, the prudent investor rule also bears on charitable and pension trusts, among others. "In making investments of trust funds the trustee of a charitable trust is under a duty similar to that of the trustee of a private trust." Restatement of Trusts 2d § 389 (1959).

The Employee Retirement Income Security Act (ERISA), the federal regulatory scheme for pension trusts enacted in 1974, absorbs trust-investment law through the prudence standard of ERISA 5 404(a)(1)(B), 29 U.S.C. § 1104(a). The Supreme Court has said: "ERISA's legislative history confirms that the Act's fiduciary responsibility provisions `codif[y] and mak[e] applicable to [ERISA] fiduciaries certain principles developed in the evolution of the law of trusts'."*Firestone Tire & Rubber Cc. v Bruch*, 489 U.S. 101, 110 -11 (1989) (footnote omitted).

Other fiduciary relationships. The Uniform Prudent Investor Act regulates the investment responsibilities of trustees. Other fiduciaries -such as executors, conservators, and guardians of the property-sometimes have responsibilities over assets that are governed by the standards of prudent investment. It will often be appropriate for states to adapt the law governing investment by trustees under this Act to these other fiduciary regimes, taking account of such changed circumstances as the relatively short duration of most executorships and the intensity of court supervision of conservators and guardians in some jurisdictions. The present Act does not undertake to adjust trust- investment law to the special circumstances of the state schemes for administering decedents' estates or conducting the affairs of protected persons.

Although the Uniform Prudent Investor Act by its terms applies to trusts and not to charitable corporations, the standards of the Act can be expected to inform the investment responsibilities of directors and officers

of charitable corporations. As the 1992 Restatement observes, "the duties of the members of the governing board of a charitable corporation are generally similar to the duties of the trustee of a charitable trust." Restatement of Trusts 3d: Prudent Investor Rule § 379, Comment b, at 190 (1992). See also id. § 389, Comment b, at 190 -91 (absent contrary statute or other provision, prudent investor rule applies to investment of funds held for charitable corporations).

UNIFORM PRUDENT INVESTOR ACT
SECTION 1. PRUDENT INVESTOR RULE.

(a) Except as otherwise provided in subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this [Act].
(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust.

Comment
This section imposes the obligation of prudence in the conduct of investment functions and identifies further sections of the Act that specify the attributes of prudent conduct.

Origins. The prudence standard for trust investing traces back to *Harvard College v Amory,* 26 Mass. (9 Pick .) 446 (1830). Trustees should "observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested." Id. at 461.

Prior legislation. The Model Prudent Man Rule Statute (1942), sponsored by the American Bankers Association, undertook to codify the language of the *Amory* case. See Mayo A. Shattuck, The Development of the Prudent Man Rule for Fiduciary Investment in the United States in the Twentieth Century, 12 Ohio State L.J. 491, at 501 (1951); for the text of the model act, which inspired many state statutes, see id. at 508- 09. Another prominent codification of the *Amory* standard is Uniform Probate Code § 1 -302 (1969), which provides that "the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another...."

Congress has imposed a comparable prudence standard for the administration of pension and employee benefit trusts in the Employee Retirement Income Security Act (ERISA), enacted in 1974. § 404(a)(1)(B), 29 U.S.C. § 1104(a), provides that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and... with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims...."

Prior restatement. The Restatement of Trusts 2d (1959) also tracked the language of the *Amory* case: "In making investments of trust funds the trustee is under a duty to the beneficiary . . . to make such investments and only such investments as a prudent man would make of his own property having in view the preservation of the estate and the amount and regularity of the income to be derived.... "Restatement of Trusts 2d § 221 (1959).

Objective standard. The concept of prudence in the judicial opinions and legislation is essentially relational or comparative. It resembles in this respect the "reasonable person" rule of tort law. A prudent trustee behaves as other trustees similarly situated would behave. The standard is, therefore, objective

rather than subjective. Sections 2 through 9 of this Act identify the main factors that bear on prudent investment behavior.

Variation. Almost all of the rules of trust law are default rules, that is, rules that the settlor may alter or abrogate. Subsection (b) carries forward this traditional attribute of trust law. Traditional trust law also allows the beneficiaries of the trust to excuse its performance, when they are all capable and not misinformed. Restatement of Trusts 2d § 216 (1959).

SECTION 2. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) general economic conditions;

(2) the possible effect of inflation or deflation;

(3) the expected tax consequences of investment decisions or the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(4) the expected total return from income and the appreciation of capital;

(5) other resources of the beneficiaries;

(6) needs for liquidity, regularity of income, and preservation or appreciation of capital; and an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(a) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(b) A trustee may invest in any kind of property or type of investment consistent with the standards of this [Act].

(c) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

Comment

Section 2 is the heart of the Act. Subsections (a), (b), and (c) are patterned loosely on the language of the Restatement of Trusts 3d: Prudent Investor Rule § 221 (1992), and on the 1991 Illinois statute, 768 § ILCS 5/5a (1992). Subsection (f) is derived from Uniform Probate Code § 7-302(1%9).

Objective standard. Subsection (a) of this Act carries forward the relational and objective standard made familiar in the *Amory* case, in earlier prudent investor legislation, and in the Restatements. Early formulations of the prudent person rule were sometimes troubled by the effort to distinguish between the standard of a prudent person investing for another and investing on his or her own account. The language of subsection (a), by relating the trustee's duty to "the purposes, terms, distribution requirements, and other circumstances of the trust," should put such questions to rest. The standard is the standard of the prudent investor similarly situated.

Portfolio standard. Subsection (b) emphasizes the consolidated portfolio standard for evaluating investment decisions. An investment that might be imprudent standing alone can become prudent if undertaken in sensible relation to other trust assets, or to other non-trust assets. In the trust setting the term "portfolio" embraces the entire trust estate.

Risk and return. Subsection (b) also sounds the main theme of modern investment practice, sensitivity to the risk/return curve. See generally the works cited in the Prefatory Note to this Act, under "Literature." Returns correlate strongly with risk, but tolerance for risk varies greatly with the financial and other circumstances of the investor, or in the case of a trust, with the purposes of the trust and the relevant circumstances of the beneficiaries. A trust whose main purpose is to support an elderly widow of modest means will have a lower risk tolerance than a trust to accumulate for a young scion of great wealth.

Subsection (b) of this Act follows Restatement of Trusts 3d: Prudent Investor Rule § 227(a), which provides that the standard of prudent investing "requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation but in the context of the trust portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the trust."

Factors affecting investment. Subsection (c) points to certain of the factors that commonly bear on risk/return preferences in fiduciary investing. This listing is nonexclusive. Tax considerations, such as preserving the stepped up basis on death under Internal Revenue Code § 1014 for low -basis assets, have traditionally been exceptionally important in estate planning for affluent persons. Under the present recognition rules of the federal income tax, taxable investors, including trust beneficiaries, are in general best served by an investment strategy that minimizes the taxation incident to portfolio turnover. See generally Robert H. Jeffrey & Robert D. Amott, Is Your Alpha Big Enough to Aver Its Taxes?, Journal of Portfolio Management 15 (Spring 1993).

Another familiar example of how tax considerations bear upon trust investing: In a regime of pass-through taxation, it may be prudent for the trust to buy lower yielding tax-exempt securities for high-bracket taxpayers, whereas it would ordinarily be imprudent for the trustees of a charitable trust, whose income is tax exempt, to accept the lowered yields associated with tax-exempt securities.

When tax considerations affect beneficiaries differently, the trustee's duty of impartiality requires attention to the competing interests of each of them.

Subsection (c)(8), allowing the trustee to take into account any preferences of the beneficiaries respecting heirlooms or other prized assets, derives from the Illinois act, 760 ILCS § 5/S(a)(4) (1992).

Duty to monitor. Subsections (a) through (d) apply both to investing and managing trust assets.

"Managing" embraces monitoring, that is, the trustee's continuing responsibility for oversight of the suitability of investments already made as well as the trustee's decisions respecting new investments.

Duty to investigate. Subsection (d) carries forward the traditional responsibility of the fiduciary investor to examine information likely to bear importantly on the value or the security of an investment- for example, audit reports or records of title. E .g ., *Estate of Collins,* 12 Cat. App. 3d 663, 139 Cat. Rptr. 644 (1977) (trustees lent on a junior mortgage on unimproved real estate, failed to have land appraised, and accepted an unaudited fmancial statement; held liable for losses).

Abrogating categoric restrictions. Subsection 2(e) clarifies that no particular kind of property or type of investment is inherently imprudent. Traditional trust law was encumbered with a variety of categoric exclusions, such as prohibitions on junior mortgages or new ventures. In some states legislation created so-called "legal lists" of approved trust investments. The universe of investment products changes incessantly. Investments that were at one time thought too risky, such as equities, or more recently, futures, are now used in fiduciary portfolios. By contrast, the investment that was at one time thought ideal for trusts, the long-term bond, has been discovered to import a level of risk and volatility-in this case, inflation risk-that had not been anticipated.
Accordingly, section 2(e) of this Act follows Restatement of Trusts 3d: Prudent Investor Rule in abrogating categoric restrictions. The Restatement says: "Specific investments or techniques are not per se prudent or imprudent. The riskiness of a specific property, and thus the propriety of its inclusion in the trust estate, is not judged in the abstract but in terms of its anticipated effect on the particular trust's portfolio." Restatement of Trusts 3d: Prudent Investor Rule § 227, Comment g, at 24 (1992). The premise of subsection 2(e) is that trust beneficiaries are better protected by the Act's emphasis on close attention to risk/return objectives as prescribed in subsection 2(b) than in attempts to identify categories of investment that are per se prudent or imprudent.

The Act impliedly disavows the emphasis in older law on avoiding "speculative" or "risky" investments. Low levels of risk may be appropriate in some trust settings but inappropriate in others. It is the trustee's task to invest at a risk level that is suitable to the purposes of the trust.
The abolition of categoric restrictions against types of investment in no way alters the trustee's conventional duty of loyalty, which is reiterated for the purposes of this Act in Section 5. For example, were the trustee to invest in a second mortgage on a piece of real property owned by the trustee, the investment would be wrongful on account of the trustee's breach of the duty to abstain from self-dealing, even though the investment would no longel automatically offend the former categoric restriction against fiduciary investments in junior mortgages.

Professional fiduciaries. The distinction taken in subsection (f) between amateur and professional trustees is familiar law. The prudent investor standard applies to a range of fiduciaries, from the most sophisticated professional investment management firms and corporate fiduciaries, to family members of minimal experience. Because the standard of prudence is relational, it follows that the standard for professional trustees is the standard of prudent professionals; for amateurs, it is the standard of prudent amateurs. Restatement of Trusts 2d § 174 (1959) provides: "The trustee is under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has or procures his appointment as trustee by representing that he has greater skill than that of a man of ordinary prudence, he is under a duty to exercise such skill." Case law strongly supports the concept of the higher standard of care for the trustee representing itself to be expert or professional. See Annot., Standard of Care Required of Trustee Representing Itself to Have

Expert Knowledge or Skill, 91 A.L.R. 3d 904 (1979) & 1992 Supp. at 48- 49.

The Drafting Committee declined the suggestion that the Act should create an exception to the prudent investor rule (or to the diversification requirement of Section 3) in the case of smaller trusts. The Committee believes that subsections (b) and (c) of the Act emphasize factors that are sensitive to the traits of small trusts; and that subsection (f) adjusts helpfully for the distinction between professional and amateur trusteeship. Furthermore, it is always open to the settlor of a trust under Section l(b) of the Act to reduce the trustee's standard of care if the settlor deems such a step appropriate. The official comments to the 1992 Restatement observe that pooled investments, such as mutual funds and bank common trust funds, are especially suitable for small trusts. Restatement of Trusts 3d: Prudent Investor Rule § 227, Comments *h, m,* at 28, 51; reporter's note to Comment g, id. at 83.

Matters of proof. Although virtually all express trusts are created by written instrument, oral trusts are known, and accordingly, this Act presupposes no formal requirement that trust terms be in writing. When there is a written trust instrument, modem authority strongly favors allowing evidence extrinsic to the instrument to be consulted for the purpose of ascertaining the settlor 's intent. See Uniform Probate Code § 2- 601 (1990), Comment Restatement (Third) of Property: Donative Transfers (Preliminary Draft No. 2, ch. 11, Sept. 11, 1992).

SECTION 3. DIVERSIFICATION.
A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, becauseof special circumstances, the purposes of the trust are better served without diversifying.

Comment
The language of this section derives from Restatement of Trusts 2d § 228 (1959). ERISA insists upon a comparable rule for pension trusts. ERISA § 404(a)(1)(C), 29 U.S.C. § 1104(a)(1)(C). Case law overwhelmingly supports the duty to diversify. See Annot., Duty ofTrustee to Diversify Investments, and Liability for Failure to Do So, 24 A.L.R. 3d 730 (1%9) & 1992 Supp. at 78- 79.
The 1992 Restatement of Trusts takes the significant step of integrating the diversification requirement into the concept of prudent investing. Section 227(b) of the 1992 Restatement treats diversification as one of the fundamental elements of prudent investing, replacing the separate section 228 of the Restatement of Trusts 2d. The message of the 1992 Restatement, carried forward in Section 3 of this Act, is that prudent investing ordinarily requires diversification.
Circumstances can, however, overcome the duty to diversify. For example, if a tax -sensitive trust owns an under-diversified block of low-basis securities, the tax costs of recognizing the gain may outweigh the advantages of diversifying the holding. The wish to retain a family business is another situation in which the purposes of the trust sometimes override the conventional duty to diversify.

Rationale for diversification. "Diversification reduces risk... [because] stock price movements are not uniform. They are imperfectly correlated. This means that if one holds a well diversified portfolio, the gains in one investment will cancel out the losses in another." Jonathan R. Macey, An Introduction to Modem Financial Theory 20 (American College of Trust and Estate Counsel Foundation, 1991). For example, during theArab oil embargo of 1973, international oil stocks suffered declines, but the shares of domestic oil producers and sal companies benefitted. Holding a broad enough portfolio allowed the investor to set off, to some extent, the losses associated with the embargo.

Modem portfolio theory divides risk into the categories of "compensated" and "uncompensated" risk. The

risk of owning shares in a mature and well- managed company in a settled industry is less than the risk of owning shares in a start-up high technology venture. The investor requires a higher expected return to induce the investor to bear the greater risk of disappointment associated with the start-up firm. This is compensated risk-the firm pays the investor for bearing the risk. By contrast, nobody pays the investor for owning too few stocks. The investor who owned only international oils in 1973 was running a risk that could have been reduced by having configured the portfolio differently-to include investments in different industries. His is uncompensated risk-nobody pays the investor for owning shares in too few industries and too few companies. Risk that can be eliminated by adding different stocks (or bonds) is uncompensated risk. The object of diversification is to minimize this uncompensated risk of having too few investments. "As long as stock prices do not move exactly together, the risk of a diversified portfolio will be less than the average risk of the separate holdings ." R.A. Brealey, An Introduction to Risk and Return from Common Stocks 103 (2d ed. 1983).

There is no automatic rule for identifying how much diversification is enough. The 1992 Restatement says: "Significant diversification advantages can be achieved with a small number of well-selected securities representing different industries.... Broader diversification is usually to be preferred in trust investing," and pooled investment vehicles "make thorough diversification practical for most trustees." Restatement of Trusts 3d: Prudent Investor Rule § 227, General Note on Comments *e -h,* at 11 (1992). See also Macey, supra,at 23 -24; Brealey, supra, at 111- 13.

Diversifying by pooling. It is difficult for a small trust fund to diversify thoroughly by constructing its own portfolio of individually selected investments. Transaction costs such as the round-lot (100 share) trading economies make it relatively expensive for a small investor to assemble a broad enough portfolio to minimize uncompensated risk. For this reason, pooled investment vehicles have become the main mechanism for facilitating diversification for the investment needs of smaller trusts.

Most states have legislation authorizing common trust funds; see 3 Austin W. Scott & William F. Fratcher, The Law of Trusts § 227.9, at 463 -65 n.26 (4th ed. 1988) (collecting citations to state statutes). As of 1992, 35 states and the District of Columbia had enacted the Uniform Common Trust Fund Act (UCffA) (1938), overcoming the rule against commingling trust assets and expressly enabling banks and trust companies to establish common trust funds. 7 Uniform Laws Ann. 1992 Supp. at 130 (schedule of adopting states). The Prefatory Note to the UCTFA explains: "The purposes of such a common or joint investment fund are to diversify the investment of the several trusts and thus spread the risk of loss, and to make it easy to invest any amount of trust funds quickly and with a small amount of trouble." 1 Uniform Laws Ann. 402 (1985).

Fiduciary investing in mutual funds. Trusts can also achieve diversification by investing in mutual funds. See Restatement of Trusts 3d: Prudent Investor Rule, § 227, comment *m*, at 99 -100 (1992) (endorsing trust investment in mutual funds). ERISA § 401(b)(1), 29 U.S.C. § 1101(b)(1), expressly authorizes pension trusts to invest in mutual funds, identified as securities "issued by an investment company registered under the Investment Company Act of 1940....

SECTION 4. DUTIES AT INCEPTION OF TRUSTEESHIP.
Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this [Act].

Comment
Section 4, requiring the trustee to dispose of unsuitable assets within a reasonable time, is old law, codified in Restatement of Trusts 3d: Prudent Investor Rule § 229 (1992), lightly revising Restatement of Trusts 2d § 2.30 (1959). The duty extends as well to investments that were proper when purchased but subsequently become improper. Restatement ofTrusts 2d § 231 (1959). The same standards apply to successor trustees, see Restatement of Trusts 2d § 196 (1959).

The question of what period of time is reasonable turns on the totality of factors affecting the asset and the trust. The 1959 Restatement took the view that "[0]rdinarily any time within a year is readable, but under some circumstances a year may be too long a time and under other circumstances a trustee is not liable although he fails to effect the conversion for more than a year." Restatement of Trusts 2d § 230, comment *b* (1959). The 1992 Restatement retreated from this rule of thumb, saying, "No positive rule can be stated with respect to what constitutes a reasonable time for the sale or exchange ofsecurities." Restatement ofTrusts 3d: Prudent Investor Rule § 229, comment b (1992).

The criteria and circumstances identified in Section 2 of this Act as bearing upon the prudence of decisions to invest and manage trust assets also pertain to the prudence of decisions to retain or dispose of inception assets under this section.

SECTION 5. LOYALTY.
A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

Comment
The duty of loyalty is perhaps the most characteristic rule of trust law, requiring the trustee to act exclusively for the beneficiaries, as opposed to acting for the trustee 's own interest or that of third parties. The language of Section 4 of this Act derives from Restatement of Trusts 3d: Prudent Investor Rule § 170 (1992), which makes minute changes in Restatement of Trusts 2d § 170 (1959).

The concept that the duty of prudence in trust administration, especially in investing and managing trust assets, entails adherence to the duty of loyalty is familiar. ERISA § 404(a)(1)(B), 29 § 1104(a)(1)(B), extracted in the Comment to Section 1 of this Act, effectively merges the requirements of prudence and loyalty. A fiduciary cannot be prudent in the conduct of investment functions if the flduciary is sacrificing the interests of the beneficiaries.

The duty of loyalty is not limited to settings entailing self-dealing or conflict of interest in which the trustee would benefit personally from the trust. "The trustee is under a duty to the beneficiary in administering the trust not to be guided by the interest of any third person. Thus, it is improper for the trustee to sell trust property to a third person for the purpose of benefiting the third person rather than the trust." Restatement of Trusts 2d § 170, comment *q*, at 371 (1959).

No form of so-called "social investing" is consistent with the duty of loyalty if the investment activity entails sacrificing the interests of trust beneficiaries- for example, by accepting below- market returns-in favor of the interests of the persons supposedly benefited by pursuing the particular social cause. See, e. g ., John H. Langbein & Richard Posner, Social Investing and the Law of Trusts, 79 Michigan L. Rev. 72, 96 -97 (1980) (collecting authority). For pension trust assets, see generally Ion D. Lanoff, The Social Investment of Private Pension Plan Assets: May it Be Done Lawfully under ERISA?, 31 Labor LJ. 387

(1980). Commentators supporting social investing tend to concede the overriding force of the duty of loyalty. They argue instead that particular schemes of social investing may not result in below- market returns. See, e. g ., Marcia O'Brien Hylton, "Socially Responsible" Investing: Doing Good Versus Doing Well in an Inefficient Market, 42 American U.L.

Rev. 1 (1992). In 1994 the Department of Labor issued an Interpretive Bulletin reviewing its prior analysis of social investing questions and reiterating that pension trust fiduciaries may invest only in conformity with the prudence and loyalty standards of ERISA §§ 403-404. Interpretive Bulletin 94 -1, 59 Fed. Regis. 32606 (Jun. 22, 1994), to be codified as 29 CFR § 2509.94-1. The Bulletin reminds fiduciary investors that they are prohibited from "subordinat[ing] the interests of participants and beneficiaries in their retirement income to unrelated objectives."

SECTION 6. IMPARTIALITY.
If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

Comment
The duty of impartiality derives from the duty of loyalty. When the trustee owes duties to more than one beneficiary, loyalty requires the trustee to respect the interests of all the beneficiaries. Prudence in investing and administration requires the trustee to take account of the interests of all the beneficiaries for whom the trustee is acting, especially the conflicts between the interests of beneficiaries interested in income and those interested in principal.

The language of Section 6 derives from Restatement of Trusts 2d § 183 (1959); see also id., § 2.32. Multiple beneficiaries may be beneficiaries in succession (such as life and remainder interests) or beneficiaries with simultaneous interests (as when the income interest in a trust is being divided among several beneficiaries).

The trustee's duty of impartiality commonly affects the conduct of investment and management functions in the sphere of principal and income allocations. This Act prescribes no regime for allocating receipts and expenses. The details of such allocations are commonly handled under specialized legislation, such as the Revised Uniform Principal and Income Act (which is presently under study by the Uniform Law Commission with a view toward further revision).

SECTION 7. INVESTMENT COSTS.
In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

Comment

Wasting beneficiaries' money is imprudent. In devising and implementing strategies for the investment and management of trust assets, trustees are obliged to minimize costs.

The language of Section 1 derives from Restatement of Trusts 2d § 188 (1959). The Restatement of Trusts 3d says: "Concems over compensation and other charges are not an obstacle to a reasonable course of action using mutual funds and other pooling arrangements, but they do require special attention by a trustee.... [I]t is important for trustees to make careful cost comparisons, particularly among similar products of a specific type being considered for a trust portfolio." Restatement of Trusts 3d: Prudent Investor Rule § 221, comment *m*, at 58 (1992).

SECTION 8. REVIEWING COMPLIANCE.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Comment

This section derives from the 1991 Illinois act, 760 ILCS 5/5(a)(2) (1992), which draws upon Restatement of Trusts 3d: Prudent Investor Rule § 227, comment *b*, at 11 (1992). Trustees are not insurers. Not every investment or management decision will turn out in the light of hindsight to have been successful. Hindsight is not the relevant standard. In the language of law and economics, the standard is ex ante, not ex post.

SECTION 9. DELEGATION OFINVESTMENTAND MANAGEMENT FUNCTIONS.

(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:
   (1) selecting an agent;
   (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
   (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(a) In performing a delegated function, an agent owes a duty to the rust to exercise reasonable care to amply with the terms of the delegation.

(b) A trustee who complies with the requirements of subsection (a) is ot liable to the beneficiaries or to the trust for the decisions or actions of the gent to whom the function was delegated.

(c) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

Comment

This section of the Act reverses the much-criticized rule that forbade trustees to delegate investment and management functions. The language of this section is derived from Restatement of Trusts 3d: Prudent Investor Rule § 171 (1992), discussed infra, and from the 1991 Illinois act, 760 ILCS § 5/5.1(b), (c) (1992).

Former law. The former non-delegation rule survived into the 1959 Restatement: "The trustee is under a

duty to the beneficiary not to delegate to others the doing of acts which the trustee can reasonably be required personally to perform." The rule put a premium on the frequently arbitrary task of distinguishing discretionary functions that were thought to be non-delegable from supposedly ministerial functions that the trustee was allowed to delegate. Restatement of Trusts 2d § 171 (1959).

The Restatement of Trusts 2d admitted in a comment that "There is not a clear-cut line dividing the acts which a trustee can properly delegate from those which he cannot properly delegate." Instead, the comment directed attention to a list of factors that "may be of importance : (1) the amount of discretion involved; (2) the value and character of the property involved; (3) whether the property is principal or income; (4) the proximity or remoteness of the subject matter of the trust; (5) the character of the act as one involving professional skill or facilities possessed or not possessed by the trustee himself." Restatement of Trusts 2d § 171, comment d (1959). The 1959 Restatement further said: "A trustee cannot properly delegate to another power to select investments." Restatement of Trusts 2d § 171, comment *h* (1959).

For discussion and criticism of the former rule see William L. Gory & Craig B. Bright, The Delegation of Investment Responsibility for Endowment Funds, 14 Columbia L. Rev. 201 (1974); John H. Langbein & Richard A. Posner, Market Funds and Trust- Investment Law, 1976 American Bar Foundation Research J. 1, 18- 24.

The modem trend to favor delegation. The trend of subsequent legislation, culminating in the Restatement of Trusts 3d: Prudent Investor Rule, has been strongly hostile to the non-delegation rule. See John H. Langbein, Reversing the Non-delegation Rule of Trust-Investment Law, 59 Missouri L. Rev. 105 (1994).

The delegation rule of the Uniform Trustee Powers Act. The Uniform Trustee Powers Act (1964) effectively abrogates the non-delegation rule. It authorizes trustees "to employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.... " Uniform Trustee Powers Act § 3(24), 7B Uniform Laws Ann. 743 (1985). The Act has been enacted in 16 states, see "Record of Passage of Uniform and Model Acts as of September 30, 1993," 1993 -94 Reference Book of Uniform Law Commissioners (unpaginated, following page 111) (1993).

UMIFA's delegation rule. The Uniform Management of Institutional Funds Act (1972) (UMIFA), authorizes the governing boards of eleemosynary institutions, who are trustee-like fiduciaries, to delegate investment matters either to a committee of the board or to outside investment advisors, investment counsel, managers, banks, or trust companies. UMIFA 5 5, 7A Uniform Laws Ann. 705 (1985). UMIFA has been enacted in 38 states, see "Record of Passage of Uniform and Model Acts as of September 30, 1993," 1993-94 Reference Book of Uniform Law Commissioners (unpaginated, following page 111) (1993).

ERISA's delegation rule. The Employee Retirement Income Security Act of 1974, the federal statute that prescribes fiduciary standards for investing the assets of pension and employee benefit plans, allows a pension or employee benefit plan to provide that "authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers.... ERISA § 403(a)(2), 29 U.S.C. § 1103(a)(2). Commentators have explained the rationale for ERISA's encouragement of delegation:

ERISA... invites the dissolution of unitary trusteeship.... ERISA's fractionation of traditional trusteeship reflects the complexity of the modem pension trust. Because millions, even billions of dollars can be involved, great care is required in investing and safekeeping plan assets. Administering such plans-computing and honoring benefit entitlements across decades of employment and retirement-is also a complex business.... Since, however, neither the sponsor nor any other single entity has a comparative advantage in performing all these functions, the tendency has been for pension plans to use a variety of specialized providers. A consulting actuary, a plan administration firm, or an insurance company may oversee the design of a plan and arrange for processing benefit claims. Investment industry professionals manage the portfolio (the largest plans spread their pension investments among dozens of money management firms). John H. Langbein & Brace A. Wolk, Pension and Employee Benefit Law 496 (1990).

The delegation rule of the 1992 Restatement. The Restatement of Trusts 3d: Prudent Investor Rule (1992) repeals the non-delegation rule of Restatement of Trusts 2d § 171 (1959), extracted supra, and replaces it with substitute text that reads: § 171. Duty with Respect to Delegation. A trustee has a duty personally to perform the responsibilities of trusteeship except as a prudent person might delegate those responsibilities to others. In deciding whether, to whom, and in what manner to delegate fiduciary authority in the administration of a trust, and thereafter in supervising agents, the trustee is under a duty to the beneficiaries to exercise fiduciary discretion and to act as a prudent person would act in similar circumstances.

Restatement of Trusts 3d: Prudent Investor Rule § 171 (1992). The 1992 Restatement integrates this delegation standard into the prudent investor rule of section 227, providing that "the trustee must... act with prudence in deciding whether and how to delegate to others.... "Restatement of Trusts 3d: Prudent Investor Rule § 227(c) (1992).

Protecting the beneficiary against unreasonable delegation. There is an intrinsic tension in trust law between granting trustees broad powers that facilitate flexible and efficient trust administration, on the one hand, and protecting trust beneficiaries from the misuse of such powers on the other hand. A broad set of trustees ' powers, such as those found in most lawyer-drafted instruments and exemplified in the Uniform Trustees' Powers Act, permits the trustee to act vigorously and expeditiously to maximize the interests of the beneficiaries in a variety of transactions and administrative settings. Trust law relies upon the duties of loyalty and prudent administration, and upon procedural safeguards such as periodic accounting and the availability of judicial oversight, to prevent the misuse of these powers. Delegation, which is a species of trustee power, raises the same tension. If the trustee delegates effectively, the beneficiaries obtain the advantage of the agent's specialized investment skills or whatever other attributes induced the trustee to delegate. But if the trustee delegates to a knave or an incompetent, the delegation can work harm upon the beneficiaries.

Section 9 of the Uniform Prudent Investor Act is designed to strike the appropriate balance between the advantages and the hazards of delegation. Section 9 authorizes delegation under the limitations of subsections (a) and (b). Section S(a) imposes duties of care, skill, and caution on the trustee in selecting the agent, in establishing the terms of the delegation, and in reviewing the agent's compliance.

The trustee's duties of care, skill, and caution in framing the terms of the delegation should protect the beneficiary against over-broad delegation. For example, a trustee could not prudently agree to an investment management agreement containing an exculpation clause that leaves the trust without recourse against reckless mismanagement. Leaving one's beneficiaries remediless against willful wrongdoing is

inconsistent with the duty to use care and caution in formulating the terms of the delegation. This sense that it is imprudent to expose beneficiaries to broad exculpation clauses underlies both federal and state legislation restricting exculpation clauses, e. g ., ERISA §§ 404(a)(1)(D), 410(a), 29 U.S.C. §§ 1104(a)(1)(D), lllqa); New York Est. Powers Trusts Law § 11- 1.7 (McKinney 1967).

Although subsection (c) of the Act exonerates the trustee from personal responsibility for the agent's conduct when the delegation satisfies the standards of subsection 9(a), subsection 9(b) makes the agent responsible to the trust. The beneficiaries of the trust can, therefore, rely upon the trustee to enforce the terms of the delegation.

Costs. The duty to minimize costs that is articulated in Section 1 of this Act applies to delegation as well as to other aspects of fiduciary investing. In deciding whether to delegate, the trustee must balance the projected benefits against the likely costs. Similarly, in deciding how to delegate, the trustee must take costs into account. The trustee must be alert to protect the beneficiary from "double dipping." If, for example, the trustee's regular compensation schedule presupposes that the trustee will conduct the investment management function, it should ordinarily follow that the trustee will lower its fee when delegating the investment function to an outside manager.

SECTION 10. LANGUAGE INVOKING STANDARD OF [ACT].

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this [Act]: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

Comment

This provision is taken from the Illinois act, 760 ILCS § 5/5(d) (1992), and is meant to facilitate incorporation of the Act by means of the formulaic language commonly used in trust instruments.

SECTION 11. APPLICATION TO EXISTING TRUSTS.

This [Act] applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this [Act] governs only decisions or actions occurring after that date.

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among the States enacting it.

SECTION 13. SHORT TITLE.

This [Act] may be cited as the "[Name of Enacting State] Uniform Prudent Investor Act."

SECTION 14. SEVERABILITY.

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

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I Introduction

Donors can be divided into two categories: those who receive tax benefits from gifts and those who don't. The "don't" category seems to be growing. Fewer and fewer Americans – only 25% – itemize income tax deductions each year, and many who do itemize lose the tax benefits of the charitable deduction because their incomes are too high or because they have "hit the ceiling" for charitable deductions. If some in Congress have their way, all gift deductions would disappear one day (if a flat tax were enacted, for example). How do gift planners plan when working with "deduction challenged" donors? What planned gifts work just fine, independent of tax rewards? How can charities gird for the possibility that charitable deductions go the way of the dinosaur?

II Why Tax Incentives Matter in Philanthropy

No one seriously suggests that Americans decide to make charitable contributions because of tax incentives. But tax savings plainly encourage and enable donors to make *larger* gifts than they might have contemplated -- especially in the arena of major gifts and planned gifts. In some cases, sweeteners such as capital gains tax avoidance or tax-free income prompt donors to make irrevocable life income gifts or outright gifts of appreciated assets, rather than defer significant contributions until death. The famous $1 billion pledge, made by communications entrepreneur Ted Turner a few years ago, was made with highly appreciated securities – which one can infer took tax considerations into account.

Major gifts and planned gifts typically are made from assets, not income, and bring into the arena professional advisers, who may no longer recommend, or acquiesce in, gifts that have no tax rewards. A $10,000, $50,000 or $1 million gift proposal might not even reach the discussion stage without tax incentives. The cautious adviser might say: "Just leave the charity something in your will."

Tax savings from the estate tax charitable deduction sometimes are what first "get the attention" of individuals who initially hadn't planned to make charitable bequests. Some estate planners will tell wealthy clients: "You can leave your estate in three ways – to your family, to charitable organizations and to the federal government (in the form of estate taxes) . . . *and you must choose two out of the three.* "Charitable estate planning" becomes even more appealing when clients realize they can "share" the benefits of a bequest between family and charity through charitable remainder and lead trusts and other deferred bequests.

III Lifetime Giving: Working with Deduction-Challenged Donors

We have seen "virtual repeal" over the years of the income tax charitable deduction for people who do not itemize deductions (roughly three-fourths of taxpayers) and for high-income donors who are subject to the 3% cutbacks in itemized deductions and/or cannot deduct because of the 30%/50% ceilings. A modest deduction for nonitemizers was vetoed in the round of tax legislation that occurred last fall.

A. General Gift Planning Strategies for the Deduction-Challenged

Four Ways to Reduce Taxes

1. **Deduct**
2. **Convert**
3. **Defer**
4. **Divert**

Structuring planned gifts without income tax charitable deductions means "working with what's left" of the traditional four-part tax-reduction formula: deduct, convert, defer, divert, plus searching for other types of tax savings and incentives.

1. Remaining tax incentives for outright gifts where income tax charitable deductions are unavailable.

   a. Gift tax charitable deductions
   b. Estate tax charitable deductions
   c. Generation-skipping transfer tax deductions
   d. State income tax charitable deductions (where applicable)
   e. State "death tax" savings
   f. Avoidance of taxes on capital gains (or ordinary income)

2. Incentives for "life income" gifts without the income tax charitable deduction.

   a. All the tax advantages listed above for outright gifts
   b. Relief from burdens and risks of managing and investing assets (transferred to charity or trustee)
   c. Avoidance of probate and satisfaction of other estate planning objectives
   d. Tax-free payments (from gift annuities) or possible tax-free interest from CRTs
   e. Diverting income to someone in a low tax bracket
   f. Deferring income until retirement
   g. Selling and reinvesting appreciated assets within the tax-free environment of a charitable remainder trust or pooled income fund

      (1) Marketable securities and real estate
      (2) Agricultural products, timber and other "ordinary income property" (PLR 9413020)
      (3) Violins and other tangible property (PLR 9452026)

   h. Other tax savings, such as self-employment tax

B. Strategies for Nonitemizers

Standard deductions are indexed for inflation and have become fairly hefty, especially for people of retirement age (our prime planned gift market). Here are the standard deductions for 2000:

	Unmarried	Joint Returns
Basic	$4,400	$7,350
Over 65	$5,500	$9,050 (both spouses)

A married couple over 65 has a standard deduction of $9,050. Assuming their home mortgage is paid off, their only noncharitable deductions may be state and local taxes and perhaps some medical expenses. A $20,000 gift annuity for a couple aged 66 generates a $6,000 deduction – which may be insufficient to lift them above the $9,050 standard deduction, even with their other charitable contributions. The donors' only remaining tax benefit is annuity payments that are partly tax free or long-term capital gain. How can gift planning help these donors?

Get your deductions in a bunch. "Doubling up" on charitable deductions by pre-paying next year's annual contributions to one's house of worship, college, hospital or other charities is a traditional strategy. A 70-year-old widow who distributes $5,000 annually to various organizations instead gives these charities $10,000 every two years, preferably in appreciated securities. (Note that even nonitemizers benefit by giving appreciated securities.) She also sets up her gift annuities in years when she is "bunching" deductions. Another form of "bunching" that works in theory, anyway, is for the widow to transfer $100,000 in 5% tax-free bonds (or cash that can be used to purchase bonds) to a five-year reversionary lead trust that pays her charities $5,000 a year. She receives a lump-sum deduction of about $21,000 for five years of contributions and gets the bonds back in five years.

Boost gift annuity deductions by getting flexible. Our 66-year-old couple could boost their gift annuity from about $6,000 to more than $11,000 by deferring the first payout for 10 years. This technique becomes practical if the couple has the option of starting payments "early" using the flexible deferred annuity plan, under a schedule of reduced payout rates (PLR 9743054). See *Problem Solving With Gift Annuities,* David Wheeler Newman, page 346, proceedings of the 23rd Conference on Gift Annuities, and *Twelve Uncommon Things You Can Do with a Gift Annuity,* Frank Minton, page 475, Proceedings of the 12th Conference on Planned Giving.

Replace annual gifts with interest-free loans. Interest-free loans, repayable on demand, may be a way to "endow" a donor's annual contributions and restore tax savings to those who cannot use deductions. Donors would "lend their support" to the organization, making loans of 20 times their annual gifts. Charity earns 5% (or more) on the loan funds, replacing annual gifts. Here is an example:

Interest-Free Loans
To Charitable Organizations
Repayable on Demand

- **$250,000 maximum (per charity)**
- **No adverse tax consequences to donors or charities**
- **Should have some "non-tax" motivations**
- **Market: Retirees (mostly)**

Consider a nonitemizing retired couple who gives $30 a week to their house of worship (roughly $1,500 a year). They do not itemize and therefore can deduct nothing. Suppose the $1,500 is generated by a $25,000 bond or long-term certificate of deposit paying 6% annual interest. The couple must pay tax on the interest, even though they give it to a qualified charity. What the couple should do is to cut out the middle man (the tax collector). They might lend $25,000 to the religious organization, interest free and repayable on demand.

The organization would keep the interest produced by the $25,000, saving the couple the trouble of writing a check -- and of reporting $1,500 of interest on their tax returns. They reduce their taxable income (and adjusted gross income) just as surely as if they had used a $1,500 charitable deduction. And they can always get their money back if they need it. At their deaths the loan would be forgiven and they will have made a fine "bequest" to their house of worship...without having to make or change a will.

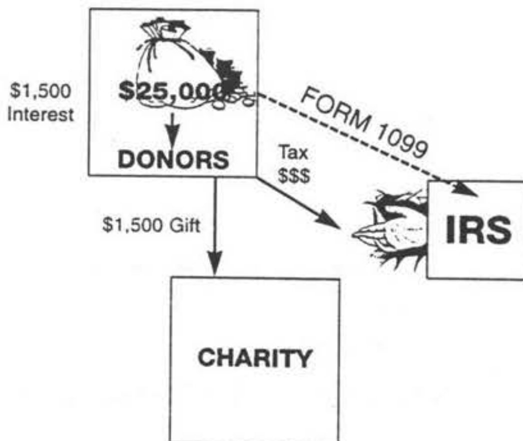
Dependent on Rates

Interest Income as % of all income

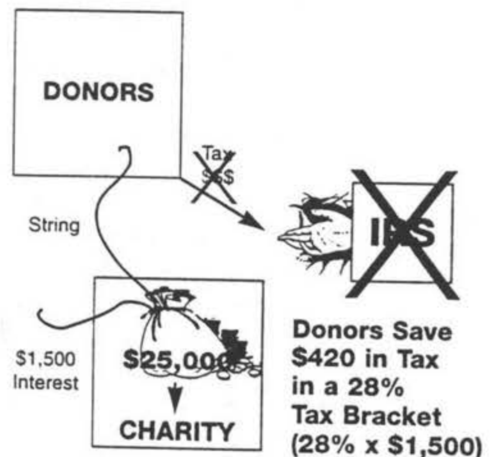
Ages 15-34	3.4%
Ages 25-44	2.5%
Ages 45-64	7.2%
Ages 65+ and up	22.4%
Those over $100,000 income	28.6%

Source: AARP, 1991 Survey

Gifts Without Tax Benefits



Donors Make Interest-Free Loans



How much to lend? Here is one formula for showing a donor the amount that should be transferred to charity in order to replace annual gifts with an interest-free demand loan: Divide the donor's annual gift by the interest rate the donor had been receiving on the funds. In the case of the married couple discussed earlier, $1,500 (their annual gift) divided by .06 (interest rate they had been receiving) equals $25,000 (size of loan needed). A simpler rule of thumb, however, is for donors simply to lend 20 times their annual gift (5% income assumption). Charity may earn more or less than what the donor was receiving. But that may be less important to the charity than the fact that a testamentary gift now is likely.

Advantages? Donors can neatly wrap their future lifetime support and an estate gift into one package (assuming the loan is forgiven at death). They are freed from having to write checks every year and the charity need not worry about the donor forgetting to make an annual contribution. Donors can increase the annual contributions, if they wish, simply by adding to the loan amount. Loans that will be forgiven at death should not go through probate and do not require making or changing a will. Donors can always reclaim their loan funds before death, in the event of a "rainy day."

All the foregoing advantages represent perfectly good *non-tax* reasons for making interest-free loans to charity. Non-tax reasons are, of course, the reasons that will prompt our donors to make loans, but the donor/lender may also realize an incidental side benefit: income tax savings (and avoidance of state and federal "death taxes"). Income tax savings would be available to donors who:

(1) Do not itemize deductions under the current tax structure;

(2) Are unable to use contribution deductions under the current tax structure because they have "maxed out" deductions under the contribution ceilings and five-year carryovers or lose deductions under the 3% cutback rules.

Savings occur because income earned on funds on loan to charity is not taxable to the donor, so long as the donor does not lend more than $250,000 per charity (Temp. Reg. §1.7872-5T).

How do you market interest-free loans? One gift planning officer who received an interest-free loan from a retired CPA (who came up with the idea) commented it was easiest to explain the concept to other donors one-on-one. For example:

> "We had an interesting gift recently from an accountant. Like you, he doesn't itemize his deductions. He was receiving $1,000 a year from a CD, getting taxed on it, then sending us the $1,000. When the CD matured it occurred to him he should 'cut out the middle man' and make a loan to us of $20,000. Now we will earn the $1,000 a year (5%) and he won't get taxed on it. He still gets full credit as a member of the $1,000 club and we will return his $20,000 any time he wishes. But he's told us to keep the money after his death."

Planned giving is full of agricultural analogies. With "life income gifts" donors are said to "give the fruit tree but keep the fruit." Charitable lead trust donors can "give the fruit but keep the tree" (a loan, of sorts). With interest-free loans donors can give the fruit and *lend* the tree -- a middle-income person's lead trust.

Note: One Chicago charity markets charitable loans as "conditional gifts" – a term they feel carries no bad connotations that might be associated with the word "loan." Charity's role in this arrangement is actually more like a trustee than a borrower.

If donors who plan to forgive loans at death are so inclined, they can purchase life insurance to replace the forgiven loans in their estates, using future tax savings to help cover the premiums.

Other Issues

Cash only. Loans seem to work only with cash – to "lend" stocks or other property to charity donors need a charitable lead trust.

Gift credit? A program for interest-free loans should be arranged to allow annual gift credit to both the donor and to the people who run your annual campaign. Donors would retain their status in a donor club, for example, and interest earned on the conditional gift should be counted as an annual gift. The gift planning officer should be credited with having arranged a deferred gift – a gift that should have more significance than a bequest because it is more likely to materialize.

How to invest? A major selling point of an interest-free loan is that donors can reclaim their principal. Investment of loan funds therefore requires careful planning, with an eye to liquidity. Where will the money come from if the donor/lender asks for her loan back? Can the organization repay out of endowment, if the loan is tied up in a long-term investment?

State/Federal Regulation. Regulating authorities, if pressed, probably could find some reason to regulate charitable gift loans (conditional gifts) – just as with gift annuities. As always, check with legal counsel, but don't go asking for trouble. (An Oregon college recently asked the state department of finance if its charitable loan program was subject to state regulation. The department not only said yes, you're regulated, it told the college the department didn't think much of this loan program and to please cut it out.) Charity should take the position that it serves as trustee of these funds, not as a borrower or issuer of a security.

Tax issues for charity? Loans that are exempt from the imputed interest rules under Temp. Reg. Sec. 1.7872-5T are free of tax consequences for both the lender and the borrower. So we doubt the IRS would give charities any trouble about interest-free loans. The only tax problem one can imagine is that the IRS would view future income generated from conditional gifts as debt-financed income under Code Sec. 514 and impose income tax on charity. If the IRS took that position, charity could either return the donor's loan or just decide to pay the tax. The prospect of a future gift at the donor's death may justify the cost.

C. Donors who have hit the 50%/30% ceilings

Donors sometimes are unable to use charitable deductions because they have exceeded the 30%/50%-of-AGI ceilings and have carried over substantial excess deductions from prior years. One tax strategy for these donors is to divert investment income from their high

tax brackets to charitable organizations, reducing the donors' adjusted gross income, as well as taxable income. Two techniques may be helpful:

Nongrantor charitable lead trusts. Donor transfers income-producing assets or cash to a lead trust that will pay the donor's annual contributions, reduce donor's taxable income and later distribute assets to heirs at cut-rate transfer tax costs.

The charitable lead trust is the reverse of the charitable remainder trust. Instead of paying income to a private beneficiary during the term of the trust, with the remainder then passing to charity, the lead trust pays income to charity during the trust term, with the contents of the trust then passing to a private beneficiary (or returning to the donor).

Interest-free charitable loans. The charitable lead trust is, in a way, a "loan" to charitable organizations. A true interest-free loan to charity can accomplish the same diversion of income from the donor's tax bracket to charity, up to $250,000 per organization. Unlike charitable lead trusts, which can be funded with securities or even rental real estate, only cash may be used to make a charitable loan.

Several years ago a home for the aging in New York was working with a wealthy donor who wanted to contribute his condominium in Florida. Unfortunately, the man had so many deduction carryovers from past years that he would never be able to deduct any new gifts.

Solution? The donor instead decided to make eight $25,000 interest-free loans to the charity, which he would forgive in future years after carried over deductions were used up. Loan amounts are deductible in the year they are forgiven. But the donor enjoyed immediate tax savings, just like the nonitemizing donors described above, because he was no longer taxed on the income earned by the $200,000.

The joy of reducing AGI. The income formerly earned on the $200,000 was removed from the donor's adjusted gross income (AGI), not just his taxable income, which is an important point.

AGI is the income a donor has before claiming the standard deduction or itemized deductions. It is difficult for most taxpayers to find ways to reduce AGI. For 2000, individuals who have AGI above $128,950 start losing some of their itemized deductions. The deduction cutback is equal to 3% of AGI above $128,950, with a maximum reduction of 80% of affected deductions (which include charitable deductions). Personal exemptions also are phased out for individuals with high AGI, starting at $128,950 for single taxpayers, $193,400 for joint returns.

Interest-free loans, repayable on demand, are a good way for high-income donors to reduce AGI, thus saving income taxes but also easing the deduction/exemption cutbacks.

Suppose you have a high-income, unmarried donor who makes annual gifts of $10,000 a year to your organization. In 2000 she will lose both itemized deductions and some of her personal exemptions because her AGI exceeds $128,950. Suppose further that the $10,000 was generated by a financial account paying 5% interest. We suggest to the donor that she lend $200,000 to our organization on January 1, interest-free, repayable on demand. She reduces her taxable income by $10,000 for 2000, just as if she had

continued making outright contributions. But she also has reduced her *adjusted gross* income by $10,000, which restores some itemized deductions (3% x $10,000 = $300) and 8% of her $2,450 personal exemption ($196). The extra savings are not huge, but they are a bonus that may induce the donor to arrange a gift that also provides a benefit at death, assuming she agrees to make the loan cancellable upon her death.

Reducing AGI may even help some retired donors who are taxed on social security benefits because their "outside" incomes are too high.

D. High-income donors and the 3% deduction cutback

High-income donors currently can lose up to 80% of their charitable deductions if they are subject to the 3% cutbacks in itemized deductions for persons with adjusted gross incomes over $128,950 (2000 level). The cutback actually applies to several other deductions: home mortgage interest, state and local income taxes and real estate taxes and miscellaneous expenses in excess of the 2% floor.

Many donors mistakenly believe their charitable deductions will be reduced. In general, donors have substantial itemized deductions other than charitable contributions, such as state and local taxes, mortgage interest, property taxes and miscellaneous itemized deductions. It's fair to suggest that the deduction reduction will come out of the latter group of deductions, rather than contributions. That may seem like a philosophical question, but it really isn't. The donor has no choice or discretion in claiming deductions for taxes or mortgage interest. Donors who suffer "deduction reduction" often would lose deductions even if they claimed no charitable gifts at all.

Example: Suppose Michael has 2000 AGI of $1,128,950. His maximum deduction cutback would be $30,000 (3% x $1,000,000). $30,000 is 80% of $37,500, which is the magic number in advising Michael, on December 31, 2000, whether he will lose any charitable deduction if he writes a check to an organization for $10,000. If Michael, on the last day of 2000, has accumulated deductions from state and local taxes, mortgage interest and miscellaneous expenses totaling $37,500, his charitable gift won't be affected; the deduction cutback has already been absorbed by other deductions. Assuming Michael is a resident of Illinois, which has a flat tax of 3% of AGI, he is already up to $30,000. If real estate taxes, mortgage interest and miscellaneous add up to another $7,500, his charitable deductions will be out of harm's way. What if Michael doesn't have another $7,500 in deductions? His cutback without the gift would be capped at 80% of $30,000 ($24,000) and if he gives $10,000, another $6,000 reduction would result – coming out of his $10,000 gift.

Here's a simple formula to provide to donors and advisers:

1. Estimate the donor's AGI for the current year ____________
2. Subtract exemption amount ($128,950 for 2000) ____________
3. Multiply Line 2 by 3% (.03) (cutback before 80% test) ____________
4. Divide Line 3 by 80% (.8) (noncharitable deductions needed) ____________

If the donor will have deductions for state/local tax, mortgage interest and miscellaneous deductions equal to or exceeding the Line 4 amount, deductions for gifts to charity will be unaffected. (Last year's Form 1040 may be a guide to estimating 2000 deductions). Donors who live in states that have no income tax, such as Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming, may lose some deductions unless they have large real estate taxes and/or mortgage interest (see www.intelligenttaxes.com for details on state taxes). But most high-income donors will have plenty of other deductions to "soak up" the cutback. Here are some deduction averages for 1996, gleaned from IRS tax data for "high income" taxpayers (returns with gross income of $200,000 or more):

Mortgage Interest	**State/Local Taxes Paid**	**Miscellaneous Above 2% AGI**	**Charitable Contributions**
$18,974	$35,803	$16,191	$18,851

If a donor had the deductions shown above, how large an income could he or she have before the charitable deduction is affected? $2,021,430. Here's how the math works out: Mortgage interest, taxes and miscellaneous add up to $70,968. Working backward on the above worksheet, you would multiply $70,968 by 80%, equaling $56,774.40. Divide $56,774.40 by 3% = $1,892,480, plus $128,950 = $2,021,430 of AGI that a donor would need to have before worrying about loss of contribution deductions. Let's check our work, using the worksheet:

1. Estimate the donor's AGI for the current year	$2,021,430
2. Subtract exemption amount ($128,950 for 2000)	1,892,480
3. Multiply Line 2 by 3% (cutback before 80% test)	$ 56,774
4. Divide Line 3 by 80% (noncharitable deductions needed)	$ 70,968

Suppose a donor in the above example had zero deductions for state and local taxes and the same $18,851 charitable contribution. He or she would lose part of the charitable deduction. In the revised example, the affected deductions, including charitable, total $54,016, of which 80% would be $43,213. The noncharitable deductions absorb $35,165 of the $43,213 cutback, meaning $8,048 of the charitable deduction is lost.

Strategies: Donors who truly are affected by the cutbacks might consider charitable lead trusts and interest-free loans as a way to reduce taxable income without charitable deductions (see discussion above). Or they might postpone major contributions until a year when they have more noncharitable deductions or a lower adjusted gross income and less exposure to the deduction cutbacks.

Charities and donors should add to their legislative wish list repeal of the 3% cutback as it affects charitable contributions. The threat from this cutback may be primarily from the *perception* by high income donors that their charitable deductions will be reduced. We've heard, anecdotally, of tax advisers warning clients not to make contributions because they would receive no tax benefits, when in fact, tax rewards were fully available, as shown in the examples above. It's a tax rule that probably provides little benefit to federal coffers relative to the harm it may be doing to charitable contributions.

CONCLUSION

Income tax incentives for charitable giving seem unlikely to improve, given current trends. Gift planners can achieve "back door" tax savings for deduction-challenged donors, through the techniques described above, but the future of gift planning may be even more testamentary-oriented than it is today.

Testamentary giving certainly would be the future of planned giving under radical tax reform that eliminated all deductions. Wills and beneficiary designations are where the real money has been all along, of course, but planning opportunities would dwindle, and gift planning might not be as much fun as before. Donors will continue to make large contributions, but the timing will change from lifetime to deathtime transfers.

Charities ought to place additional emphasis on the non-tax aspects of charitable estate planning and gifts that leave donors in control of their assets during life. Approach planned giving as a **problem solving** endeavor – become SERVICE ORIENTED. If they have not done so already, organizations should establish or strengthen:

1. Wills and bequest programs that also encourage various beneficiary designations and other nonprobate transfers.

2. Estate planning services: seminars, publications and counseling that educate donors about:

    a. Thoughtful distribution of their estates

    b. Protection of beneficiaries through trusts and other arrangements

    c. Avoidance of probate

    d. Living wills and powers of attorney for healthcare

    e. Plans for money management and trusteeship in the event of disability, such as living trusts, durable general powers of attorney and life income gifts

    f. Testamentary "life income gifts" and lead trusts.

EXHIBITS

1. Temp. Reg. Sec. 1.7872-5T
2. Interest-free loan, for stated term.
3. Interest-free loan, repayable on demand.

EXHIBIT 1

Temporary Regulation Sec. 1.7872-5T

1.7872-5T. Exempted loans (temporary).---(a) In general---(1) General rule. Except as provided in paragraph (a) (2) of this section, notwithstanding any other provision of section 7872 and the regulations thereunder, section 7872 does not apply to the loans listed in paragraph (b) of this section because the interest arrangements do not have a significant effect on the Federal tax liability of the borrower or the lender.

(2) No exemption for tax avoidance loans. If a taxpayer structures a transaction to be a loan described in paragraph (b) of this section and one of the principal purposes of so structuring the transaction is the avoidance of Federal tax, then the transaction will be recharacterized as a tax avoidance loan as defined in section 7872(c)(1)(D).

(b) List of exemptions. Except as provided in paragraph (a) of this section, the following transactions are exempt from section 7872:

* * *

(9) Gift loans to a charitable organization (described in section 170(c), but only if at no time during the taxable year will the aggregate outstanding amount of loans by the lender to that organization exceed $250,000. Charitable organizations which are effectively controlled, within the meaning of section 1.482-1(a)(1), by the same person or persons shall be considered one charitable organization for purposes of this limitation.

* * *

(c) special rules---* * *

(3) Loans without significant tax effect. Whether a loan will be considered to be a loan the interest arrangements of which have a significant effect on any Federal tax liability of the lender or the borrower will be determined according to all of the facts and circumstances. Among the factors to be considered are---

(i) whether items of income and deduction generated by the loan offset each other;

(ii) the amount of such items;

(iii) the cost to the taxpayer of complying with the provisions of section 7872 if such section were applied; and

(iv) any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the applicable Federal rate and a payment by the lender to the borrower. [Temporary Reg. 1.7872-5T.]

EXHIBIT 2 (Term Loan)

PROMISSORY NOTE
$25,000.00

__________, New York
December 24, 1999

For value received, the undersigned promises to pay to the order of (name of lender) at the Central Office of the undersigned located at (address of charity) or at such other place as the holder may from time to time appoint, the sum of Twenty-Five Thousand Dollars ($25,000.00) without interest, in one payment due on December 31, 2009.

The liability of the undersigned on this Note shall terminate upon the date of occurrence of any one of the following events, whichever shall occur first: payment in full, the receipt by the undersigned of the original note marked "canceled" and signed by the original payee, or the death of the original payee.

This note is No. 4 of a series of 4 notes, all in the same principal amount and without interest but maturing on successive annual dates. Upon default in the payment of any note in this series, the remaining notes shall, at the option of the holder hereof and without notice, become immediately due and payable.

The undersigned represents and acknowledges that it is a charitable organization within the aggregate outstanding amount of loans by (donor/lender) to the undersigned as of the date of this note is Two Hundred Thousand Dollars ($200,000).

The undersigned hereby waives presentment, demand for payment, notice of dishonor, and all other notices or demands in connection with the delivery, acceptance, performance, default or endorsement of this note.

(NAME OF CHARITY)

____
Signature of Officer

EXHIBIT 3

Promissory Note for Interest-Free Demand Loan

Chicago, Illinois
July 1, 2000

On demand, the Chicago Home for Unwed Grandmothers promises to pay ______________ (LENDER) the principal sum of Fifty Thousand Dollars ($50,000.00) without interest, payable at 500 North Dearborn Street, Chicago, Illinois, said principal sum representing repayment of a loan made to the Chicago Home for Unwed Grandmothers by (LENDER) July 1, 2000. However, this loan shall be canceled and the obligation to repay any principal shall be wholly forgiven if (LENDER) has not demanded repayment of principal before the date of death of (LENDER). Any remaining loan principal shall then become the absolute property of the Chicago Home for Unwed Grandmothers and shall be used exclusively for its charitable purposes.

In witness whereof, the undersigned has hereunto set his hand (and seal) on the date first written above.

The Chicago Home for Unwed Grandmothers

BY: Rev. A. Dimsdale, President

(seal)

Marc Carmichael, J.D.
R&R Newkirk Company
8695 S. Archer Avenue, #10
Willow Springs, Illinois 60480
800-342-2375
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MarcCarmichael@msn.com
www.rrnewkirk.com

American Council on Gift Annuities
24th Conference
April 26-28, 2000 • St. Louis, Missouri

FUNDAMENTALS OF CHARITABLE GIFT ANNNUITIES AND CHARITABLE REMAINDER TRUSTS

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CHARITABLE GIFT ANNUITIES

Definition

A contractual arrangement between a donor and a charitable organization where the donor transfers cash or property in exchange for a life income for himself/herself and/or other persons.

Tax Consequences

The donor may claim an income tax charitable deduction for the value of the "gift" portion of the property transferred in return for the annuity.

If the donor uses his/her own property and names someone other than their spouse as a joint or survivor annuitant, the donor has made a gift which may be a taxable gift by the donor, not of the charitable remainder value but of the present value of the income stream to the individual. $10,000 annual gift tax exclusion available if gift of income is a present interest.

A portion of each payment received by the annuitant is a tax-free return of principal, for the remainder of the annuitant's life expectancy.

If appreciated property is used to purchase the gift annuity, a portion of each payment received by the annuitant will be treated as capital gain income.

Donor can create a testamentary gift annuity for another person.

Donor can purchase a deferred payment gift annuity with annuity payments to start at a later date. Income tax charitable deduction, based on the annuitant's age at the time payments start, is deductible in the year the annuity is purchased.

If donor creates a charitable gift annuity funded with appreciated property for another individual, and donor is not an income beneficiary, donor will have to recognize capital gains in the year of the gift.

Charity's Obligations

Charity's entire assets back obligation to make annuity payments.

Charity is responsible for filing IRS form 1099R (prior to 1991, W-2P form was

filed annually.) with the IRS, and for providing a copy to annuitant(s).

The remaining value of the annuitant's right to payments for life is adjusted annually as part of the annual audit and is listed as a liability.

In some states, charity is required to maintain a minimum reserve fund for gift annuities and to comply with other regulatory requirements. In some states, only certain types of charities may issue gift annuities. In still other states, gift annuities cannot be issued. (Indiana law exempts charitable gift annuities from regulation by the Department of Insurance; *Indiana Code 27-1-12.4-2.*)

The Philanthropy Protection Act of 1995 (P.L. 104-62) requires that, if funds contributed in exchange for gift annuities are commingled with other funds, a disclosure "describing the material terms of the operation of such fund," including how the funds are invested, must be provided at the time of donation. (The law provided that such a disclosure be provided to past donors no later than March 7, 1996.)

The Philanthropy Protection Act of 1995 and the Model Standards for the Charitable Gift Planner prohibit the payment of commissions on charitable gift annuities.

Funding Considerations

Easily arranged with cash or readily marketed appreciated securities.

Valuable tangible personal property can be used (coins, stamp collections, art work, collectibles) so long as easily sold for income production.

Unproductive real property may be a problem if can't readily turn into income production, unless charity can afford to pay annuity from other funds until income produced.

Some charities will allow a donor to fund a charitable gift annuity with the remainder interest in a residence or farm; in such cases charity must pay the annuity from other funds until the life tenant's death because the life tenant has the right to use the property during his/her lifetime.

CHARITABLE GIFT ANNUITIES

Benefits:

1. Fixed, guaranteed (as long as charity is solvent) income for life. The July 1999 recommended rates exceeded 7% at age 66 for a single life and for a two-life where the younger age was 69 and the older age was 78 or more.

2. A portion of the annual annuity is taxed as tax-free return of investment for the rest of the annuitant's or annuitants' life expectancy. Typically increases after-tax yield by about 1%. For annuities funded with cash, half or more of the annual annuity can be tax-free for an older beneficiary, and not counted in the calculation of whether 50% or 80% of social security benefits are taxable.

3. For annuities funded with appreciated property, the portion of the long-term capital gain attributable to the gift portion of the annuity is never taxed. The portion of the long-term capital gain attributable to the annuity is reported as reported as long-term capital gain income spread over the annuitant's or annuitants' life expectancy. If long- term capital gain income is tax-favored (either taxed at a lower bracket or only partially taxable), this type of income is preferable to ordinary income.

4. Produce a higher charitable value for tax purposes than pooled income funds or charitable remainder unitrusts at the same payout rate (same value as charitable remainder annuity trusts).

5. Ability to defer income to date certain in the future by using deferred payment charitable gift annuities.

6. Simple contractual agreement that is easy to understand; not expensive to establish or for legal review.

7. Can fund with tangible personal property (coin collections, collectibles, etc. without delay in taking itemized charitable deduction for charitable value).

8. Much smaller amount needed to fund a charitable gift annuity than a charitable remainder trust; standard minimum is $5,000, but varies by charity.

Disadvantages:

1. Fixed, guaranteed (as long as charity is solvent) income for life. Income loses purchasing power as cost of living increases. Cumulative effect of even modest inflation can substantially reduce purchasing power after 10 years.

2. If wish to use to make gifts to several charitable organizations, typically must fund separate annuities with each charity. Some community foundations issue gift annuities with eventual value split among several permanent funds held by the community foundation.

3. Some charities will only accept cash or marketable securities to fund annuities, no real estate or tangible personal property accepted.

4. Inability to have more than 2 annuitants per contract.

5. Minimum age requirements for annuitants by some charities.

6. Relatively low annuity rates for younger annuitants (5.7% for single life age 45, 5.5% for two-life annuity with younger age 45 and older person).

Charitable Gift Annuity (Fixed Income) Donor Profiles

1. 75+ year old donors who could afford to make an outright gift, but are concerned about future income needs and want something they can "count on."

2. Donors who want a fixed income and like the simplicity of the charitable gift annuity agreement and reporting.

3. Donors who want a fixed income but have a modest amount to contribute (not enough for a charitable remainder annuity trust).

4. Donors who want a nominal income they can "count on" and budget for.

5. Donors who want to name an older individual like a parent(s) as the annuitant(s) as a way of providing financial assistance (gift tax implications possible) and like the simplicity of the charitable gift annuity. Charitable deduction and rate of income much higher for older generation annuitants.

6. Donors who simply want to replace a fixed income (such as income from a

Certificate of Deposit) and make a future charitable contribution at the same time.

7. Donors with low-yield appreciated assets who want higher current income without incurring long-term capital gains taxes.

8. Donors who want to use one or more deferred payment gift annuities as a source of retirement income.

9. Donors who want to make more strategically advantageous gifts than simply a bequest in a will, and who want to enjoy the favorable tax implications during life, knowing the remainder will ultimately pass to a favored charity.

10. Donors who like to make repeat gifts as income and financial situations permit, e.g. to roll over low yield CD's as they mature, or to use a portion of a mandatory retirement plan withdrawal to fund a CGA for guaranteed lifetime income and a charitable deduction to offset some of the income inclusion of the withdrawal.

Assets to Fund Charitable Gift Annuities

Cash --	easy and produces the largest amount of tax-free income.
Marketable Securities --	as the appreciation % of the fair market value increases, the amount of the annual income which will be taxed as long-term capital gain also increases and the amount of tax-free income decreases.
Privately-held or traded Securities --	generally don't produce much in dividends, so must be sold for proceeds to invest. In 1997, only sub-chapterC stock could be used. Since 1998, sub-chapter S stock can be accepted, but dividends *and* sale proceeds will be taxable income (UBTI) to the Charity. Should probably consider reducing recommended rate to make up loss of proceeds due to taxation. Corporation can redeem the shares from the Charity as an alternative to selling to someone else.
Collectibles --	must be sold for proceeds to invest. Difference between appraised value and actual sale price can be huge (50% reduction possible) - think "retail" and "wholesale." Proceed very cautiously. Should probably greatly reduce the recommended rate to make-up difference between appraised value and proceeds. Should always review the donor's appraisal prior to acceptance since appraised value usually used for charitable calculation. If high, obtain an independent appraisal and negotiate on final value. Should always evaluate marketability before accepting collectible and unless a quick sale is very likely, delay first payment date for 6 months or longer; may even wish to consider a deferred payment gift annuity (first payment more than a year after the date of the gift).

Real Estate -- can be a great asset to fund a charitable gift annuity, but unless rental or commercial property, must be sold for proceeds to invest. Any mortgage on the property reduces the fair market value and causes the donor to recognize some long-term capital gain. If the property has been depreciated and other than straight-line depreciation claimed, the fair market value must be reduced by the "excess depreciation." Should probably reduce the recommended rate to cover reduction in proceeds due to sale costs. Should always review the donor's appraisal prior to acceptance since appraised value usually used for charitable calculation. If high, obtain an independent appraisal and negotiate on final value. Should always evaluate marketability before accepting real estate and unless a quick sale is very likely, delay first payment date for 6 months or longer; may even wish to consider a deferred payment gift annuity (first payment more than a year after the date of the gift). As with all gifts of real estate, environmental assessment should be done before acceptance.

Management of Charitable Gift Annuities

Choices:

Internal management -- software programs now available to simplify management, such as "Gift Annuity Organizer" from PG Calc, Cambridge, Massachusetts.

Bank or trust company -- fee for service arrangement. Should include preparation of annual 1099's. Charity oversight needed to assure proper management. Charity ultimately responsible to the IRS.

Independent administration companies -- Renaissance Trust Company and competitors. Fee for service arrangement. Should include preparation of annual 1099's. Charity oversight needed to assure proper management. Charity ultimately responsible to the IRS.

Investment of Charitable Gift Annuities

Choices:

Separate investment of each gift annuity -- no spreading of risk and smaller amounts generally mean lower yields available; no disclosure statement required.

Invest gift annuities as part of the endowment pool -- investment objectives may for an endowment pool generally less oriented to higher yields, so may not be suitable; disclosure statement required.

All gift annuities part of separate "gift annuity pool" -- investment objectives can be tailored to higher yield needs; disclosure statement required.

Reinsure by purchasing commercial annuity product -- annuitants must be insurable, expensive to reinsure, fewer companies willing to reinsure, and charity is still on the hook to the annuitants if commercial annuity fails; no disclosure statement required.

Sample Disclosure Statement as Required by *The Philanthropy Protection Act of 1995*

If contributions for charitable gift annuities are commingled for investment, you must provide a disclosure statement about the operation and investment prior to execution of the gift annuity agreement. Here is a sample statement:

> "You have indicated an interest in making a contribution to _______________ Charity in exchange for a charitable gift annuity. A charitable gift annuity provides guaranteed payments in the amount indicated in the charitable gift annuity agreement to the named annuitants for life.
>
> These payments are a general obligation of the __________ Charity and they are backed by all of the Charity's assets. On ______________ (indicate date) the total invested Charity assets exceeded $ _________ and they are invested in _______________________________(describe the general types of investments held by the Charity such as stocks, bonds, money market funds, and federal obligations, but do not list assets by name).
>
> The _______________ Charity was established in _____________ (indicate date). Responsibility for governing the Charity is vested in a Board of ___________ comprised of ________ persons, who are __________________________ (describe the manner of selection).
>
> Common investment funds managed by the Charity are exempt from registration requirements of the federal securities laws, pursuant to the exemption for collective investment funds and similar funds maintained by charitable organizations under the *Philanthropy Protection Act of 1995* (P.L.104-62). Information in this statement is provided to you in accordance with the requirements of that Act."

CHARITABLE REMAINDER TRUSTS

1. Charitable remainder trusts are statutorily created (Code section 664 and the regulations thereunder) exceptions to the partial interest rule. They are irrevocable instruments, except for amendments that maintain the trust's qualification as a CRT.

2. There are two versions of CRTs -- charitable remainder annuity trusts, which pay at least annually an annuity amount equal to at least 5% of the initial fair market value of the trust assets (a fixed amount which never changes), and charitable remainder unitrusts, which pay at least annually a unitrust amount equal to at least 5% of value of the trust assets revalued annually (a variable amount which changes as the value of the assets increase or decrease).

3. Both CRTs are individual entities for tax purposes, with a trust document required (the IRS issued sample trust documents in Rev. Proc. 89-21, 90-32, 90-30 and 90-31. See also Revenue Ruling 92-57, I.R.B. 1992-29,4 modifying Revenue Rulings 82-165, 1982-1 C.B. 117 and Revenue Ruling 88-81, 1988-2 C.B. 127. The earlier rulings contained erroneous sample language on the method to be used for computing deferred payments for testamentary unitrusts.). Each CRT has a federal ID number, one or more Trustees, and files form annual tax returns, including form 1041.

4. The donor can act as Trustee of CRTs. When hard-to-value assets (real estate, collectibles, closely held business interests) fund a CRT, an independent appraisal to document valuation must be obtained, and the appraised value documented and reported.

5. CRTs are tax-exempt trusts except to the extent they earn unrelated business taxable income, which can lead to the disqualification of the trust as a qualified CRT.

6. CRTs can be created for the life or lives of the named annuity/unitrust income beneficiaries, or for a term of years not to exceed 20 years.

7. At the end of the trust term, the trust assets, including corpus and any accumulated income not owed to the beneficiary(ies) is distributed to the named charitable beneficiary(ies). The donor can retain the right in the trust document to substitute or add other qualified charitable organizations, and change the amount or percentage of the assets which each organization will receive. If such power is not retained in the initial trust, the choice of charitable remainder beneficiaries is deemed irrevocable.

8. Charitable remainder unitrusts can accept additional contributions. Many donors include pour-over provisions in their testamentary documents to add to CRTs created during

lifetime. Charitable remainder annuity trusts cannot accept additional contributions because they are valued once, and therefore are usually the preferred vehicle for trusts funded with or invested in tax-exempt bonds.

9. Contributions of appreciated assets to fund CRTs do not result in the realization of long-term capital gains or the tax thereon for either the donor (contributions are neither sales nor exchanges of capital assets) or the trust (due to its tax-exempt status).

10. The tax character of the distributions of the annuity/unitrust beneficiaries is determined by the four-tier method (Code section 664(b)) with the following mandatory order of distribution:

    a. ordinary income
    b. capital gain income
    c. other income (tax-exempt income)
    d. return of corpus

11. The value of a spouse's interest in a CRT qualifies for both the unlimited marital gift and estate tax deductions, so long as spouses are the <u>only</u> non-charitable beneficiaries of the CRT. If another income beneficiary is named in addition to the spouse, only the charitable deduction applies, and the marital deduction is lost.

12. Mortgaged property cannot be used to fund a CRT, because it gives rise to unrelated business income and its tax, that will lead to the disqualification of the trust as a CRT.

13. CRTs are subject to the private foundation prohibitions against self-dealing, jeopardizing investments, excess business holdings and taxable expenditures (Code sections 4941, 4944, 4943, 4945).

14. CRT documents cannot restrict the Trustee from investing the trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets (Reg. Sec. 1.664-1(a)(3)). A CRT cannot mandate that the Trustee invest only in tax exempts.

15. Charitable remainder annuity trusts where there is a greater than 5% probability that the trust assets will be consumed in making the annuity payments are not qualified charitable remainder trusts for income, gift or estate tax purposes and are not tax-exempt trusts. This is known as the 5% probability test. Anytime the payout percentage exceeds the federal midterm rate in an annuity trust, the 5% probability test should be run. In such cases, except with elderly income beneficiaries or a fairly short term or years trust, it is likely there will be no deduction.

16. The older the age of the income beneficiaries at the time CRTs are established or additional contributions are transferred, the higher the charitable value portion of the total value transferred. Updated mortality tables are taken into account as part of the factors prescribed by the IRS for valuing such contributions as is the federal midterm rate, that changes monthly.

17. The minimum payout percentage is 5%. The higher the payout percentage selected, the lower the charitable value portion of the total value transferred. Higher payout percentages increases the value of the life beneficiary(ies)' interest in the trust, leading to a reduced charitable value.

18. The *Taxpayer Relief Act of 1997* provided that for specific dates as of June 1997, that the maximum payout rate for a qualified charitable remainder trust is 50%, and that the charitable value of a transfer to a charitable remainder trust must be at least 10% for a qualified contribution. These limitations apply also to additional contributions to unitrusts.

19. Funding charitable remainder trusts with highly-appreciated low-yield assets enables the donor to reduce the out-of-pocket cost of the eventual charitable gift due to the substantial charitable income tax deduction, the avoidance of long-term capital gains tax, and the ability to substantially increase their after-contribution lifetime income, as well as to enjoy other significant planning advantages. Such plans are particularly attractive as individuals enter retirement or during retirement.

20. There are three versions of charitable remainder unitrusts possible. The versions differ in terms of how the amount of income distributed to the lifetime beneficiaries is calculated:

    a. A "regular" unitrust distributes the stated percentage of the trust assets, revalued annually. This amount bears no relationship to the actual trust income earned during the period. If the trust does not earn sufficient income to make up the payments, the deficiency is taken from corpus. If the trust earns excess income, the excess is added to corpus.

    b. A "net-income" unitrust distributes the <u>lesser</u> of the stated percentage of the trust assets, revalued annually, <u>or</u> the actual net income earned. Such trusts never invade corpus to make the required unitrust payments.

    c. A "net-income" unitrust with "make-up provisions" distributes the <u>lesser</u> of the stated percentage of the trust assets, revalued annually

or the actual net income earned. Plus, excess income may be used to make-up deficiencies from earlier years. This version also protects the trust corpus from invasion, but maximizes the amount which can be distributed to the income beneficiaries during the trust term.

This type of unitrust is being created and purposely invested to reduce current income and increase growth in the years before retirement and to maximize income in the years immediately following retirement -- the typical income deferral plan for retirement. High income professionals in the 40's and 50's are using this type of plan to supplement their qualified retirement plans.

This type of plan has also been used by grandparents to help fund the college educations of young grandchildren. The trust is invested for growth initially, and before the grandchildren enter college, the portfolio is invested then for income.
This can yield more future income against a greatly grown balance, and can provide for make-up payments of deficiencies from prior years, as income each year permits.

21. A "net-income" type of unitrust can, provided appropriate language is included in the trust and upon certain conditions, be at some future time "flipped" to a "regular" unitrust. Make-up deficiencies are forfeited in a "flip" situation however. For trusts created before December 10, 1998, reformation of such "flip" trusts must be completed by June 30, 2000.

CHARITABLE REMAINDER TRUSTS

Benefits:

1. Most flexibility in amount and timing of receipt of lifetime income. Both fixed (annuity trust) and variable (unitrust) income possible. Possible to defer some or all income through use of a "net-income with make-up provisions" unitrust invested to defer income and maximize growth. So-called "retirement unitrusts" very popular; have been considered by IRS for possible revisions in regulations, but no adverse current position nor forewarned.

2. Use of the net-income unitrust allows for funding with an asset not currently producing income and allows for sale of the contributed asset by the trust at other than "fire-sale" price. With issuance of final regulations, "flip" unitrusts are possible under some conditions, with June 30, 2000 as the applicable date for some "flips" to be finalized. In "flip" unitrusts, the trust operates as a net-income trust until most or all of the nonliquid assets are sold, then flips to a regular payout unitrust after the sale. After the sale, any accumulated deficiencies cannot be made up.

3. Variable income from a unitrust offers better chance of keeping up with inflation and maintaining the purchase price of the lifetime income. As value of trust assets increases, fixed percentage payout produces more dollars. Likelihood of keeping up with inflation much greater if 5% payout chosen, then both excess income and growth in value maximize the growth of the value of the trust assets.

4. For individuals who want a larger layout percentage than realistic in current economy (6 to 7%) who believe interest rates will increase in the near future and don't mind reducing the charitable value for deduction purposes, using a net-income unitrust with a higher layout percentage (7, 8, 9%) may be attractive (of course charitable value will be less).

5. Flexibility in length of trust term. Trusts may last for the lifetime of one or more individuals, with either joint or consecutive payments. Trusts may last for a term of years, not to exceed 20 years. The trust term can also be a combination of lives and a term of years, e.g. parents for life then children or grandchildren for term.

6. Term of years trusts have been used to provide cash flow for college years, or to provide some cash flow to income beneficiaries while maximizing charitable value for income tax or gift/estate tax deduction purposes.

7. Tax character of distributions to life income beneficiaries based on four-tier system. Possible to receive tax-favored income (long-term capital gain income, tax-exempt income, or tax-free return of corpus). Possible to receive only tax-exempt income if fund with cash or tax-

exempt holdings and trust only invests in tax-exempt investments.

8. Maximum donor involvement of all the charitable life income plans. Trusts can be established without any involvement by a charitable organization. No federal requirement to notify charities named as irrevocable beneficiaries. Donor can be his or her own trustee, but at one time needed independent trustee with hard-to-value assets. Under final regulations, independent trustee is not needed, only qualified appraisal of hard-to-value assets. Donor can retain the right to change which charities take the trust assets at the end of the trust term and in which proportion.

9. Can provide that payouts to income beneficiaries cease upon the occurrence of a qualified contingency (divorce, remarriage, for example).

10. Charitable remainder annuity trust produces the same high charitable value for deduction purposes as charitable gift annuities.

11. Can do all charitable giving in one vehicle because multiple charities can be named to divide the trust assets at the end of the trust term.

12. When contributed appreciated asset to a fund, long-term capital gain never recognized, so no long-term capital gains tax paid, either by donor or trust.

Disadvantages:

1. If corporate trustee used, usually not economically feasible at less than $100,000 or more.

2. Costs to establish the trust or for legal review can be substantial (although should be less due to issuance of IRS sample documents).

3. Complicated accounting required and annual trust tax return which can increase trustee fees or annual costs when donor is the trustee.

4. Trusts can end before the end of the trust term if trust assets consumed.

5. Setting payout percentage above 5% increases the likelihood of use of corpus to make annual distributions. In a unitrust, use of corpus to make current payouts also reduces future payouts. In an annuity trust, use of the corpus can cause the corpus to be eroded before end of the trust term.

6. Under 1997 tax act, payout rate may not exceed 50% and if the present value of the charitable interest is less than 10% when funded (in both charitable remainder annuity trusts and charitable remainder unitrusts), the trust is not a qualified charitable remainder trust, so no charitable deductions and treated as a taxable trust. This provision also affects additions to current unitrusts, which must meet these tests as well.

7. In unitrusts, fairly slight variations in investment performance as compared to investment illustrations can cause substantial differences in lifetime performance of the trust. Donors don't always understand the subtle impacts or are frustrated when less than optimum results are achieved.

Charitable Remainder Trusts Donor Profiles

Annuity Trusts (Fixed Income):

1. 75+ year old donors who could afford to make an outright gift, but are concerned about future income needs and want something they can "count on."

2. Donors who want a life income plan where all the income will be tax-exempt interest; may fund initially with cash or municipal bond holdings. Normally are either highly compensated or have a large amount of taxable income from other sources.

3. Donors who want a nominal income they can "count on" and budget for; charitable gift annuities not available or the donor does not trust the charity and wants a Trustee to manage the process; or donors who want to retain the right to change the charitable remaindermen.

4. Donors who want income they can "count on" and want the larger immediate income tax deduction generated by the CRAT as opposed to the charitable remainder unitrust. Especially attractive if the donor names older parents as the trust's income beneficiary(ies) to assist in their support (gift tax implications possible).

5. Donors who simply want to replace a fixed income (such as income from a Certificate of Deposit) and make a future charitable contribution at the same time.

6. Donors with low-yield appreciated assets who want higher current income without incurring long-term capital gains taxes. Typically a large, one-time transfer to fund the trust.

Unitrusts (Variable, Market-Driven Income):

1. Younger (50's/60's) donors who could afford to make an outright gift, but are concerned about future income needs and want something that can keep up with inflation.

2. Donors with low-yield appreciated assets who want higher current income without incurring long-term capital gains taxes. Typically fund the trust with a large transfer, but like the idea that additional assets can be added during lifetime, or can be "poured over" from the estate of the first spouse to die for additional income for the surviving spouse without management responsibilities.

3. Older donors who want a variable, market-driven income.

4. Donors who want a higher payout rate than economically feasible at present (net-income unitrust or net-income unitrust with make-up provision).

5. Donors who want a variable, market-driven income, but want to preserve the trust corpus for the charitable remaindermen (net-income unitrust).

6. Donors who want to fund a charitable remainder trust with an asset not currently producing an income (net-income unitrust or net-income unitrust with make-up provision to give the Trustee time to produce income for distribution; avoids distribution of the corpus when no income has been earned.)

7. Donors who still enjoy the excitement of stock and bond market deviations and have higher risk tolerance.

8. Donors who want to assist with a "younger" (60's) parent's support but want a variable, market-driven income for the parent.

9. Donors who want to "defer" the income until later (around the time of retirement).

   Example: Pete's pension plan administrator told him he should not make additional contributions to his qualified pension plan for the foreseeable future because of concern over estate and income taxes. Pete, age 50, wants to supplement his retirement income and also make a substantial gift to several charitable organizations. By creating a special version of a charitable remainder unitrust, he can accomplish both goals and save income taxes at the same time.

   This version of the unitrust (a "net-income unitrust with make-up provisions") is invested for growth during the years before retirement. Then the investment is changed at some

point in the future to increase income. The gain realized when the trust sells the growth investment is not subject to tax on long-term capital gain because the trust is exempt from taxation.

Pete contributes $10,000 per year for 10 years to a 5% "net- income charitable remainder unitrust with make-up provisions." Each year he can claim a charitable deduction - ranging from approximately $3,000 the first year to more than $4,000 in the last year. If the trust is invested for growth during the first 10 years (3% income and 5% annual growth) and the trust assets are sold in the 11th year and reinvested earning 8% annually, the following results:

a. Pete has contributed $100,000 to the trust, and claimed charitable deductions of over $34,000, saving over $10,000 in income tax at the 31% bracket.

b. At the end of the first 10 years, the trust corpus has grown to over $132,000.

c. In the first 10 years of the trust, he received approximately$20,000 in pre-tax income from the trust. (Note: He could use some of this income to purchase a life insurance policy to replenish the $100,000 taken from his estate). At the end of the first 10 years, the trust "owes" him over $13,000. This amount will be "made up" and paid to him in years 11, 12, 13, and 14, along with the income owed to him for those years. He receives almost $40,000 in income over these 4 years.

d. In year 15 (at age 64) and thereafter, he receives approximately $6,600 annually from the trust. If the trust corpus grows over the $132,000 value, his annual income will also increase.

e. At the end of his life, the named charitable organizations will receive the trust corpus, probably in excess of $132,000.

   Note: It is possible to invest charitable remainder unitrusts so there is only income distributed when the income beneficiary requests it and none distributed in other years. This allows for total deferral until some point in the future, such as retirement. The charitable remainder unitrust assets are invested in a special type of deferred variable annuities. The IRS has reviewed whether such "retirement" unitrusts are abusive, but has taken no regulatory position on these particular vehicles nor is any action contemplated.

American Council on Gift Annuities
24th Conference
April 26-28, 2000 • St. Louis, Missouri

PRIVATE EQUITY GIFT PARTNERSHIPS

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24th Conference on Gift Annuities
April 26-28, 2000
Adams Mark Hotel
St. Louis, MO

Thursday, April 27th 3:15 to 4:30 p.m.
Friday, April 28th 8:30 to 9:45 p.m.

Conventional gift acceptance procedures don't always fit the unconventional gift proposals of entrepreneurs and venture capitalists. Learn what gift planners need to know in order to respond favorably to these high-level donors. They may be your most loyal donors or trustees; figuring out how you can work with them from their perspective is key!

Introduction:
When an entrepreneur tried to give us pre-IPO stock in his company, we were ready to accept the closely-held stock and credit the gift at the value determined by a "qualified appraisal". The donor was discouraged by having to get an appraisal, since he knew that his company stock would be valued 40% less than its understood business value. Pre-IPO companies typically appraise at discounted values. He wanted credit for his gift at the company's book value, and we were not able to comply with his request. Needless to say, we missed out on the gift and the donor was left frustrated. Two years later, the company was sold for an amount that was much higher than the amount the donor wanted credited at the time of our discussion. This situation and a few others like it caused us to wonder what we could do differently to satisfy the donor's needs while also maintaining a gift acceptance policy that met our institution's needs.

Presented with this unconventional gift scenario today, I would propose a private equity gift partnership to the donor suggesting a commitment of a specified number of shares of company stock beginning when the company goes public or such time as it might be sold. We would recognize this gift plan without stating any dollar value until the actual transfer of the stock is made in the future. This arrangement:

- satisfies the donor's interest in participating in our capital fund raising effort;
- he gets the benefit of the run-up in value of his stock in the future for crediting; and
- Johns Hopkins does not have to compromise our present policy for accepting closely-held stock.

If you think you are missing out on some gifts from entrepreneurs because of your gift acceptance policy, maybe you are. Now could be the time to review your policy and think again about how to make changes that will speak to the issues relating to entrepreneurs and encourage their gift planning in ways that can work with your policy. You'll also need to do your homework and identify those entrepreneurs already close to your organization--those most loyal to your cause and those that are either close to an initial public offering of their company or have recently gone public. These are the entrepreneurs who will be approachable. Yes, of course, second generation family business entrepreneurs could be prospects, but you'll need to address them with an understanding of family issues. This puts them into an entirely different category for gift planning. And, while a present gift may not be possible, keeping them involved will make it easier for you to ask for a future gift when the entrepreneur is looking for ways to save taxes when the business is sold.

In this present day world of fund raising with entrepreneurial endeavors at an all-time high, development officers need to figure out how to work with entrepreneurs. We need to understand from the donor's perspective the stages of building a company and how to present our gift appeals so that they will be received and acted upon. When entrepreneurs are on the upside of their company's growth, they may be

ready to consider their charitable intentions, now, for a gift transfer in the future. We need to be prepared to respond with gift options that can work for them, and create gift plans that make sense to our institutions too. If you are ready to ask an entrepreneur for a gift, of course, you will need to motivate the person to want to make a gift first, before getting around to "the ask" or the method of giving. Indeed, in order for an entrepreneur's private equity gift partnership to come together in the future, there must be a strong charitable motivation to create the gift! Entrepreneurs who are not yet committed to your institution may not be ready to consider this form of gift planning.

Field Study--
A few years ago while at Williams College, I initiated a field study with entrepreneurs and business people who intersect with them to learn how to work with this group of donors. We'd been successful working with entrepreneurs selling their businesses proposing conventional deferred gifts, but we missed a few gift opportunities proposed to us by young entrepreneurs and we needed to understand how to respond to these dedicated loyal alumni. I also met with venture capitalists, investment bankers, and attorneys whose businesses revolve around working with entrepreneurs. These people had proposed various types of gifts of closely-held stock or other types of private equity assets and we were unable to accept their gifts on their terms using our gift acceptance guidelines. We realized that we should find new ways to reach out to these people and figure out how to work with them. And, so, with the blessing of Steve Birrell, our vice president for alumni relations and development, and Allan Fulkerson, the chairman of our board of trustees finance committee, I was given the go ahead to do a research project. I referred to the research project as a field study with alumni entrepreneurs, venture capitalists, investment bankers, and attorneys who were known to be close to us. I asked them how we should be positioned to maximize their gift potential, and they told me what was important to them, the assets that they were likely to have available to fund their gifts, and the stumbling issues. I introduced charitable gift methods and, with their help, tried to figure out how a match of their gift scenarios and assets could come together with viable gift options. I was there to learn how to have a development conversation.

For instance, I learned that when a company starts-up, there are hopes and dreams of success with high levels of energy to build the company. There is little time to look ahead to profitability let alone being charitable. Funding is a primary concern and cost efficiency is priority number one. The company will go through various "childhood" disorders as it matures into a profitable company. In mid-life, such growing pains are more under control, the company is getting closer to profitability, and thoughts of an IPO or a sale are in view. In some of these situations, a charitably minded entrepreneur might want to be supportive. As these companies grow and become profitable, the reality of an IPO or sale is more clearly defined, and financial issues and tax liabilities emerge. To maximize capital gains tax savings, charitable gift planning crosses into view to save taxes, and transfer wealth to heirs. Here are a few related facts:

Start-up company	**Mid-life company / Pre-IPO**	**IPO / Mature company /Family Company Sale**
• Building value in idea • Finding funding from any or all sources • Cost conscientious • Charitable planning might not exist	• Pre-IPO visions • Pre-sale visions • Charitable thinking may be in view the closer the company is to profitability • Gift planning ahead of the IPO or sale can be considered • On the company timeline, close to profitability	• Company is profitable, growing, and looking to go public or be sold • Financial concerns emerge when thinking of selling company stock • Gift planning represents tax saving solution

Early in the study, I learned to separate entrepreneurs into two basic categories:

1. Those interested in building a lifelong business that could be the means of a family's livelihood for generations; and,
2. Those that intend to build value in a creative idea for the purpose of going public or selling out within a short period of time.

Generation Differences--
The age of an entrepreneur and his/her generation personality can make a difference in the way the entrepreneur thinks about philanthropy and the way he/she builds a business. For instance, an older entrepreneur may have built a business to pass down to family members. In these situations, gifts of company stock are not likely until the company is ready to be sold. As previously noted, gifts of privately-held stock might then be used to fund charitable remainder trusts. A younger entrepreneur, on the other hand, may build a business in a fast paced environment to be sold as soon as the company builds value. These "thirty something" entrepreneurs may be involved with more than one business during their careers and will need to consider the financial strategies for retaining as much of their company's growth and appreciated value as possible. Financial planning, and wealth transfers to heirs begin early for these people. Charitable remainder trusts will serve these donors well to fulfill philanthropic goals and save capital gain taxes at the same time. These successful young entrepreneurs wind-up planning their estates at earlier ages and have discovered philanthropy as a wise financial planning tool.

By understanding the donor's perspective, gift planners should be better positioned to respond to unconventional gift proposals with guidelines that will allow us to have conversations that lead to significant gift support in the seven and eight figure gift levels. Such gifts are often commensurate with the profitability of the company. For example, if the company sells for $100 million then gifts in the five to ten million range are not uncommon.

Venture Capitalists--
Entrepreneurs may elect to work with venture capitalists (VCs) to help move their companies into the next level of maturity. They infuse a company with management talent and private equity support and recast a company's direction with hopes of taking the company public or positioning it for a sale. The market niches in which they operate are numerous. Each individual venture capitalist may be a specialist in one or two industries with a particular interest in mid-stage companies that can easily benefit from their expertise. VCs also want to take a position in a company in order to have certain controls in building the company. Indeed, many entrepreneurs are skeptical of VCs, however this is why entrepreneurs turn to VCs in the first place, they are looking for help growing their company. Therefore, they resign themselves to work with venture capitalists on their terms.

While there are different ways that venture capitalists find businesses, they are primarily looking for quick turnaround companies for fast profits. Indeed, some internet companies fit this description and are profitable within two or three years of their inception. Venture capital firms want these companies in their venture partnerships. Also, these quick profit companies are lead by entrepreneurs with capital gains problems, and charitable remainder trusts and supporting organizations represent solutions in these situations. The challenge for the gift planner is in knowing how to create the plan to make it acceptable to your institution based on gift acceptance guidelines.

Some venture capitalists are actually private equity managers, as I learned from one Chicago based private equity managers. He told me that he invests private equity assets held by wealthy Chicago families in venture companies. He also said that venture capitalists may do smaller deals than private equity manager and sometimes will take a company public before it is ready.

In another conversation, I learned how venture capitalists are compensated. They typically receive a 1% administration fee, they can receive company stock, and take a percentage of the profits they help produce. This is referred to as the "carry on the profit." In addition, VCs can participate in venture partnership deals themselves.

For gift planning purposes, supporting organizations could be advantageous for holding partnership interests when liabilities like unrelated business income would pass on to the charitable organization. It's also possible that a venture partnership interest may not be transferable to charity. When considering how to work with a venture capitalist, take into consideration his charitable intentions first. If he is driven by his own interest to support a specific project, he will be focusing on creating a gift plan that will satisfy the required funding. If an appeal for gift support is made to a venture capitalist with little natural charitable

interests, then he might prefer to choose to make conventional gift from his appreciated stock portfolio. On the other hand, if the gift planning is initiated by the venture capitalist, then he or she may elect to be more involved using their business talent. They might want to leverage current assets using their investment ability or consider giving a fractional interest in the future growth in a venture capital partnership. A gift of a percentage of the "carry on the profits." Whatever, they choose to do, you would wind-up working with a person who truly wants to use their business skills to benefit your institution. Indeed, this is where the "real" gift potential is with a person of such business talent.

Why would they want to do this? Because successful venture capitalists have reached a stage in their lives when they have achieved their financial goals and they and their family members are already well cared for. Any further financial growth will be subject to significant IRS tax eventually in their estate and charitable planning is a way to minimize this tax liability.

Investment Bankers--
Investment bankers help entrepreneurs to go public with their companies. With their help, the initial public offering price is determined. Their expertise is essential in knowing when to introduce the company to the public. Restrictions are typically placed on these stocks under the guidelines established by the investment banker. A San Francisco investment banker told me that restricted stock lock-up rules are created by investment bankers to protect the market place from sell offs of too much stock by one party at a given time. He said that when these assets are given to charity, the rules can be lifted, or modified, by talking with the investment banker who put them there. Another New York City investment banker suggested that we should avoid getting hemmed in by tradition. If we change our procedures for accepting illiquid assets, it could lead to the "home run" gift. Accounting for venture gifts might be a bit like "oil well accounting"--meaning that you look at the group of wells rather than valuing one at a time. This person was excited by this approach and wanted to work with me to make sure all issues would be addressed to bring about solid gift planning with future gift transfers. How to value such future gifts was an enigma at first because we could not figure out how to put a present dollar value on assets that would realize value sometime in the future. Instead, we choose to acknowledge the gift plan and credit the assets when value is known.

Attorneys—
Attorneys engaged by entrepreneurs assist with a variety of company legal concerns including financial planning. One San Francisco attorney who works with Silicon Valley entrepreneurs noted that there are four interests in the estate planning process:

1. Self
2. Heirs
3. IRS
4. Charity

He said, every individual needs to come to terms with the taxes that might conceivably be paid to the IRS without charitable gift planning and then reviewed with a charitable gift component, assuming that minimizing taxes paid to the IRS is a priority. Maximizing gifts to heirs at the time of death could mean that the IRS will receive more in taxes unless charitable planning is included. Minimizing the taxes paid to the IRS by taking advantage of estate tax charitable deductions could increase overall support to heirs during their lifetimes.

From a gift planning standpoint, attorneys are instrumental in helping entrepreneurs to evaluate gift vehicles to be used to transfer wealth and minimize their tax burden when company stock is to be retired or sold to the public by an IPO. They might choose to prepare the charitable trust documents or defer to your institution's legal counsel when your institution is to serve as trustee. Another attorney that I spoke with in Indianapolis encouraged gift planning and legal document preparation in advance of the IPO. He said that this is when the donor and attorney have sufficient time to address issues without the stress of dealing with an IPO and the stock market's reaction to the offering. This is also true if there is a sale of the company. Indeed, one gift option could be to use a revocable trust that becomes a charitable remainder trust, or outright gift. Entrepreneurs, being cost conscientious people, are often reluctant to pay the legal expenses of attorneys. Be prepared for this to be an issue with your prospective donors.

Gift Planning Issues--
Following the field study and conversations with over 70 entrepreneurs, venture capitalists, investment bankers, and attorneys, we decided that entrepreneurs could be encouraged to stay in control of their assets since they know how to build value in company within their market niche. Indeed, this may be the way to encourage a gift partnership arrangement because the entrepreneur will be able to remain in control of assets given. In these situations, the donor will probably hold off transferring the assets to your organization until the future event triggers the transfer of assets. The question then arises as to how the donor will be recognized for his gift plan. This is when a private equity gift partnership agreement can be used to state the terms of the gift plan.

For example, if the entrepreneur makes a commitment of 50,000 shares of a private company stock when the company goes public in the future, the partnership agreement would simply state how and when a gift of the privately-held stock is to be given at a future date. The entrepreneur remains in control managing his company and continues to build value as the company moves closer to the IPO. Other gift partnerships would be based on the donor's assets and gift plans, timed to transfer when value is built into the company for a gift of privately-held stock or other type of alternative asset.

Entrepreneurs who have not yet decided to be charitable are likely to wait until their company has achieved success before making any commitment. This is okay, since sometimes this forward thinking discussion moves a donor to make a better gift than they might have made otherwise.

Below are a few other issues that surfaced from the field study.

- Entrepreneurs and VCs want:
  - ⇒ Control
  - ⇒ To avoid capital gains taxes
  - ⇒ To maximize gift credit
  - ⇒ To maximize tax benefits

- Alternative assets or illiquid assets
  - ⇒ Private equity assets—common and preferred
  - ⇒ Restricted stock
  - ⇒ Stock options
  - ⇒ Warrants, and other illiquid assets

- Ways to give:
  - ⇒ Outright
  - ⇒ Private foundation
  - ⇒ Supporting organization
  - ⇒ Donor advised funds
  - ⇒ Charitable remainder trusts
  - ⇒ Charitable lead trusts
  - ⇒ Incomplete gifts—to be completed in the future triggered by a particular event (IPO or sale of company)

- Gift Partnership issues:
  - ⇒ Structuring gift plans
  - ⇒ Avoiding investment liabilities
  - ⇒ Asset control
  - ⇒ Valuation of assets
  - ⇒ Gift credit & charitable deduction
  - ⇒ Timing asset transfer to maximize credit and charitable deduction

- Gift recognition issues:
  - ⇒ Conventional dollar value credit given for conventional gifts
  - ⇒ Incomplete gifts will not receive credit until a gift transfer is made
  - ⇒ Gift partnerships will be recognized without a dollar value by acknowledging the donor's philanthropic interest and gift plan

- Generation differences--young entrepreneurs
  - ⇒ Baby Boomers
  - ⇒ Generation Xers

Comments made by entrepreneurs, venture capitalist, investment bankers, and attorneys during the field study:

⇒ Building a business can be a lonely process
⇒ I'm always looking for ways to reduce taxes
⇒ Encouraging entrepreneurs to accumulate wealth to give in the future is refreshing
⇒ Gift partnership concept is a way to get on people's charitable lists early
⇒ Don't get hemmed in by conventional practices—think entrepreneurial
⇒ Gift partnership agreement disciplines donors with incomplete gift plans to follow-through

Initial steps for working with young entrepreneurs and venture capitalists:
- Don't get hemmed in by conventional gift acceptance policies.
- Create gift acceptance policies that work for your institution
- Develop a strategy that works for your major donor prospects
- Have the conversation with your best prospects first, the ones that love your organization the most
- Listen to their fantasy gift plans
- Go slowly until your institution is comfortable accepting unconventional assets in a private equity gift partnership arrangement

Ways to work with entrepreneurs and venture capitalists:
- Test your market—go visit some of your most loyal entrepreneurs and venture capitalists to see what they think
- Continue to motivate people first to want to make a gift
- Ask them to make their best gift—outright, deferred, or by a private equity gift partnership agreement
- Create a brochure to illustrate gift possibilities
- Organize an affinity reunion for entrepreneur alumni—assuming you have an alumni base
- Think of ways to reach out to a selected group of entrepreneurs that are close to your organization
- Consider establishing an entrepreneur's circle composed of people who might be encouraged to create a private equity gift partnership

Things to keep in mind—

Determine how to respond to entrepreneurs who propose gifts to your organization is a first step. Creating gift acceptance guidelines is a second step, and remaining open to having a conversation will probably lead to a gift plan. As each prospective donor comes to you with their own set of priorities, listen to them. Your gift planning assignment is to figure out how to structure the gift to fit the circumstance of each individual donor.

Gift partnerships that work within most conventional gift procedures—

- Gifts of start-up company stock: signals high charitable intent, even though there is little tax benefit
- Gift of pre-IPO stock contingent on the occurrence of one or several future events (initial public offering, a merger or takeover of the donor's company): signals high charitable intent, and conventional gift acceptance policies for private stock can be utilized

- Gift of privately-held stock, limited partnership interests, stock options or warrants made outright; or, to fund a charitable remainder unitrust, private foundation, or supporting organization.

CONCLUSION:

So, if you think you are missing out on gifts from entrepreneurs or venture capitalists, maybe you are! Now, could be the time to review your procedures, the way you identify entrepreneurs as major gift prospects, and your gift planning strategies for soliciting them for a gift. Doing so may allow you to have more conversations with these people leading to significant support.

Being prepared to have the conversation with entrepreneurs and venture capitalists is key to getting the gift done. If you are prepared to have it, something can happen. If you do not have a way to propose reasonable gifts, then you may not get to have the conversation at all and you will miss out. Of course, there will be situations when donors are not charitably motivated in their gift proposals, and these gifts should be declined, but it is just as likely that another method of giving will be found. In time, you will grow confident of ways to work with entrepreneurs and venture capitalists and you will sponsor programs to promote private equity gift partnerships to a devoted constituency with charitable intentions clearly in mind for your organization. Go slowly and grow into the process, if you do, you too will be entrepreneurial in your fund raising efforts!

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REALLY WORKING WITH ALLIED GIFT PLANNERS

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AMERICAN COUNCIL ON GIFT ANNUITIES
24th Conference on Gift Annuities

"Really Working with Allied Gift Planners"

Friday, April 28, 2000
8:30 – 9:45
10:15 – 11:30

> ***But now old friends are acting strange***
> ***They shake their heads, they say I've changed***
> ***Well something's lost, but something's gained***
> ***In living ev'ry day***
>
> ***I've looked at life from both sides now***
> ***From win and loose and still somehow***
> ***It's life's illusions I recall***
> ***I really don't know life at all****

INTRODUCTION

Last year, after some twenty odd years working as a gift planner strictly in the employ of non-profit organizations, I moved to the for-profit sector. And not just to the fringes of the for-profit sector either, but rather to a large super regional banking company.

Before making the move I was told – indeed warned repeatedly – to carefully consider the differences between the non-profit and for-profit worlds. In fact one non-profit colleague (meaning to be sincere I presume) wished me well by saying that my move was, "a terrible loss for the sector." However I had no plans to "leave the sector." In fact, I didn't even leave town!

One of the founding principles of the National Committee on Planned Giving is that good gift planning requires collaboration and cooperation between all of the various professionals involved. In fact, NCPG has grown up as a hybrid organization representing different interests that are sometimes competing, but recognizing that each brings an important element to bear in the creation of charitable gifts that benefit society and are advantageous to the donors and clients.

Nevertheless, there are differences between the roles of the for-profit gift planner and the non-profit gift planner. The purpose of this session is to explore those differences and see if they are real or if they are just life's illusions after all. The goal is to arrive at a better understanding of how to work more collaboratively together for the benefit of our clients and donors.

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* lyrics by Joni Mitchell, © 1969 by Siquomb Publishing Corp.

Whether we be for-profit or non-profit our primary objective ought to be to see to it that our clients and our donors have the most fulfilling charitable giving experience possible, that their charitable gifts make the most sense for them, for their families and for the community. In the end the only way to realize this ideal is for the non-profit gift planner and the for-profit gift planner to work together in close collaboration with the interests of the donor and client foremost. We must recognize in the practice of charitable gift planning each of us, both for-profit and non-profit, will be called upon to behave differently than others in our respective professions.

THREE ASSERTIONS: Bold, Obvious, Heretical

Bold Assertion – There is *no competition* between for-profit organizations and non-profit organizations.
Obvious Assertion – There is *stiff competition* among for-profit organizations.
Heretical Assertion – There is also *competition among non-profits.*

stunningly logical conclusion: Donors are not harmed by this competition, they are the beneficiaries of it.

MODEL STANDARDS OF PRACTICE FOR THE CHARITABLE GIFT PLANNER

The Model Standards were first adopted in 1991. Early in the history of the National Committee on Planned Giving it already obvious that a statement of guidelines was needed to help define acceptable behavior for all of those calling themselves "charitable gift planners" and so the Model Standards of Practice for the Charitable Gift Planner were jointly adopted by ACGA and NCPG. During the past year the Model Standards received an extensive review and, with only a few adjustments, they were re-affirmed in 1999.

It should also be noted that the Model Standards differ from NSFRE's "Donor Bill of Rights" and other similar statements which attempt to define norms from the donor's point of view. The Model Standards were written as a code of conduct for all gift planners, be they non-profit or for-profit.

Since the Model Standards have a direct impact on the charity / advisor partnership they bear discussion here, particularly the areas in which they may be interpreted differently by the non-profit gift planner and the for-profit gift planner,

I. Primacy of Philanthropic Motivation
The principal basis for making a charitable gift should be a desire on the part of the donor to support the work of charitable institutions.

II. Explanation of Tax Implications
Congress has provided tax incentives for charitable giving, and the emphasis in this statement on philanthropic motivation in no way minimizes the necessity and appropriateness of a full and accurate explanation by the Gift Planner of those incentives and their implications.

III. Full Disclosure
It is essential to the gift planning process that the role and relationships of all parties involved, including how and by whom each is compensated, be fully disclosed to the donor. A Gift Planner shall not act or purport to act as a representative of any charity without the express knowledge and approval of the charity, and shall not, while employed by the charity, act or purport to act as a representative of the donor, without the express consent of both the charity and the donor.

IV. Compensation
Compensation paid to Gift Planners shall be reasonable and proportionate to the services provided. Payment of finders fees, commissions or other fees by a donee organization to an independent Gift Planner as a condition for the delivery of a gift are never appropriate. Such payments lead to abusive practices and may violate certain state and federal regulations. Likewise, commission-based compensation for Gift Planners who are employed by a charitable institution is never appropriate.

V. Competence and Professionalism
The Gift Planner should strive to achieve and maintain a high degree of competence in his or her chosen area, and shall advise donors only in areas in which he or she is professionally qualified. It is a hallmark of professionalism for Gift Planners that they realize when they have reached the limits of their knowledge and expertise, and as a result, should include other professionals in the process. Such relationships should be characterized by courtesy, tact and mutual respect.

VI. Consultation with Independent Advisers
A Gift Planner acting on behalf of a charity shall in all cases strongly encourage the donor to discuss the proposed gift with competent independent legal and tax advisers of the donor's choice.

VII. Consultation with Charities
Although Gift Planners frequently and properly counsel donors concerning specific charitable gifts without the prior knowledge or approval of the donee organization, the Gift Planners, in order to insure that the gift will accomplish the donor's objectives, should encourage the donor, early in the gift planning process, to discuss the proposed gift with the charity to whom the gift is to be made. In cases where the donor desires anonymity, the Gift Planners shall endeavor, on behalf of the undisclosed donor, to obtain the charity's input in the gift planning process.

VIII. Description and Representation of Gift
The Gift Planner shall make every effort to assure that the donor receives a full description and an accurate representation of all aspects of any proposed charitable gift plan. The consequences for the charity, the donor and, where applicable, the donor's family, should be apparent, and the assumptions underlying any financial illustrations should be realistic.

IX. Full Compliance
A Gift Planner shall fully comply with and shall encourage other parties in the gift planning process to fully comply with both the letter and spirit of all applicable federal and state laws and regulations

X. Public Trust
Gift Planners shall, in all dealings with donors, institutions and other professionals, act with fairness, honesty, integrity and openness. Except for compensation received for services, the terms of which have been disclosed to the donor, they shall have no vested interest that could result in personal gain.

COMMON INTEREST: THE OPPORTUNITY

Why the intense interest in charitable giving on the part of for-profit organizations? The answers are the same as for the non-profits: opportunity. The first siren call was probably Rendell and Avery's identification of the "Intergenerational Transfer of Wealth," but there are other factors too. According to the Federal Reserve Bank, wealth is extremely concentrated in this country. As Jay Steenhuysen has pointed out, this presents an opportunity to meet widely varying needs depending upon the audiences:

percent of population	portion of wealth	issues faced
top 1%	one-third	loss of wealth due to taxes is inevitable, loss of influence can be mitigated through charitable gift planning (will inherit tens of millions of dollars)
next 9%	one-third	tax losses can be reduced through careful charitable gift planning (will inherit millions of dollars)
bottom 90%	one-third	generally taxes are not a concern, but directing distribution of property is (will inherit thousands of dollars)

In a 1997 survey of "millionaire households," Russell Allan Price found some interesting responses to his questions about charitable giving:

frequency of giving
- 95% - give regularly
- 80% - would like to give more

would like to know more about
- 90% - private foundation
- 35% - charitable remainder trust
- 1% - life insurance

types of gifts made
- 35% - made some kind of planned gift
- 18% - something more than a bequest

originator of the idea of a charitable gift
- 65% - financial advisor
- 12% - fund raiser
- 8% - volunteer or peer

COMMON PURPOSE AND MANAGEMENT, DIFFERENT COMPENSATION

There are clear and obvious differences between the compensation systems and management structures of for-profit and non-profit organizations. However, in the end these differences may be less important to the donor and client than they are to the gift planner.

	NON-PROFIT	FOR-PROFIT
PURPOSE	• to secure new and increased gifts for the organization • to build relationships on behalf of the organization	• to secure new and increased revenue for the organization • to build relationships on behalf of the organization
COMPENSATION	• salaried or hourly but never commission based • independent of specific gift transaction	• salaried, hourly, incentive, commission or combination • may be tied to specific gift transaction
MANAGEMENT	• gift planners who fail to produce increased or new gifts for the organization are not successful • time expectations may be more relaxed	• gift planners who fail to produce increased or new revenue for the organization are not successful • time expectations may be shorter

Fundamentally, the non-profit gift planner and the for-profit gift planner share a similar purpose: they are employed by their respective organizations to generate gifts or revenue and to build relationships with donors and clients. In addition, gift planners who fail to produce will not succeed in either the for-profit or the non-profit sectors. The real differences are in the compensation systems, the greater time urgency the for-profit gift planner feels to conclude the gift, and the drive of the non-profit gift planner to secure the gift for his or her organization only.

The compensation question has been the fuel for many a long and contentious debate over the years. It may well be that the compensation systems are entirely appropriate for each sector. Since the overall objectives of the non-profit sector are different than the overall objectives of the for-profit sector, it is reasonable to expect different compensation mechanisms. In all candor, much of the debate over compensation seems to be based upon a misunderstanding of the degree of compensation -- a "grass is always greener on the other side" mentality. In fact, non-profit gift planners do not simply collect fat salaries regardless of their productivity, as some for-profit gift planners suspect. And, conversely, while a for-profit gift planner may be paid a substantial sum upon completion of a specific transaction, non-profit gift planners often have little understanding of the economics of an incentive based compensation plan.

For the for-profit gift planner, the potential that compensation may be directly tied to completion of the gift provides significant incentive to move the gift forward or to disqualify low potential prospects. This sense of urgency can also work in favor of the non-profit to make the gift development process more efficient.

A more subtle difference lies in the desire of the non-profit gift planner to make certain that the gift is made to his or her organization and in a form that is most advantageous to the organization. For the for-profit planner the selection of charitable beneficiary may well be immaterial.

The significant issue for gift planners should not be on these differences, but rather on how to ensure that these differences do not lead to undue pressure on the donor or client. The best way to ensure that the interests of the donor or client comes first is for the for-profit gift planner and the non-profit gift planner to work in close collaboration.

QUESTIONS AND STATEMENTS

In the course of charitable gift planning there are a number of common questions that are frequently asked by donors and clients and there are statements and representations that are made as a matter of routine. Upon closer reflection, however, some of these questions might be answered differently and some of the statements might have different meaning depending upon whether the gift planner is for-profit or non-profit. Following are a few examples, some are obvious, some are more subtle:

	NON-PROFIT	FOR-PROFIT
"Is it true that I can avoid capital gains taxes if contribute appreciated property to a charitable remainder trust?"	"Yes. There are no capital gains taxes at all when you transfer appreciated property to your charitable remainder trust."	"Not exactly. Although there is no capital gains tax on the transfer to the trust, your income beneficiary will probably pay capital gains taxes over the years if the trust distributes its gain."
"Can you write the trust (or other gift plan document) for me? Is there a charge?"	"We can provide a document for you although we urge you to take it to your own advisor. No there's no charge."	"We can arrange for an attorney to draft the appropriate documents for you and the cost will be included in your fees."
"I'd like to have three (or maybe more) organizations benefit from my trust. Will you still work with me?"	"Yes, we'll be happy to advise you and provide you with calculations and sample documents, but we need to be a major beneficiary."	"It doesn't matter to me which charity benefits so long as you are helping causes that matter to you."

"Will you work together with the charitable organization (or with my advisor)?"	"Sure, of course we will work together."	"Of course we'll work with the charitable organization, but you can remain anonymous if you'd like. In fact, that might be part of the reason you came to me first. Besides, what if you want to change your mind? This way you won't be embarrassed. And don't forget, if we tell the charity they might start pestering you."

Paradoxically, there is more than one right answer to these questions, which reinforces, for the best interests of the donor and client, the importance of close collaboration between the non-profit and for-profit charitable gift planner. In order that the donor and client make an informed decision it is critical that he or she have the benefit of multiple points of view.

CONCLUSION

Charitable gift planning has come a long way since the tax act of 1969. Indeed we may well be on the verge of becoming a profession. If so it is a curious profession, one that does not value specialists as much as collaboration among colleagues. In fact our differences may well be the source of our greatest strength.

As we become more professional and more visible we will attract more public attention, and it is critical that we work to improve our ability to work with one another with mutual respect. A key is to remember one's point of origin, one's reason for being involved in a given relationship. As a non-profit gift planner my natural objective is to gather new gifts for my organization. I must do this ethically and honestly, but in fact a charitable gift to an organization other than mine is not success. And as a for-profit gift planner my natural objective is to create revenue by gathering assets or by billing hours.

There is a natural tension between us, but what mediates that tension is our shared interest in the donor. If charitable gift planning is to realize its full potential then we must pledge ourselves to putting the interests of the donor first. We must agree to collaborate toward making sure that the donor experiences charitable gift planning positively, even if it means that the gift is not made to my organization, or that the assets are managed elsewhere. However, if we can really place the donor and his or her experience at the center we will inevitably generate more charitable gifts for the good of the community and our society.

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DON'T BE AFRAID!

GIFT PLANNING IS...

GOOD FOR YOU!

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WHY IS GIFT PLANNING GOOD FOR YOU?

- **Current estimates of the generational transfer of wealth between the oldest living generation and their offspring range from 12 trillion to 40 trillion in some cases (translation-there is HUGE fundraising potential in it for your organization)**
- **Other fundraising methods, with rare exception, are competing for the same dollar in your community**

Gift Planning operates on these basic assumptions:

- **75% of Americans give at some time during their lifetime**
- **only 6-8% leave a gift to charity in their estate plans**
- **roughly 80% of Americans die without a will (a truly amazing statistic)**
- **once an individual leaves a bequest in their will, only 3% change that commitment**
- **the average bequest in most organizations is between $20,000 and $50,000-the national average is $27,000**
- **The cost of a staffed program typically runs only about 6 cents on the dollar (vs. special events/direct mail at ????)**
- **Gift Planning is not brain surgery**
- **Gift Planning does not always mean future money**
- **A Gift Planning program allows you to offer your donors all available fundraising options**
- **A Gift Planning Donor, properly romanced, can become a wonderful current donor**

IT ALL SOUNDS GREAT ON PAPER, BUT……….

- **I DON'T HAVE THE TIME**
- **I DON'T HAVE THE EXPERTISE**
- **I DON'T HAVE THE BUDGET**
- **I DON'T HAVE A CLUE**

- **YOU DON'T NEED TO DO IT ALL, KNOW IT ALL OR EVEN SPEND A DIME TO HAVE A GIFT PLANNING PROGRAM!!!!!!**
- **I know, and you have some swampland in Florida………..**

What is the definition of a Planned Gift?

A Planned Gift consists of two primary components: planning and giving. Planned Gifts fall primarily into three categories: (1) outright gifts, whereby the non-profit often has use of the asset immediately, such as securities, tangible property (jewelry, collectibles, ect.), and real estate gifts; (2) bequests and beneficiary designation whereby the donor uses the asset during his lifetime and the charity receives it at the donor's death: and (3) life income gifts, such as Charitable Remainder Trusts, Gift Annuities, Pooled Income Funds, whereby a donor makes a gift today and receives a stream of income for life, and upon the donor's death the non-profit has use of the remainder value of the gift.

- **80% of all planned gifts fall into the first two categories**
- **Everyone in this room understands the way that you plan these first two gift categories**
- **So now everyone in this room understands 80% of Gift Planning**
- **What strikes fear into non-gift planners is often the other 20%-LIFE INCOME GIFTS!!!!!**

TODAY WE WILL FOCUS ON THE 80% THAT WE ALL UNDERSTAND

What are the primary differences between Gift Planning and other forms of fundraising?

- **Gift Planning is almost entirely self-identification. What I mean by that is you can't call someone out of the blue and ask them to put you in their will, like telemarketing, you can't find a volunteer who is a natural partner to go to lunch and ask their friend to create a substantial Bequest (major gift), you can't call up an annual giver to thank them and say "Oh by the way, did you put us in your will?"**
- **Gift Planning is the most personal form of fundraising.**
- **In its purest form, it reflects the hopes and dreams of the donor and also reflects the feeling the donor has for the future of the organization**
- **Translation: the money often has emotional strings connected to it**
- **Because it is a personal and self-identified commitment:**
- **It is a marketing driven form of fundraising**

WHAT ARE THE FIRST STEPS TO BEGIN YOUR PLANNED GIVING PROGRAM?

Or

HOW DO I FOCUS ON THAT 80% I ALREADY UNDERSTAND?

Let's start with Bequests

First Steps

1. **Take all the cards, slips of paper, notes, any indicators from donors, attorneys notes from conversations of board members around the office indicating a notice of a bequest**

2. **Put whatever donor information you have on each donor in a separate file**

3. **Organize it in a way that make sense**

4. **Color coded files**

5. **Color dots on files**

6. **Separate area or filing cabinet**

7. **Make a list of all these people and update when new ones are identified**

8. **Come up with a dollar average for you bequests**

9. **Suggestion-take the amount of money received in the last 5 years,(or however many you can track back) divide the # of bequests and you will get the rolling average**

Why the average?
You need to prove to yourself, your boss, and your board that it is important to have a bequest program. Also, you can take the rolling average times the # of bequests you are currently aware of, and come up with a real figure of what these "promises are actually worth. Also, remember that for every donor that tells you about their commitment, 3 more do not.

Why do this? **The challenge of any Gift Planning program is justifying raising future dollars with current work effort and in many cases, salary and budget**

NOW WE KNOW WHY-HOW DO WE GET THERE?

- **Marketing Marketing, Marketing.......**
- **What can you do that is simple and within your budget? (cheap)**
- **Letterhead**
- **Articles in Newsletter or box that simply says: remember ABC charity in your will, trust life insurance policy or retirement plan.**
- **Ways to give**
- **Business card**

- **Fact sheet for donors and advisors**
- **Inquiry sheet for other staff**
- **Marketing to non-donors (stuffers in your special events)**
- **Check off box in your direct mail**
- **I have/am considering putting ABC charity in my will**
- **Please send me information about estate planning**
- **Any communications piece that goes out of you office**
- **Have a volunteer who is a professional advisor do a presentation to your board**

WHO SHOULD YOU MARKET TO? (this will cost some)

- **Depends on how large and organized your donor database is**
- **If your donor list is small, your budget is probably as well, so…..**
  Market your ideas to everyone
  Use many of the ideas listed above
  Don't forget your volunteers –they are your best audience

IF YOUR DONOR DATABASE IS LARGE ENOUGH

- **Best first step is to segment your donors by age**
  There are many organizations that can take your database of names and put an age overlay on it, giving you the approximate age of as many as 80% of your donors within the month of their birthday-and it is not expensive. You can also justify the expense by reminding yourself that you can segment mailings in other fundraising activities as well.
- **By segmenting, you can now target market your Gift Planning information to those who would most respond to it**
- **What is your best audience?**
- **If you have limited funds, 65 and older**
- **Next best group is 55-65**

WHAT TOPICS SHOULD I COVER IN MY MARKETING EFFORTS?

- **Bequests-**
- **Gifts of Securities (stocks and mutual funds)**
- **Beneficiary designation under retirement assets**
- **Beneficiary designation under life insurance**

RULE OF THUMB-market ideas in your comfort zone

Bequests

- ❑ **Always have the proper bequest language in any article**
- ❑ **Always remember to put the phrase "Remember ABC charity in your will, trust life insurance policy or retirement plan" in a separate box away from the article**
- ❑ **Talk about the importance of having a will-Remember: 80% of your reading audience doesn't**
- ❑ **Whenever possible, use actual donor stories to illustrate your point**

Gifts of Securities

- ❑ **Talk about the benefits of giving appreciated stock/mutual Funds vs. cash**
  - **Avoidance of capital gains**
  - **Ease of gift to your organization**
  - **Ability to help current year's tax bill and your organization**
- ❑ **List your dedicated brokerage account phone # and contact name for brokerage (if you don't have one, get one)**
- ❑ **List your contact phone # as well**
- ❑ **Always indicate how important it is for them to let you know of the transfer (about 20% in my experience don't)**
- ❑ **These gifts have sizzle because they can make you look like a genius. Why? Because of your marketing efforts, you helped the organizations' bottom line today**
- ❑ **Once you train a donor to give in this way, they will do so again (suggestion: send out a reminder letter in early November to all stock givers)**
- ❑ **Make sure you have proper procedures for handling a gift of stock or mutual funds**

Gifts of retirement assets

- ❑ **Easiest gift in the world to create for donor to give to charity. It is a one-page form that the donor gets from his retirement plan representative that take 10 min. to fill out**
- ❑ **A donor can make this commitment without making out a will or trust (a big key)**
- ❑ **A donor can give all or part of the policy to your charity-and can change beneficiary if necessary**
- ❑ **Gift of retirement assets to children could result in over 80% being lost to taxes (good gift to charity)**
- ❑ **Gift to charity takes gift out of estate and can avoid estate taxes for donor**
- ❑ **When the donor dies, it comes straight to your organization within a few weeks**
- ❑ **Assets often represents the largest part of most people's wealth**

Gift of Life Insurance

- **Also a one-page form that can be filled out easily**
- **Donor can get form from their life insurance agent**
- **Many donors own small paid up policies that they can easily make you the beneficiary of**
- **Upon their death, money goes straight to your organization**
- **Advantage for donor: flexibility-they can change beneficiary if absolutely necessary**
- **All of these "planned gifts" are gifts you understand-remember-you market what you know, and you know the mechanics of 80% of planned gifts**

WHO WILL WRITE THE COPY?

- **You can write it yourself (my own example)**
- **A volunteer who is a professional advisor (Estate Planning Attorney, CPA, Financial Planner, Trust Officer)**
- **Buy canned articles-Suggestion-Planned Giving Today-Roger Schoenhals- "16 Articles you can use"-very inexpensive and easily customized to fit your organization-**
- **If you go complete Gift Planning Newsletter route-many excellent companies (list in back)**
- **Build up a group of articles and rotate them-no need to invent the wheel every month**

NOW YOU HAVE EXPERIENCED SUCCESS AND RESULTS USING THE TOOLS WE HAVE TALKED ABOUT-WHERE DO YOU GROW FROM HERE?

Put together a committee of professional advisors and board members and ask each other the following questions:

- **Where do we start?**
- **When do we start?**
- **Who will handle it all?**
- **What do we promote?**
- **How will we manage it?**
- **How much will it cost?**
- **Do we need outside help?**

❑ Readiness Checklist

- ❑ **Board is supportive if not enthusiastic about our ability to encourage planned and major gifts**
- ❑ **Direct mail and annual programs are fairly strong and in place (not-an indirect fundraising organization)**
- ❑ **Regular newsletter is sent on regular basis**
- ❑ **Annual report in whatever form, recognizes your donors and talks about your organization's accomplishments**
- ❑ **Donor Database program is in place and tracks gift history of donors and hopefully, records notes about your donors**
- ❑ **Board understands there will be a cost to commit the Gift Planning program to the next level, without an immediate return**
- ❑ **Your organization has personnel to administer a Gift Planning program**
- ❑ **Your organization has proven financial stability to Board and donors to take this next step**
- ❑ **Board leadership is willing to make their commitments first to set example**
- ❑ **Board and staff understand that long term goal of Gift Planning program is to build endowment for your organization**
- ❑ **Top management of organization understands need to give strong internal support to program (no lip service)**
- ❑ **Your donors understand your mission**

WHERE DO WE START?

- ❑ **Marketing Plan (beyond what you are already doing)**
- ❑ **Gift Acceptance Policies**
- ❑ **Board cultivation**
- ❑ **Prospect identification**
- ❑ **Consultant?**

WHEN DO WE START?

- ❑ **This year**
- ❑ **Next year**
- ❑ **Sometime in the future (bad answer)**

WHO WILL HANDLE THE DETAILS?

- ❑ **Planned Giving Committee**
- ❑ **Director of Development**
- ❑ **Other staff member**
- ❑ **Planned Giving Manager**
- ❑ **Consultant**
- ❑ **Combination of some or all**

HOW DO I DO ALL THIS WHEN I HAVE SO MUCH OTHER WORK? TRANSLATION, THIS STUFF IS GREAT IN THEORY, BUT……………

- ❑ **Ask for help, ask for help ask for help**

- ❑ **Use volunteers for**
- ❑ **Setting up you files**
- ❑ **Coding your bequest expectancies in your database**
- ❑ **Stuff your propaganda in the special events packages**
- ❑ **Call to personally thank those who put your organization in their will**
- ❑ **Create relationships with allied professionals**
- ❑ **At the very minimum, have an estate planning attorney or CPA that you can call to ask questions don't be afraid to ask questions-remember, advisors are people too**
- ❑ **If you can, add a Trust Officer and Real Estate person to the list as well**

- **Take advantage of your local Gift Planning opportunities**
    - **Attend appropriate Planned Giving Council presentations (if you are not a member, get membership information**
    - **Local PG councils usually hold at least a one day workshop a year**
    - **Get involved in your local Leave a legacy campaign (bequest awareness campaign)**

Housekeeping Tips

1. **Put together your Bequest Program on paper in the form of a step by step plan-Give those that follow you a road map so that the plan continues long after you are gone. Also, it gives the support staff and volunteers a clear picture of how things need to be done when you are not in the office to answer their questions**
2. **Make sure your organization gives people the opportunity to give in this way by keeping the message consistently in your materials-Planned Giving is about "planting the seed".**
3. **Always have your Chief Executive or Key Volunteer thank your donor immediately for their commitment to your organization. Don't ignore them just because it isn't money in hand. (Don't be part of the 3% I mentioned earlier)**
4. **Keep notes in your database about any contact you make with them-this includes cards ,notes, visits, annual reports-if you can't do it, make sure support staff or a volunteer can**
5. **Work smart, not hard-as often as you can, contact these people as a group**
    - **send all of them an annual report**
    - **send them all a holiday card**
    - **send them your chief communication piece**
    - **invite them ,as a group, to functions already in place for your other donors and volunteers**
    - **in other words, show them you care**

Find a way to make this happen-think of it as your legacy to your organization-don't make your "plan" more work than you can handle-and whenever possible, use volunteers and support staff to do the housekeeping

Final Thoughts

- **Attend a training at least once a year (local or otherwise)**
- **Get involved in local PG council**
- **Get involved in Leave a Legacy campaign**
- **Go at your own pace-you don't have to do it all-but do something!**
- **Subscribe to at least one PG publication**

Resources

- **Planned Giving Today-Roger Schoenhals-1-800-Kall-PGT or** www.pgtoday.com
- **National Committee on Planned Giving**
- **Local Planned Giving Council**
- **Other Planned Giving Marketing Companies**
    - **Robert Sharpe**
    - **Pentera**
    - **R & R Newkirk**
    - **Stelter Co.**
- **Mailnet services-age overlay-(615-742-1368 or custsvc@listcleanup.com)**
- **Adopt a Planned Giving person (create a link with a local PG person to call with questions)**

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Planned Giving Levels

Level 101 (passive but effective)

- ❑ **Put message about bequests in all communication materials**
  - **quarterly newsletter (either box with phrase "Remember us in your will, trust, life insurance or retirement plan" OR "Ways to Give" OR BOTH**
- ❑ **Make sure to do it forever and ever-people need to see it over and over before they act on it**
- ❑ **Letterhead if possible**
- ❑ **Back of business card**
- ❑ **Inquiry Sheet**
- ❑ **Fact sheet for Donors and Advisors**
- ❑ **Have Board President send thank you to all who let you know they have put you in estate plans**

❑ Level 201
(More active and effective)

- ❑ **Check off box in direct mail**
- ❑ **Presentation to your board about PG annually**
- ❑ **Isolate info in office about people who have told you that your organization is in estate plans (preferably color code)**
- ❑ **Code these people in your data base so you can send them**
- ❑ **B-Day card, holiday card, and annual report**
- ❑ **Come up with dollar average of Bequests and continually update this info and give to those who need to see it (Board President, Executive Director)**
- ❑ **Stuff propaganda in special events packages**

Level 301
(for those of you who have really caught the spirit)

- ❑ **Develop readiness checklist**
- ❑ **Develop Policies and procedures**
- ❑ **Hire a consultant to help you decide how to proceed OR**
- ❑ **Develop a PG committee of committed professional to follow up on more sophisticated inquiries**
- ❑ **Begin offering materials to send to people about PG**
- ❑ **Develop list of Estate Planning attorneys that you can refer to donors**

- ☐ **Hire a Gift Planning Manager**

WELLS FARGO

Building for the Future of the Charitable Community

As one of the oldest and largest trust and investment organizations in the country, Wells Fargo is uniquely positioned to serve the charitable community through our dedicated Charitable Management Group. We offer comprehensive management of charitable trusts, charitable gift annuities, pooled income funds, and endowment funds. Our active management style helps maximize the growth of assets that eventually pass to your charitable organization while providing for the income beneficiaries' needs. These strengths are combined with an experienced, professional management staff committed to service and efficiency. Together, they add up to benefits that can be substantial for your charitable institution and the donors who support it.

Charitable Management Group

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Vice President & Manager

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FUNDAMENTAL MARKETING THEORY

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FUNDAMENTAL MARKETING THEORY

Marketing planned giving is more than selling an idea. It is the analysis, planning, implementation, and control of a program designed to create, build, and maintain relationships with your target audience for the purpose of securing planned gifts.

Marketing vs. Selling

The marketing concept (i.e. satisfied donors as the key to success) is frequently confused with the selling concept.

	Focus	**Means**	**Ends**
Selling	Existing services	Aggressive selling and promotion	Goals achieved via increased volume
Marketing	Donor financial needs and charitable desires	Integrated marketing effort	Donor satisfaction as the key to achieving the organization's objectives

For you to experience success in your planned giving program, your must have a grasp of marketing fundamentals. Media executives will tell you that the key quality for attracting business is repetition, perseverance, and continuity. In other words, your message should be seen or heard frequently over a long period of time, and it must have a continuity so that your audience begins to recognize and identify the message with you and your organization. Keep in mind that it may take from three to 30 months to close but the cumulative effect of your marketing over time, along with appropriate personal follow-up, will result in planned gifts.

Harvey DeVries says that there are two aspects of planned gift marketing:

- Conceptual, that is, marketing "planned giving." The objective here is to create an awareness and an environment in which donors and prospects begin to associate the idea of charitable giving with estate planning.
- Specific, that is, marketing "planned gifts." Here the objective is more like prospect identification in that you begin to profile specific segments of your prospect list as well as individual prospects in order to match certain gift plans and ideas to their circumstances.

Developing Your Marketing Strategy

We should start with the scope of your operation. Just where (geographically) are your prospects? And, for that matter, do you intend to reach everybody on your mailing list?

Let's begin with what Harvey calls, "saturation marketing." This means you want to reach everybody. So, plan to use broad scale information and motivational material to expose virtually every market you have to planned gift development. I like his phrase, "Every friend of __(your organization)__ should have a will, and every will should have a provision for __(your organization)__." This is really a broad scale approach. It is where you need to start in that you expect prospective donors to initiate the response, that is, to qualify themselves.

Now we narrow the scope down to a segmented market. This is where you break your prospect list into segments that meet unique planned gift prospect criteria. These individuals should be exposed to a more direct and consistent effort of information and assistance. Many of them will qualify themselves by initiating inquiries for materials and counsel.

You further identify prospects by segmenting certain profile groups for some special marketing activity. Your groups might include (a) professionals with topped-out pension plans, (b) people with low-yielding, highly appreciated assets, (c) recently retired executives, (d) executives about to retire, that sort of thing. However, this still keeps you in a reactive posture as the prospective donors are inquiring and you respond.

By narrowing the scope even further you come to the kind of marketing where you have an impact on specific individuals. That is, we identify individuals who, by reason of their circumstances, wealth, interest, or motivation are judged to be planned gift prospects. Then, you begin to expose them to a direct, personal development cycle. That means they receive all of your literature (newsletters, brochures, announcements, etc.), they are invited to seminars and presentations, and you talk to them personally. They have been chosen because their circumstances may be benefited by including charitable planning and your organization will be benefited by their gift.

The objective is to move from "everybody" — that is, your entire constituency base — down to "somebody" — a specific donor prospect. Here are some marketing strategies:

- Use your newsletter and other methods to reach the widest possible audience ("saturation") in order to generate inquiries from highly motivated prospects.
- Use direct mail to a "segment" of your constituency base in order to reach the most likely prospects.
- Use creative events with a select group to identify the best qualified prospects.
- Use one-on-one contacts ("impact") with your most qualified list to negotiate a close with the highly motivated, most likely, best qualified prospects.

Good marketing is designed to meet the needs of your donors/prospects more specifically. If you can learn to identify and draw out their *personal* as well as their *altruistic* motivating factors for giving, and then meet their philanthropic and even their financial needs, you will open the discussion with ease and close the gift and be far ahead of your, so-called, "competition" in the not-for-profit world.

Marketing Motivators

Fact:	About 70% of adult Americans die intestate (without a will).
Fact:	In the last three years, 8 of the 12 largest gifts made in the U.S. were planned gifts.
Fact:	Almost 40% of the revenue of nonprofits with an experienced planned giving program comes from planned gifts.
Fact:	70% of Harvard's endowment (over $12 billion) came from bequests.
Fact:	Fewer than 20% of individuals capable of making large gifts have ever been asked.

Your Case

Every successful planned giving marketing plan must be based on a meritorious case for support. Since planned gifts are most often a donor's ultimate investment in your cause and, for that matter, they are the final expression of the donor's sense of responsibility in using his or her accumulated resources for public good, it is vital that you are able to communicate your mission and your current and future need for resources. In other words, because planned gifts usually represent the donor's largest charitable gift and are so future-oriented, your organization must have a meritorious mission and case *and* a projection of what the mission and financial needs of your organization will be in the next 10 to 30 years. Your case must compellingly communicate how economic and demographic trends will affect your organization's future.

Here are some other things your case statement should confirm:

1. The permanence of your organization and a public perception of the stability of your board and staff.
2. Strong financial management.
3. Board commitment to their responsibilities relative to planned gifts and their own planned gifts.
4. An adequate and knowledgeable development staff.

A case statement can focus exclusively on a particular department or program, or on the major needs of your organization. If you properly draft your statement, you will raise awareness about your organization's needs and,

like a menu, offer a variety of funding options along with their corresponding costs. This is one of the most important but neglected marketing tools a development program can offer.

Marketing Is Also Promotion

There are all kinds of ways to promote your planned gift program but you may face certain limitations unique to your organization. Some methods include advertising, direct mail, publications, events, seminars, volunteers, personal contact, etc.

Newsletters

Make a list of every publication or printed piece that is sent to any or all of your constituency base. Usually newsletters have the widest possible audience and are the very best vehicle for stories, advertisements, pictures, etc. about how planned gifts work, when they are good to consider, and how they benefit the donor and your organization. With that in mind you should be sure to include planned gift information with virtually all of your organization's promotion and communications efforts.

Always be sensitive to your market and have an objective in mind for all of your promotional programs. Think of your donor first and prepare your materials and events with the donors and/or the segments of donors in mind. Clearly define exactly what response you expect to achieve, and make it easy for that response to be made through your promotional efforts.

So, what are your objectives? Promotion should be designed to generate awareness, interest, inquiry, investigation, and investment. Good planned gift development requires personal attention. So don't expect or try to close deals through promotional efforts, but rather use promotional efforts to create the opportunity for personal contact. (See, "What Are Your Objectives?" below.)

Advertising

If you choose to use advertising, I suggest you advertise in your own publications. Some major organizations have advertised in newspapers with good success. But those organizations have a long term of successful practice in planned giving with a strong reputation and the ability to test their marketing efforts.

Remember, you are really selling your organization when you advertise, not a planned gift program. Don't make promises that cannot be fulfilled; use clear and simple expressions; appeal to curiosity; highlight benefits and service; be motivational, use testimonials, illustrations, and examples. Make it easy for a prospect to inquire.

Direct Mail

Direct mail is a more selective tool and can be easily qualified for any given market and, for that matter, it can be highly personalized. It is flexible in that it can be creatively designed to achieve your purpose.

You should use personalized letters, estate planning information and service materials, brochures, questionnaires, newsletters, statistical data, timely appeals and analysis in a direct mail program.

You should always be building selective mailing lists for thorough cultivation, information, service and solicitation for your planned gift program (see "Your Audiences" below). But frankly, the nature of a planned gift program is such that renting lists and broad-scale solicitation really are not the best approach. Rather, your best methods for planned gifts will come from a more sophisticated and highly-qualified personalized approach.

Publications and Brochures

Publications and brochures may be designed specifically for your organization and they are available from a variety of sources. If you buy them rather than write and design them yourself, you should select something that is flexible enough to be adapted and useful to your organization and your objectives. By the way, consider that you can buy the ***copy*** for a publication or even a brochure on a floppy disc from some publishers. Then you can design your own publications and place the purchased copy where you want it.

You should probably have a general brochure on planned giving and then a variety of technical brochures dealing with various vehicles. Use your newsletters, magazines, or whatever schedule of publications you have to carry a column or regular feature on planned gifts. You can get this copy on a disc from certain publishers, too.

Seminars and Workshops
These can be very good promotional and motivational events. A seminar can be structured for a variety of audiences such as widows, people with topped-out pension plans, recently retired executives, about-to-retire executives, agents of wealth, service clubs, etc. Use outside resource people (perhaps a well-known estate planning attorney) to give credibility and professional prestige to your events.

Your Audiences

Your audience for all of your marketing efforts is critical to your success. For items to be mailed, the quality and selection of your lists are much more important than the quantity. Large lists can become debilitating. So your criteria for selection are as follows:

1. Donors, current or past, preferably at upscale levels.
2. Current and retired employees (as well as other retirees) in a leadership role.
3. Senior clubs and organizations.
4. Retirement center residents.
5. Referrals.
6. Seminar or workshop registrants.
7. Specific prospects that meet your profile criteria.

For public presentations such as seminars and workshops your audiences may include:

1. Various constituencies such as alumni or grateful patients, etc.
2. Donor groups.
3. Senior clubs.
4. Retirement centers.
5. Auxiliary groups.
6. Selected by invitations (such as, donors who hold large amounts of highly-appreciated assets, donors about to retire, donors recently retired, etc.).
7. Special interest groups (such as, specific purpose clubs or societies, agents of wealth/influence, etc.).

Internal Marketing
External marketing is only one-half of your marketing program. The other half involves educating your internal colleagues. In order to ensure cooperation between the planned giving effort and other supporting departments, plan on marketing your program in order to educate these other departments about how planned gifts will benefit the entire organization and how their efforts are a part of the entire marketing process. Spend your time primarily with the vice president for development, the president, the board of trustees (directors), volunteers, the treasurer, general counsel, and the business office.

While most vice presidents for development are generalists rather than specialists in planned giving, they usually have a basic understanding of the vehicles. They also know quite well that to compete successfully with other organizations they need a vibrant and active planned giving program. The attitude of the vice president directly affects the perception of the planned giving program by others inside the organization, including development staff and employees in related offices.

There are a number of ways in which a vice president for development can facilitate the planned giving effort:

1. Provide direct access to the president and trustees.
2. Ensure a sufficient budget to run the program.
3. Allow enough time for the marketing efforts to produce gifts.
4. Offer opportunities for continued professional training for you.
5. Involve you in meetings that include the president and trustees (directors), and give you ample opportunity to speak about planned giving.

6. Provide adequate recognition for planned gifts within the organization.

An enthusiastic president can have a great impact on the effects of the planned giving program. Moreover, a president who has personally made a planned gifts is uniquely qualified to speak about the value of these gifts to other donors and to employees. Your goal is to have the president endorse the planned giving program at every possible opportunity. That, of course, will influence others to take your program seriously. Use the president sparingly.

Consider using volunteers to multiply the impact and reach of your planned giving program far beyond what you could ever do alone. Volunteers can speak on behalf of your organization in ways you never can. While the words may be the same, the message is quite different coming from someone who is not being paid to deliver it. And, by involving ***prospects*** as volunteers, you are utilizing the most effective form of cultivation possible.

What Are Your Objectives?

In every marketing effort, whether it be direct mail, seminars, face-to-face meetings, advertising ... whatever ... always determine your specific objectives for using this marketing form. Your objectives should fall somewhere within the following:

1. To create a general public awareness of the need and opportunity to include gift provision when preparing a will or estate plan.
2. To provide and identify resources for planning.
3. To provide useful information about wills, estate plans, and gift opportunities.
4. To identify prospects and generate inquiry.
5. To educate perspective donors in the basic concepts and implications of charitable giving and estate planning.
6. To generate specific inquiries for services and information.
7. To motivate prospective donors to take positive action.
8. To give visibility to your organization, your programs, and support opportunities in planned giving.

If you plan a program for agents of wealth/influence, your objectives should include:

1. To create an awareness of the potential benefits for their clients as well as for your organization in planned gift opportunities.
2. Identify your organization as a resource for competence and creativity in planned gift development.
3. Cooperation in facilitating the charitable objectives of their clients, your donors.
4. Build a network of professional individuals as resources to whom we can confidently refer prospective donors.
5. Create the possibility for them to refer clients to your organization and propose gift plans for your benefit.
6. To raise the profile and art of charitable estate and financial planning.

Your Planned Giving Program Plan

Your plan should be at least one year in length and should include a schedule of mailings and events that will develop your audience's understanding from general to specific. For example, begin with information on wills. That's easy because everyone understands a will. Moreover, they are relatively simple and inexpensive to prepare and have become the foundation for most estate plans as well as for most planned gift development programs.

Follow that with information about "gifts that pay income," such as charitable gift annuities and charitable remainder trusts. Include in your year-long education program information on gifts of property, year-end gifts, as well as basic ways to give, and some stories on specific gift plans. Most people don't remember details about how a charitable remainder trust works, but they will remember a story about Bill and Barbara Jones.

Your plan should include policies and procedures for dealing with specific gifts and/or specific issues. For example, how to handle gifts of real estate; will your organizations serve as trustee of a trust; how do you give recognition for deferred gifts vs. current gifts? Moreover, you should have a sufficient budget and your plan should

include accountabilities. For example, how many calls per week/month are you accountable for? Are you (God forbid) required to bring in $X in planned gifts each year?

You should consider marketing endowed funds to donors. Planned gifts are an important means of funding endowed funds. Although a donor may establish a fund with an outright gift, planned gift vehicles are often associated with establishing or augmenting endowed funds. These funds may be established for any purpose and are commonly named after the donor or the donor's loved one. An endowed fund may be created to establish an endowed scholarship, project, program, institute, professorship, or chair.

A printed list of endowed naming opportunities and their corresponding costs can help raise a donor's philanthropic sights. You'll find some competitive donors see the higher-level endowed fund options as a challenge to be met.

It is not enough just to inform your public but you must have a method for following-up. At events your plan should require you to have a registration form in order to capture the name, address and phone number of all of your participants. Also, be sure your presenter is scintillating. Make sure ***you*** have heard this presenter before and that everything he or she does is designed to engage the audience. Planned giving can be deadly and a purely technical presentation can put your audience to sleep quickly.

Be sure you write notes to thank people for their attendance and attention. Include in your own records information you have gleaned about your prospects such as their family information and the approximate age of the prospects. Use evaluation forms asking the participant if the subjects were of interest to them and asking for their suggestions for future seminars. It is important to move from that into a question about their own personal planning such as, "Do you have a will?" Immediately ask, "If you have a will, do you have a provision for our organization?" Or, "If you were to prepare a will today, would you consider a provision for our organization?"

In Conclusion

One of the most important components of any planned giving program is effective marketing. To stimulate business, you must play the role of entrepreneur on behalf of your program. Without a strong marketing effort, most prospects won't even know about your giving opportunities. The use of marketing vehicles to help prospects identify themselves will, over time, result in a greater number of planned gifts for your organization.

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DONOR STEWARDSHIP TECHNIQUES:
"To whom much is given, much is required."

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Donor Stewardship Techniques:
"To whom much is given, much is required."
Melodie A. Knighten

I. INTRODUCTION

Stewardship is becoming more of a household word and perhaps a technical chore for charitable organizations making strides to improve donor relations and gift administration efforts. This discussion for donor stewardship techniques seeks to deliberately remove one's paradigm from tried and true "techniques" to a more powerful ethos in stewardship planning and practice.

The most successful gift planning programs in the country incorporate responsive and responsible stewardship to move the "donor accountability" mountain out of the way. In turn, relationships inside and outside of the organization improve and incoming resources increase. We will look at stewardship as it is defined, designed and then aligned to a more personalized, program mission that carefully tends to the needs of your philanthropists and to the ethos of your program and charitable organization.

II. DEFINING STEWARDSHIP

A. *Stewardship* defined by Webster's:

The office, duties, and obligations of a steward or individual(s) deemed responsible to manage his life and property with regard to the rights of others. When one acts as a steward, they act as a manager of that very object or individual with whom they are entrusted on behalf of the one entrusting them.

Main Entry: **stew·ard·ship**
Function: *noun*
Date: 15th century
1 : the office, duties, and obligations of a steward
2 : the conducting, supervising, or managing of something;
especially **:** the careful and responsible management of something entrusted to one's care.
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B. *Stewardship* defined by its Creator:

The right return of good to others through the right exercise of gifts placed in each of us. Each of us have been given the gifts of our time, our talent and treasure. Planted into each of us are these gifts to be managed in such a way that we ultimately use them to serve others over self-interest. We are not only the stewards of these gifts within ourselves, but we are presented with many opportunities as charitable gift planners and philanthropic coaches to steward or manage these very same gifts within others.

Luke 12:48B (NIV)
From everyone who has been given much, much will be demanded;
and from the one who has been entrusted with much, much more will be asked.

C. Stewardship defined with *INSIGHT* in gift planning:

>***Inquire within***

Who decides what stewardship means to me, to the program and to this organization?

What does true stewardship mean here?

When is stewardship actually seen or experienced inside and outside my program? Is it more of a conditioned reaction or an unconditioned response?

Where does the mission of stewardship reside at my organization?

Why is stewardship important to my organization?

How is stewardship embodied within my gift planning program mission?

>***Nurture the needs*** of your customers - Donors, Advisors, Beneficiaries, Institution's Public

Who is the customer and who on your team will tend to the customer?
(The Philanthropic Intellectual vs. The Charitable-at-Heart)

What are the customer's needs and what is required in state/federal regulations?

When will customer's needs be met according to and/or above and beyond meeting personal needs and mandatory state/federal regulations?

Where will customer needs be met?
By my office, treasurer's, the President's, the out-sourced administrator?

Why should customer needs be met?

How will customer needs be met?

>***Service with style***

Your program must define stewardship through a raised awareness and sensitivity to service-orientation. Having this orientation will allow you to more quickly identify who, what, when, where, why and how you will provide service that is more responsive to the individual rather than reactive for your institution.

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>Information...Gather and give it!

Stewardship embodies information flow and the effective retrieval and distribution of it for confidential use by those involved with donors, and the commitment of their relationships and resources to your charity's mission.

>Good manners is good business!

Providing stewardship to your donors despite their capacity to give again or to give larger amounts is good manners and good business.

>Helpful Guidance

Stewardship is a team-process to guide and assist a donor in his/her relationship with you and in their understanding of the management and utilization of their gift by your charity.

>Truth be Told

Someone must always take responsibility for the care and attention of your donors. Why not your program and your charity?

Focus on full disclosure with your WHOs (relationships) and your WHATs (mission and resource management)

WHO is most important in stewardship?
Your donor. It is less expensive for a development program to keep and elevate the happiness of its current donors than to invest in the acquisition and solicitation of those less familiar and involved.

WHAT is most important in stewardship?
Your mission and resource management. The closer your charity is to fulfilling and realizing its mission, and successfully managing its resources while accounting to those who have provided them, the closer your donors will want to be affiliated with and participate in your mission.

Defining INSIGHTful stewardship =

Inquire within
Nurture Needs
Service with Style
Information...gather and give it!
Good Manners is Good Business
Helpful Guidance
Truth be Told

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III. DESIGNING STEWARDSHIP

When you define stewardship and give it a mission, you are ready to design in such a way that your donors will experience a more unique process which sets apart your program and charity from all the others. The best design work begins first by recognizing *"at what point"* does the stewardship process begin, how to move from process to practice and who your institution's stewards are?

A. When Does Stewardship Begin?

The stewardship process typically begins at the point at which you give priority to the donor and his/her completed gift. For instance, the majority of stewardship programs are modeled to initiate stewardship plans and activities with the donor after a gift commitment is completed and based usually upon the annual or lifetime giving level of the donor, or on the "unknown" estate gift.

Stewardship has been more or less "prescribed" by the institution and donors are placed into convenient, computerized boxes that are categorized or grouped by giving. This model has been elevated to importance, because institutions realize the daunting audience of donors who need special attention and tracking. But, is this really what our donors need in the overall benchmark of what is good, better, or best for the long-term?

B. When Ought Stewardship Begin?

The stewardship definitions we have discussed suggest that stewardship does begin at the moment one has been entrusted with something to manage on behalf of the giver. Should we not then permit the giver to guide or give input to the stewardship process they will encounter?

In the cycle of cultivating prospects and negotiating gift plans we grow familiar with the management of donors during all phases of contact with our institution. We have direct contact with or we manage (steward) the direct contact of colleagues with prospects who eventually become planned gift donors.

The contact and cultivation work being done to bridge new relationships and gifts is carefully planned, carefully individualized and implemented with progress being monitored at all times. It is not the moves management theory to which I refer here for that demoralizes the donor into a target. But, it is that framework of planning and practice to which program energy invested in stewardship will reap tremendous results in improved relationships and increased resources.

Setting our programs apart can only begin by ***invest*ing** in a process irrespective of the gift commitment and continuous in the life cycle of our donors, who by their needs and preferences declared at any age or economic status, may reveal the donor's truth, "This is what my stewardship experience ought be, nothing more, nothing less...and above all, I wish for nothing prescribed institutionally without my input."

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It is already reported that our most important gift planning prospects are growing through other life stages besides the late retirement, 70+ year olds. Besides our better educated and affluent elderly population, these new donors are reportedly a psychographic blend of baby boomers, women, successful entrepreneurs and high income earners. All are very astute at deciphering the good, better and best in stewardship and accountability among charities.

These donors carry with them one of two basic perspectives about charitable giving no matter their age and what values identify them even among the Seven Faces of Philanthropy. These two perspectives, *The Philanthropic Intellectual* and *The Charitable-at-Heart*, in this new century require our programs and institutions to operate with a new way of thinking: a new paradigm.

Arriving on the scene with more "say so", these donors are meeting privately amongst their peers. They are showing up and sometimes showing off with more of their minds, hearts and souls in the manner in which they give and to what matters most to them. Will their gift be the one to help cure cancer so there is no longer a need to research the cure or will they continue to help feed the poor? Will their gift have purpose or will it relieve the ongoing plight of those we will always have with us?

These new donors will only seek and "go on-line" with charities who provide them a more individualized experience in being philanthropic or charitable...one that is intellectually sound and intuitively stimulating. If you are presently not at the point of program readiness for individualized donor stewardship design, then you must embark on a new stewardship mission, plan and practice that requires additional mind, heart and soul. What follows are practical pointers for the plans and practices that will help steer your stewardship in the right direction.

C. DESIGNING THE STEWARDSHIP PROCESS, Part I

PLANNING = INVESTing in what matters to your donor.

I - Individualize your stewardship *"Watch My Watch!" Exercise*

Stewardship plans that work best put forth ideas and receive input in such a way that our donors have truly engineered or invented their individualized stewardship experience. This achieves the greatest level of mutual accountability between the donor and charity. Otherwise, the charity is simply recording for itself what it did and did not achieve in stewardship activities measured for particular donors identified for institutionalized stewardship.

N- New Plan = A New Process

Embrace new processes for meeting the donor's needs in order to succeed and be set apart from what is being experienced elsewhere. Dare to think new. For instance, send an 'Anniversary on the Date of Gift' greeting each year instead of the old, "It's Your Birthday and we're counting down with you!" Engage your treasurer, gift processing, legal and gift administration and investment management counsel in addressing how you will steward your donors in a more individualized manner...one that is befitting of their wishes and goes the extra mile when compared to what is required by law.

V- Voice A Vote

Planning for stewardship requires time and input from many who are involved in some way with your donor and the gift planning process. Obtain the votes of others familiar with your donor and with great donor stories within your charity. Find and ask for input from those who already have or will play vital roles in the stewardship process through special events, communications, community relations or other departments.

E- Ensure End-Users - YOUR DONOR, THEIR ADVISORS, THE BENEFICIARIES

Donors want to be ensured of your mutual commitment to them for the long haul. You must show accountability before the process of acknowledgement, recognition and reporting...all of which are important processes. Don't simply assume nor take the "love them, then leave them approach" too often exercised in the hurry of campaign numbers crunching. Give your donors and those important to them full consideration before establishing the process they encounter. This is the best way to meet and possibly exceed certain expectations for accountability while reflecting a more positive, partnership light between donors with your charity.

S- Seek The Successful Stories

When in doubt, seek out! Anything new to you may not be so new to others who are not in the everyday framework of gift planning. Seek out some of the past successful stewardship scenarios and personalities with whom examples of stewardship done with care created a measurable difference or increase in the relationship and/or commitment of resources.

T- Team Spirit!

Don't go it alone or you and your program will be left with none. The more colleagues, qualified professionals and volunteers that you have involved with your donor, the more opportunities there will be to solve or resolve any potential stewardship matters that can arise with the relationship(s) and the resource(s) resulting from your work.

Designing to INVEST in the plan =

Individualize Your Stewardship
New Plan = A New Process
Voice a Vote
Ensure End-Users
Seek the Successful Stories
Team Spirit!

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D. **DESIGNING THE STEWARDSHIP PROCESS, Part II**

PRACTICE = Implementing the donor stewardship plan and what the law requires.

I- Instill Individual & Institutional *Integrity*
-Full disclosure
-Gift acceptance & counting policies
-Confidential & complete file records
-Tax reporting in a timely manner
-State/Federal regulatory requirements re: register, solicit, serve as trustee
-Investment/Administrative Performances
-CEO philosophy, mission, annual report and strategic plans
-Stewardship plan review
Timely acknowledgement, receipting, recognition & reporting of gift

M- Make it happen or manage it!
-Steward your donor's gift and plan as others help steward your donor.

P- Prioritize politeness into program & performance reviews!

L- Leave legal matters and "I don't knows" to qualified counsel.
Little remembrances mean more than you know.

E- Excellence = Endeavoring + energy!
-The Recognition Society
-The Recognition Event
-The Advisory Council
-Other Marketing Practices

M- Major in the majors.....Make the gift experience positively unforgettable for your donor.
Don't major in the minors, nor minor in the majors!

E- Entrust everyone with your program's stewardship ethos!
-To manage with regard to others, to serve others over self-interest.
- To whom much is given, much is required

N- Never assume anything and don't be afraid to say, "No!"

T- Thank your donor and then thank them again, creatively and annually!

Designing to IMPLEMENT the practice =

Instill Integrity
Make It Happen or Manage It!
Prioritize Politeness
Leave Legal Matters to Counsel, and Little Remembrances
Excellence = Endeavoring + Energy
Major in the Majors
Entrust everyone with the ethos
Never assume and it's okay to say, "NO"
Thank your donors, again!

E. WHO ARE THE BEST STEWARDS FOR PLANNING AND PRACTICE?

A working dialogue and tips from "The Wizard of Oz"

Stewardship Team Members	***Mind***	***Heart***	***Soul***
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

IV. ALIGNING YOUR STEWARDSHIP ETHOS AT YOUR INSTITUTION

Defining and designing stewardship are successfully accomplished with the *insight* of your gift planning program, *invest*ing in planning and *implement*ing practices. Now comes the most bold part of your adventure. You and your program can help inspire institutional leadership to grasp hold of the stewardship ethos. Look for opportunities where your program's success with stewardship can give more mind, heart and soul to the overall perspective, plans and practices of your charity as it seeks to serve its public.

A. The Cornell University-Wide Stewardship Committee...their vision in the mid 1990s.

B. Inspiration from some of Philanthropy's Prophets:

>Dr. Paul Pribbenow...*"Stewardship, the new mythology and ethos for philanthropy."*

>Dr. Judith Nichols...*"We're entering a time when fund-raisers will serve more as account managers and less as technicians. Planned Giving is no longer end-of-life, linear strategy for giving. It must be embraced as the holistic, overall strategy it should be."*

>James Gregory Lord...*"The donor is capable of generating optimal philanthropy more powerfully through the professional's use of appreciative inquiry."*

C. Suggested Readings

Stewardship : Choosing Service over Self-Interest
by Peter Block

Robert H. Waterman, Jr., author of The Renewal Factor and co-author of In Search of Excellence. "Stewardship is visionary, hopeful, and practical. Block calls for a whole new way of thinking about the workplace-and then takes the reader through very tangible steps for getting there."

The Stewardship of Private Wealth: Managing Personal and Family Financial Assets
by Sally S. Kleberg

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Crescendo Interactive is the choice of an overwhelming majority of national gift planning charities *- generally those with eight or more gift planners. Why? They know that National Gift Planning requires the dependable national-quality resources of* ***Crescendo Interactive*** *- THE electronic marketing and support firm for National Gift Planners.*

Crescendo Pro Software "Crescendo Interactive products, services, staff and seminars have always proved helpful and up to date. In our many years with them, these resources have helped us close many outstanding gifts."
- Colin V. French, Director, National Endowment - **Boy Scouts of America**

National Charity	Crescendo Sites*
American Cancer Society	54
Lutheran Organizations	53
Salvation Army	52
Baptist Foundations	52
Methodist Foundations	52
Jewish Charities	50
Catholic Charities	44
LCMS	38
California State University	23
ELCA	19
Adventist Charities	18
Episcopal Charities	17
American Heart Association	16
YMCA	16
United Way	15
Orchard Foundation	14
Mennonite Charities	13
Catholic Healthcare	11
Assemblies of God	8
Boys Scouts of America	8
American Red Cross	8

*Site numbers reflect current charity partnerships through October 1999.

Software Support "In the crunch time and in all my years working with profits and non-profits, Crescendo support continues to provide the *Salvation Army* with the best customer service AND results I have ever experienced!"
- Lindsay Lapole, Territorial Planned Giving Director
- Salvation Army USA Southern Territory

In-house Tax Support "When multimillion-dollar gifts are in process, our staff needs answers - right now. With three tax attorneys and a CPA *in-house*, Crescendo has always provided the right answer to help close the gift on the spot."
- Jackie Franey, Dir. of Planned Giving, National Center
- American Heart Association

National Marketing for Allied Professionals "Among Crescendo's many advantages, we are delighted with the *GiftLaw* service that reaches over 20,000 attorneys, CPAs and other professionals each week. This service will help us work with trained professionals and potentially raise tens of millions in more gifts. We are happy to be on board with *Crescendo Interactive*."
- T Joseph McKay, Dir. of Fund Development and Planned Giving
- Catholic Healthcare West

National Marketing for Donors "Web and e-mail education of donors is now a must. *GiftLegacy* is a superb way of educating and motivating our rapidly growing group of Seniors on the Internet. It is a very impressive addition to their powerhouse of tools."
- David Overstake, Planned Giving Director - **Salvation Army Northern Division**

Crescendo Interactive market share has extraordinary dominance (about 75%) of all National Gift Planners.

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SEVEN STEPS TO CREATIVE MARKETING USING MULTIPLE MARKETING MEDIA

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Seven Steps To Creative Marketing Using Multiple Marketing Media

How to Facilitate the Development of Creative Concepts In Major Gifts Marketing

Creativity is a powerful force. Creative ideas have lead to innumerable innovations. Today, we are in the process of an information society transition that has released an extraordinary level of creativity.

How can a person become more creative? Are there certain methods or ways in which a person can facilitate creativity? What types of specific actions or concepts will lead you to become more creative?

In this article, seven specific ideas will be explained. These concepts have enabled people from all walks of life to develop new and creative programs, methods and products. If you apply these concepts, they can also help you to become more creative.

In the first section, we will examine seven concepts and specific examples of those ideas. The second section will be an exercise devoted to the application of these ideas to the GiftLaw program. GiftLaw is a multiple-media education program for allied professionals. It includes satellite teleconferences, a web site, e-newsletters and video. While it is only one year old, the GiftLaw program is a useful example for this marketing exercise because it has shown great potential for marketing success.

I. Background – Formal and Acquired

Each person brings a whole series of life experiences to the table of creativity. For example, your undergraduate education, other formal education and work experiences comprise your background. Since each person's background is very different, the nature of his or her thought process will be different.

Is formal educational background important? This background may not be directly significant for developing creativity. Most gift planners have formal educational background in very structured disciplines such as science or teaching, and this background alone will typically not be particularly helpful to the creative process. However, these same persons may have an opportunity to acquire diversity of background through both life experiences and continuing education.

Most people tend either to be oriented toward art or science. Yet good marketing ideas require a combination of both disciplines. Science is the discipline of structure and analysis. Art is the study of beauty, form, color and creative energy. Good creative marketing programs require elements of both art and science.

If you are an artistic person by nature, then it will benefit you to acquire some background in science. Many area colleges offer evening courses. The courses in the new technology would be especially the type of science that would be beneficial. Learning how to use the Internet, how to make appropriate use of media such as audio, video, television and other technical information will be very important.

Alternatively, more of the typical gift planning audience tends to be grounded in science. People who have a science background should attempt to expand their mind in the artistic area. This can be done through traveling to the various art museums and exploring the many types of art. It also is helpful to attend the symphony, the ballet or perhaps take an art appreciation course.

Two of the giants of the artistic world were also excellent scientists. Michaelangelo is the preeminent sculptor in history and also had a knowledge of medical science comparable to most doctors of his time. Leonardo Da Vinci's "Mona Lisa" is perhaps the most viewed painting in all history. Yet Da Vinci also was very knowledgeable in physical sciences. Leonardo conducted numerous engineering studies and foresaw the advent of the aviation age. Both of these enormously gifted artists also were well grounded in science. Their creative spirit was enhanced by an understanding of both art and science.

II. New Ideas

Have you ever had lunch with a marketing executive? Generally, the lunch conversation is peppered with ideas. A veritable downpour of new concepts, thoughts and ideas pours forth from the creative mind of the marketing professional.

It is essential to be exposed to people with large numbers of ideas. Yet, it may be possible to gain that experience in your particular area. Sam Walton was the founder of Wal Mart and many consider him to be a marketing genius. Sam Walton said that one key to his success was to have 100 ideas operative in any store at a given moment. Most of the ideas would not succeed, but some would succeed and would prove to be very helpful. Merely by receiving and implementing hundreds of ideas, Sam Walton developed a marketing mega-store.

Many ideas do not take shape immediately. There may be 10 or 12 different concepts or proposals circulating around the development of a product or the creation of a marketing plan. Some of these ideas may not function optimally yet. For example, in 1997 gift planners began examining the options for broad-based marketing through the World Wide Web. This is an excellent idea, but the maturity of the idea needed greater acceptance by seniors of Internet technology.

In the year 2000, there are already many seniors on the Internet. As the web continues to gain in acceptance and as broadband technology becomes widespread by 2001 or 2002, the majority of seniors will be on the Internet. At that time, the marketing concept will now match the mature market group. In addition, there will be much greater understanding of how to interact with seniors on the Internet. Since it is quite common for programs to require three to five years to be developed, there are many circumstances where ideas are excellent, but need to wait until either the marketplace or technology are in the right relationship to create an effective marketing program.

The power of new ideas is greatest when combined with advice. You may find that one, two or three concepts work together in combination in an effective manner for your target market. This is important, because in most circumstances, one recommended course of action will not work exactly as advised. However, with some modifications, the combination marketing strategy can prove very effective.

A request or input from another person will spark many ideas. Particularly if you have a reputation for being open to ideas, you will receive many different ideas. Do you know someone who likes to give advice? Most Americans fit into that category and are very happy to give advice to anyone, anytime on nearly any subject.

III. Transference

Hundreds of ideas circulate past each one of us every day. Some of the best inventors are persons who take a current idea and give it a new application. For example, Wal Mart received an idea from an employee at a store in which there was a shoplifting problem. The employee suggested placing a retired person near the door to watch for shoplifters.

When the store implemented the concept, the retired person was a fairly friendly type. He always said hello to his neighbors and so would greet everyone who walked in the store with a friendly, "Welcome to Wal Mart." This solution to the shoplifting problem turned out to be a wonderful marketing idea that has been tremendously helpful to Wal Mart. By having greeters and encouraging all employees to be friendly, the entire store encourages repeat business. This is an example of an idea that was designed to solve one problem, which proved far more effective for a quite different reason.

Yet creativity is by definition new, different and unique. Mere duplication of the efforts of another person will seldom achieve the desired results. The creative process must be broader than that.

For example, to develop a new brochure, a gift planner might look at the brochures of two other charities and then, using those as his or her model, write a new brochure. This result tends to have rather modest success.

A more productive method would be to review the brochure of one non-profit and then to review the brochures of a for-profit entity. By understanding the market positioning and methods of both the non-profit and for-profit, you will have considerably broadened your perspective. The resulting brochure is much more likely to speak in a fresh and a new way to your constituency.

A third method is better yet. Combine the concepts of the non-profit and the goals as viewed in the literature of the for-profit with the uniqueness of your organization. This method is very likely to lead to success. First, review a fairly broad area of marketing, apply the best concepts from both the for-profit and nonprofit arena, and then modify those creative ideas in a manner that is specially designed to speak to your constituency. This is the essence of the successful marketing program.

IV. Language

Marketing ideas must speak in different languages for different groups. Each different segment will require a specific language. For example, in the planned giving area, some individuals have attempted to speak to donors in language that is appropriate for attorneys. Is there a difference between donor-language and attorney-language? Clearly, these are two quite different types of syntax, vocabulary and structure.

The donor language should be very clear, concise and encouraging. On the other hand, language for the CPA or attorney or other professional will generally relate more directly to tax and planning concepts and is expected to be more technical. In marketing to both groups, your language must be the correct type for each market segment.

Gift Planners need to acquire facility in three languages – donor language, professional advisor language and technology-communication language. These three languages are the essential building blocks for creative marketing.

V. Understanding of Technology

Thomas Edison would never have invented the light bulb if he had not understood the basics of electricity, metallurgy and glass technology. He was able to combine diverse types of materials because he had a general understanding of the technology of each type.

Similarly, in the information age, you will be well served to acquire a basic understanding of the new technology. This technology includes audio, video, e-mail, television, direct mail, software, hardware and the Internet. The basics of audio include scripting, voice character, recording and editing. Video principles include the actor's scripts, the technical script with times, camera selection, camera angles and audio mixing, the taping, transitions, editing and the final post-production. Internet production requires an understanding of basic HTML, graphic development, page system design, colors and fonts and creation of interactivity.

Area colleges typically offer courses in all of these areas. While some of the courses are too technical for most gift planners, there are usually some offerings that are a blend of technology and marketing. Review the options available in both the marketing and management departments for related courses that cover both those areas and technology.

While you need not become an expert in all areas, it is very helpful to have a general understanding of each area. At its heart, marketing is communication. These different types of media are all useful in the communications process. Effective marketing will involve applications of several of these types of technology in a multiple-media marketing program. Understanding the essential methods for the different technology will be very helpful in sparking new ideas to make best use of the methods.

VI. Mild Craziness

Henry Ford implemented a marketing stroke of genius that was considered "mild craziness" by almost everyone in his industry. He decided to pay his workers the then–unheard of sum of $5 per day. His theory was that the workers would then have sufficient income to buy cars and he would sell far more automobiles. Indeed, his "mild craziness" prepared the general consumer market for the day when the average person in America would own a car. One only has to observe the traffic in Washington, Chicago, Atlanta, Dallas and Los Angeles over the past decade to appreciate fully how successful Henry Ford's idea has become.

Good marketing ideas will typically tread on new ground. Some of the advisors for each person will surely question the logic, viability and practicality of the idea. Others will question the sanity of the originator of a new concept. Hold your ground! Stand tall! Stay firm! Good new ideas will always generate opposition. You must be willing to take reasonable risks in any new program to gain market success.

Mild craziness inherently includes a willingness to fail. And failure is an essential part of the creative process. Most readers of this article make use every day of a product failure by 3M. They invented a glue that didn't stick and wondered whether or not there could be any application for such a product. Today, "post-it" notes with the "glue that doesn't stick" are an essential part of all modern offices.

Thomas Edison had been working diligently to invent the light bulb. One morning, an associate asked him how he was progressing. He responded, "Great. I already know 400 things that won't work!"

Nearly everyone knows that Mark McGuire broke the records of Babe Ruth and Roger Maris by hitting 70 homeruns. Virtually no one knows that Mark McGuire had 155 strikeouts. When being creative, remember that people will remember your homeruns and forget your strikeouts. Launch out into the new territory knowing that there will be successes and failures. Then celebrate your successes.

A willingness to fail is essential to success. Boards of directors with a measure of "mild craziness" will understand that most great successes come mixed with a dose of failure. The best description of a creative marketing gift planner is,

"Dedicated to Success, and Willing to Fail."

VII. Test and Evaluation

Feedback in the marketing area is essential. William Wrigley of the Wrigley gum fame was one of the most successful marketers of his day. His comment was, "Half of my marketing money is wasted; I just never know which half."

Truly, there will be many different marketing ideas that are attempted and will fail. However, since marketing is a rather unique area, it is nearly impossible to understand in advance which ideas will succeed and which will not succeed. Thus, it is absolutely essential to use a number of different marketing ideas and then to evaluate progressively the success and reception of the different concepts.

Future marketing programs will necessarily be multiple-media campaigns. But which media is working best? Is the video the strongest? Are we getting good response from our web site? Will donors read our e-direct mail? Should we add audio to our Internet site?

All of these questions can be answered by testing. This test and evaluation process can occur in several ways. First, all marketing concepts should be tested with individuals, small groups or good friends. They will provide the initial feedback concerning the marketing concept. Many marketing concepts are now tested with "focus" groups. These groups provide objective feedback concerning the product. Finally, when the marketing plan is in place, there will obviously be a considerable level of response from donors, board members, other gift planners and friends about the programs. While much of this is anecdotal in nature, it is also possible to do some statistical sampling in a scientific survey to determine the success of a program.

Marketing Exercise

Let's embark on an exercise now to test several of these concepts. While the GiftLaw program is approximately one year old and no marketing program can be pronounced a success until it is approximately three years old, there are some obvious signs of potential success that make this program a fairly good case study. In addition, it is a multiple-media marketing program that will give insight to the various methods for marketing programs that use new electronic media.

As we proceed through the various steps of the development of the GiftLaw program, you will have the opportunity to pause after each step and indicate the use of one or more of the seven marketing principles. This process will enable you to analyze and understand better how these seven marketing principles may be applied to your particular situation.

I. GiftLaw Background – 1997

In 1997, the Case of the Week and the Article of the Month were published on the web. The Case of the Week was a case study that discussed a planning situation. Each week, a new case study was added to replace the previous one. Similarly, the Article of the Month discussed an area of gift planning, gift plan marketing or tax law relevant to the gift planning profession. Every month there was a new article offered on the Internet. Both of these were offered at no cost to all that were interested.

In mid-1997, Leslie Neuhaus, President of the Central Nebraska Community Foundation in Grand Island, called and suggested a teleconference. She noted that many of the professionals in central Nebraska were now starting to receive teleconferences. Her suggestion was that January would be a very good time for a teleconference, since indoor activities prove quite popular in the winter in Nebraska.

Your author had previously done many continuing legal education sessions and was continuing to do a significant number of sessions for attorneys and CPAs in different parts of the country during 1997. However, it was progressively becoming more and more difficult to maintain the CLE session travel schedule and keep a number of other work and philanthropic commitments.

During 1997, your author received each month a CD from a national tax service. At the end of 1997, it became more and more apparent that the opportunity existed for an organization to produce a charitable tax planning CD service. At that time, there was no charitable tax service in existence. During the Christmas season, your author did the preliminary software development on a charitable CD tax service to be known as the "GiftLaw" service.

What planning concept or concepts are present? Circle your answer or answers.

I. Background II. New Ideas III. Transference IV. Language V. New Technology VI. Mild Craziness VII. Test and Evaluation

Why does this concept apply?

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II. Satellite Teleconference

In her gracious and persistent manner, Leslie Neuhaus continued to call occasionally and encourage the presentation of a teleconference. Initially, she suggested that it would be made available for six sites in Nebraska in January of 1999.

Your author was continuing to do a significant number of professional seminars. Since these seminars were invariably scheduled after April 15, there typically was a series from mid April to mid May in

the Spring and then a series during October in the Fall. Normally, CLE/CPE seminars are not conducted in January, since the CPA's are not able to attend then.

In late 1998, your author agreed to do a teleconference. The initial goal was to complete a teleconference for the six downlink sites in Nebraska in January of 1999. While your author had not previously done a teleconference, he and his staff had completed an educational video in 1994 and thus had some understanding of the video production process.

What planning concept or concepts are present? Circle your answer or answers.

I. Background II. New Ideas III. Transference IV. Language V. New Technology VI. Mild Craziness VII. Test and Evaluation

Why does this concept apply?

III. Teleconference Development

Your author then reviewed a number of other teleconferences. The American Law Institute – American Bar Association (ALI-ABA) teleconferences are available on many topics. After reviewing several of these, your author was of the opinion that these were rather low energy events. Indeed, a brief informal survey of other attorneys suggested that these events were "dull" or "boring."

A review of other types of similar media was also completed. It was very instructive to look at the in-depth news programs on television. Programs such as *20/20, 60 Minutes, Lehrer News Hour* and others maintained much higher energy levels.

In order to build a program that was both educational and yet enjoyable to watch, the decision was made to try to combine the strategy of the typical ALI-ABA seminar with the shorter time frames and more lively presentations of the television in-depth news shows.

Thus, the goals of the teleconference were determined. These goals were to (1) produce a program with excellent technical tax quality, (2) engage the services of a very good technical production facility and (3) maintain a high energy level during the presentations.

What planning concept or concepts are present? Circle your answer or answers.

I. Background II. New Ideas III. Transference IV. Language V. New Technology VI. Mild Craziness VII. Test and Evaluation

Why does this concept apply?

IV. Technical Site and Staff

A site with a good set, qualified technical staff and reasonable access was needed. Several calls were made to educational institutions. One institution called back. Based upon the interest expressed by that university, a site visit was made.

The institution, California State University Northridge, had a good studio with good quality audio and video consoles and video production experience. They had done satellite teleconferences in the past. In addition, the person who eventually became the satellite teleconference producer had excellent experience in both video and television production.

What planning concept or concepts are present? Circle your answer or answers.

I. Background II. New Ideas III. Transference IV. Language V. New Technology VI. Mild Craziness VII. Test and Evaluation

Why does this concept apply?

V. Program and Staff Development

With the goal of creating a program that was appealing, it was necessary to recruit top-quality tax and legal talent. Jerry McCoy, attorney from Washington, Janice Burrill, Vice President of Wells Fargo, James Chisholm, Vice President of Northern Trust and Claudia Sangster, Senior Counsel at Pepperdine University were willing to be part of this new endeavor.

After reviewing the three-hour ALI-ABA programs, it was decided to use a two-hour format. This program could be offered both in May and October. In order to allow the crew and cast setup time, the decision was made to offer the program at 12:00 Pacific. This two hour program would then be available at noon on the West Coast and in the mid and late afternoon in the Central and Eastern time zones.

What planning concept or concepts are present? Circle your answer or answers.

I. Background II. New Ideas III. Transference IV. Language V. New Technology VI. Mild Craziness VII. Test and Evaluation

Why does this concept apply?

VI. 1999 – The May and October Teleconferences

The programs were initiated on May 20th and October 28th of 1999. The May conference dealt primarily with lead trusts, while the October conference addressed IRAs and Pension Plans. There were 50 sites that volunteered for the May session and over 100 sites in 38 states were available for the October session. All attendees were asked to send in evaluations of the session. There was a separate evaluation by the site coordinator and by each attendee. The sites also were permitted to send in questions by fax to a specific line. Those questions that were not able to be answered during the session were later posted on the GiftLaw web site.

A 160 page manual was prepared for each of the sessions. The manual was submitted to the appropriate certifying authorities and the sites received approval for CLE/CPE credits.

What planning concept or concepts are present? Circle your answer or answers.

I. Background II. New Ideas III. Transference IV. Language V. New Technology VI. Mild Craziness VII. Test and Evaluation

Why does this concept apply?

VII. Web Site

Two concepts were circulating. First, the initial idea in 1997 to provide a charitable tax service on CD was still present. However, it now was obvious that there would be benefits in linking the teleconference to a web site. For a year, a Case of the Week and Article of the Month had been offered without charge on the Internet. These could also be offered free on this web site. In addition, there would be materials from the teleconference that could be made available on a web site. Furthermore, the programming resources to produce a high-quality web site were also available.

After considering the options, a decision was made to also offer a PLR with commentary each week. For the past two years, the important PLR's had been included in a "Gift Advisor" section of gift planning software and this was just a modest expansion of an existing concept.

The web site would include a weekly Washington Update. This was similar to the Washington Update done at the beginning of each satellite teleconference by attorney Jerry McCoy. Thus, the web site would also include additional material on bills in Washington, current cases and tax forms. In order to give the site visibility, the domain name GiftLaw.com was reserved.

What planning concept or concepts are present? Circle your answer or answers.

I. Background II. New Ideas III. Transference IV. Language V. New Technology VI. Mild Craziness VII. Test and Evaluation

Why does this concept apply?

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VIII. E-Direct Mail Update to Professionals

The tax service on a monthly or quarterly CD was still a possibility, but now there appeared to be another option. During 1997, many of the better web sites started including an e-mail program for various types of updates to the sites. In the commercial area, Amazon.com started offering periodic e-mails on a broad scale basis with specific topics and InstallShield sent regular e-mail updates. Other types of web sites soon began to follow.

The advantage of the e-mail program is that one can have a very quick and easy link to information. Yet the user is in full control. If he or she is not interested in that information, the message may simply be deleted. With a weekly note from e-mail on the updates to the web site, professionals would have a very quick and concise way to review changing events for the week and then to access additional information as they desire.

What planning concept or concepts are present? Circle your answer or answers.

I. Background II. New Ideas III. Transference IV. Language V. New Technology VI. Mild Craziness VII. Test and Evaluation

Why does this concept apply?

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IX. Color E-Mail Tax Newsletter

Initially, the weekly e-mail was designed just to be a brief discussion of changes on the web site. As time continued, the very favorable response by professionals to the e-mail encouraged the development of a more professional "look and feel." Thus, the e-mail was converted to a weekly e-mail tax newsletter using HTML.

Since nearly all web browsers and e-mail readers can interpret HTML, the language of the Internet, it was now possible to publish what looks like a very professional and formatted newsletter when read on the screen. This greatly increased the readability, attractiveness and appeal of the weekly electronic newsletter. By now it became apparent that the weekly e-mail newsletter was the most powerful part of the entire program. Each charity had an opportunity for a weekly contact with professionals who were friendly to that organization. This frequency and quality of contact was already proving very effective.

What planning concept or concepts are present? Circle your answer or answers.

I. Background II. New Ideas III. Transference IV. Language V. New Technology VI. Mild Craziness VII. Test and Evaluation

Why does this concept apply?

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X. Economics

Historically, the Case of the Week and Article of the Month had been offered without charge. The PLR's with commentary had been added to software. When the CD tax service was initially contemplated, it was thought that this CD service for professionals would involve a reasonable annual fee.

Clearly, there was considerable expense involved in developing and maintaining the web site. In addition, there was substantial production expense in developing and producing twice per year a two-hour teleconference. In many respects, this two-hour teleconference bears a strong resemblance to a two-hour television program, with all of the attendant costs.

Furthermore, the teleconference would qualify for Continuing Legal Education credits. All of the other CLE programs charged a significant fee to professionals and this was an expected part of receiving CLE credits.

Nevertheless, after giving thought to the potential public relations benefit of the program, the decision was made to offer all three services to any public charity without cost. This decision was made after a great deal of discussion and review of the costs. In essence, this was a risk taken knowingly. The hope was that the program would generate sufficient public relations benefit to offset most of the costs. Some of the cost also would be offset by sale of videos of the teleconferences to professionals who were not able to attend.

What planning concept or concepts are present? Circle your answer or answers.

I. Background II. New Ideas III. Transference IV. Language V. New Technology VI. Mild Craziness VII. Test and Evaluation

Why does this concept apply?

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Conclusion

Marketing programs are potentially successful in three years. Any charity entering into a marketing program should have at least a three-year time horizon for measuring effectiveness. GiftLaw is certainly governed by this rule.

However, the early signs are very positive. The GiftLaw program appears to be gaining strength from the different types of media involved. Electronic or marketing programs of the future will almost certainly require coordination of electronic marketing. The combination of the satellite teleconference, the web site and the e-mail produces significant symbiosis. Each element supports and strengthens the other sections.

Creativity applies in many areas of life but especially to marketing. Understanding the principle methods for facilitating and encouraging creativity is essential. By using these methods, one can gradually acquire a greater vision, a greater prospective. This greater vision or "marketing eyes" will allow you to see opportunities and implement solutions in ways that are unique for yourself and your organization. Creativity implemented properly can lead to significant success.

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American Council on Gift Annuities
24th Conference
April 26-28, 2000 • St. Louis, Missouri

CURRENT DEVELOPMENTS, TRENDS AND REGULATORY INITIATIVES IN NONPROFIT MANAGEMENT AND PLANNED GIVING

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House Votes to Repeal Internal Revenue Code and Work on Replacement

Like a diver who jumps without checking to see that there is water in the pool, the House of Representatives voted on June 17 to "terminate" the Internal Revenue Code by December 31, 2002, without addressing the question of what would take its place. The vote was close - 219 to 209. The measure is almost certain not to be passed by the Senate or signed by the President, so the net effect was political grandstanding, as those voting against terminating the Code are forced to explain to voters why they voted to stick with the old Code.

The grandstanding nature of the measure was evident, with the principal trade association backing the bill, the National Federation of Independent Business, staging a rally featuring an 18-wheel tractor-trailer (we are not making this up) with Congressional leaders climbing on it.

We will keep you posted on any subsequent move toward tax reform.

Charities should consider how well their interests will be protected in the face of such mindless antics. It is clear that some leaders in Congress place repeal of the present Internal Revenue Code higher on their agenda than responsible work on an alternative. What happens to the traditional benefits and incentives for charitable transfers should be our first concern.

Transfer Tax Repeal

In the summer of 1999, the Congress finally passed a provision that has been advocated since the Republicans obtained a majority in the Congress in the 1994 elections: a repeal of the transfer tax system. Under the provision, the estate, gift and GST tax rates would be phased out beginning in the year 2000 with complete phase out occurring in 2009. The first thing to go would be the "5% bubble," which reflects the 5% rate which is tacked onto the 55% rate for large estates until the effective tax rate on the entire estate is essentially 55%. That bubble would pop for decedents dying after December 31, 2000. The additional rate reduction schedule would be as follows:

Decedents dying after 12/31/00 - 53%
Decedents dying after 12/31/01 - 50%
Decedents dying after 12/31/02 - 49%
Decedents dying after 12/31/03 - 48%
Decedents dying after 12/31/04 - 47%
Decedents dying after 12/31/05 - 46%
Decedents dying after 12/31/06 - 44.5%
Decedents dying after 12/31/07 - 42.5%
Decedents dying after 12/31/08 - 0%
Decedents dying after 12/31/09 - - Trick or Treat!

For decedents dying after December 31, 2009, the repeal would sunset and the current system would be restored! This results from prevailing budgetary rules in the Senate which requires that any new tax provision which loses revenue sunset after 10 years. A 60-vote margin-of-passage is necessary to overcome this provision. The conferees suspected they could not get the 60 votes. The conferees were right. The Senate approved the Act by a vote of 50 to 49. One senator was missing (he was attending his daughter's wedding - at least something matters to one of these guys more than abolishing the estate tax!). The senator did, however, say from the church house that the bill "is okay by me," or something to that effect.

The modest phase-in, the one-year drop off of a cliff, and the convenient fact that the cost of the repeal provision over 10 years is all that was subject to Joint Committee on Taxation scoring did have one salutary effect for proponents of repeal: it dramatically reduced, albeit artificially, the revenue effect of repeal. The Joint Committee on Taxation estimates that the revenue cost of these provisions is $65.6 billion. This is substantially less than private estimates of true repeal which place the revenue cost of repeal over 10 years in excess of $350 billion.

Carryover Basis: It's Baaack

To replace the abolished transfer tax system, a carryover basis system would be enacted for decedents dying (and gifts made) after December 31, 1998. For readers as old as your editors, the proposed carryover basis regime is not quite as burdensome as its long-ago repealed cousin enacted as part of the Tax Reform Act of 1976. It would essentially apply only to estates of a size that would be subject to estate tax (if, hypothetically, one died in a year in which an estate tax exists!), and would have a "democratic" marital provision. The Act would phase in a carryover basis regime beginning with estates valued at $1.3 million with the full carryover basis applying for estates with a value in excess of $2 million. Furthermore, for estates of $3 million or less passing to a spouse, carryover basis would not apply. For marital estates of over $3 million, the $3 million benefit would be allocated among the estate assets by the executor. All of this means that smaller estates would get a step-up in basis while larger estates would get carryover basis except that marital estates would get a step-up in basis except that large marital estates would not get a complete step-up in basis . . . but we think you get the idea.

Estate planning lawyers need not fear unemployment after the repeal of the estate tax if this system is adopted, and devotees of the elegant complexity in the current system would not be disappointed.

The marital deduction is not the only present estate tax provision that would survive the repeal of the estate tax. The new carryover basis system would pick up property that would have been included under any of Code Sections 2033, 2038, 2040, 2041 and 2042 (1) of the "old" estate tax.

Imagine the planning considerations this system would create. Estate planners would still need to know many of the present estate tax rules even after they are "repealed." And does anyone doubt that careful study of the new law, and comparison with the old law, will reveal new loopholes for the diligent researcher? Charitable organizations themselves, especially private foundations, might find that the carryover basis system itself produces adverse tax consequences for them. Also, experience with the 1977 to 1980 carryover basis system suggests that this new plan would complicate greatly the administration of trusts and estates. Indeed, this aspect of the 1977-1980 law played an important role in bringing about its eventual repeal.

Mistakes, Mistakes, Lawyers Continue to Make Mistakes

LR 9822041. There have been a series of recent rulings in which the IRS has allowed judicial modifications or other alterations in trust documents to reflect what it determined to be the original intent of the grantors (the mistaken actions of their attorneys notwithstanding). In this instance, a couple established a 7% charitable remainder unitrust with the understanding that they would receive 7% of the net fair market value of the trust assets as revalued annually. After the trust was executed, and while discussing the trust with their accountant, the CPA pointed out that the trust documents provided not for a 7% payout, but rather for a payout of the net income of the trust or 7%, whichever is less. In other words, the trust was a net income trust, not a straight 7% trust.

In making its case to the IRS, the taxpayers had an acknowledgment from their attorney that he used the wrong form, stated that they had never heard of a net income trust until their CPA explained it to them, and produced contemporaneous notes by the husband from the meeting with the attorney which clearly indicated that only a 7% straight trust was considered.

The IRS determined that the trust contained a "scrivener's" error, a mistake by the attorney in drafting that was a technical mistake unintended by the grantors and subject to reformation under state law. Consequently, the IRS ruled that the trust will continue to qualify as a charitable remainder trust described under Section 664 and that the relevant charitable deductions will be allowed if the trust is reformed as requested by the husband and wife and a valid state court order to that effect is issued.

There was a time, before the reformation provisions of the Tax Reform Act of 1984, when drafting a charitable remainder trust was truly a fearful thing. One mistake could cost the qualification of the trust, subject the drafter to malpractice action, and leave the donor without redress other than against the attorney involved. With the Tax Reform Act of 1984, the right to reform or amend defective trusts was created, thus allowing for corrections of many mistakes.

Now, in a series of rulings, the IRS has shown an even more lenient and sympathetic attitude by allowing the correction of what are clearly drafting errors which occurred through no fault of the grantors of the trust. This is certainly a positive trend, but not one to be relied upon. Better to get it right the first time.

But Don't Blame the Lawyer for This One!

LR 9826022. In a ruling reminiscent of LR 9818048, described in the May 1998 issue of Charitable Gift Planning News, the IRS has held that a drafting error which caused a reference to Code Section 170(b)(1)(A) to be inadvertently included in the list of Code provisions under which a charitable beneficiary of a charitable remainder trust must be described may be changed by reformation. Specifically, the usual litany in a charitable remainder trust intended for a public charity is "Section 170(c), Section 170(b)(1)(a), Section 2055(a) and Section 2522(a)." However, if it is contemplated that a private foundation will be the beneficiary of the trust, the reference to Section 170(b)(1)(A) must be omitted. Section 170(b)(1)(A) describes public charities, and although it is necessary to have this provision in the trust to obtain public charity treatment, its inclusion in a trust intended for a private foundation fouls up everything.

Just as in the prior ruling discussed in the May 1998 issue of CGPN, the trust here included Section 170(b)(1)(A) in the litany, but the husband and wife who established the trust produced an affidavit from their "representative" that he fully realized that the donors intended to retain the right to name a private foundation as remainder beneficiary of the trust and that he inadvertently included the Section 170(b)(1)(A) provision. Consequently, since a reformation of the tax law would be allowed under the state law involved, the IRS provided that reforming the trust to correct the drafting error would not affect the qualification of the trust. It was further noted that since the charitable deduction produced by the trust would be less than 20% of the donor's adjusted gross income and that the gift would be one of "Qualified Appreciated Stock" during a time when such gifts were allowed as a deduction at full fair market value, so that the donor's income tax charitable deduction claimed under the trust would be unaffected by the reformation.

It is important to note here that nowhere in the ruling is the word "attorney" or the term "lawyer" mentioned! Rather, the drafter of the trust is mysteriously referred to as the donor's "representative." It appears that it is quite likely that a non-lawyer put the trust together. It is also implied that unlike the circumstances in the prior ruling described in the May 1998 CGPN, where the lawyer was referred to in the past tense (indicating that he was no longer in the employ of the donor involved in that instance!), here the "representative" is spoken of in the present tense. Consequently, this "representative" may still be in the saddle! Poor lawyers. They just can't get a break!

IRS Allows Scrivener's Error Correction, Gives Tacit OK to Allocation of Post Contribution Gain to Principal

LR 9833008 and LR 9833010. In an identical pair of rulings obviously resulting from requests by a grantor of two identical trusts, the IRS has allowed judicial modifications of two unitrusts to correct what were perceived as scrivener's errors." In both instances, the grantor of the charitable remainder trusts had originally agreed to enter into straight unitrusts. However, subsequent to that decision, the attorney and accountant for the grantor decided to create net income trusts and to provide that post-contribution capital gain would be allocated to income. The lawyer redrafted the trusts to provide for the net income provision, but forgot to include the capital gain allocation provisions. When the grantor went to his accountant's office (not his lawyer's office) for execution of the trusts, the accountant explained to the grantor the new provisions regarding the net income amount and the allocation of post-contribution gains to income. The grantor agreed to these changes. Only afterwards did the grantor determine that the post-contribution gain allocation provisions were not included and a state court action has now been instituted to correct this oversight. The taxpayer now asks the IRS to approve this court modification.

Using the same logic previously applied to other recent scrivener's errors, the IRS had no problem with the concept of such amendments. Then, the ruling proceeded to discuss the definition of income and principal rules and noted that where a proposed provision is not a "fundamental departure from state law," the provision of state law will be given deference by the IRS. In the state involved, capital gain is allocable to principal. However, state law allows the grantor of a trust to direct the manner of allocation of income and principal. This is a provision similar to most state versions of the Uniform Principal and Income Act.

The IRS states these general principles, gives examples of when a provision would be disregarded by the IRS as being a fundamental departure from state law, e.g., the allocation of ordinary dividends and interest to principal, but then proceeds to allow this reformation. The ruling seems to indicate that post-contribution allocations of capital gain to income, when allowed under state law, as is the case here, will be respected by the IRS. Of course, current proposed regulations (which are supposed to be issued in final form this year), forbids the allocation of precontribution capital gain to income, with the natural inference that the allocation of post-contribution capital gain to income is acceptable. The question that has continued to exist is whether in a state with a law similar to the one in this ruling, the IRS will consider the allocation of postcontribution capital gain to income to be a fundamental departure from state law, given that traditionally, capital gain has been allocated to principal. In this ruling, which of course is not precedential, the IRS seems to acknowledge that under the typical state law version of the Uniform Principal and Income Act, the allocation of post-contribution capital gain to income will not constitute a fundamental departure from state law. It will be interesting to see if the IRS continues to take this tack.

User Friendly IRS Continues to Allow Reformation of Charitable Remainder Trusts Containing Drafting Errors

LR 199923013. Grantors created a charitable remainder trust intended to qualify under Section 664. The property was transferred to the trust, but soon thereafter, the attorney discovered that there were multiple provisions in the trust that would disqualify the trust. The attorney provided a sworn affidavit that the disqualifying provisions were the result of drafting errors and that the grantors had always intended to create a qualifying charitable remainder trust. Consequently, a reformation action was filed in state court, and the reformation was ordered in due course. The IRS has now ruled that the reformation is a qualifying reformation for the purpose of transforming the nonqualified trust to a qualified trust.

It should be noted that one of the disqualifying powers in the charitable remainder trust was the right to exchange property of the trust for other property owned by the grantors, with the grantors acting in a nonfiduciary capacity. In other words, this is exactly the same power contained in the previous charitable lead trust ruling. Here, however, with a charitable remainder trust, such a power can create a void trust, since the charitable remainder trust cannot be a grantor trust. This is a provision that distinguishes a charitable lead trust from a charitable remainder trust, and is an important one for drafters to remember when relying on form language previously used in drafting a subsequent trust.

Congress, IRS, Likely to Address Perceived Abuses

While everyone is aware that a lot is going on in Washington, most people think it has to do with the controversy surrounding the White House. While that certainly is entertaining, the old maxim that "still waters run deep" applies in the area of tax legislation and regulation. While little has been said to date publicly, major changes may be on the way as a result of recent highly publicized "abuses" of traditional giving vehicles and techniques.

For years, critics have alleged that the elected representatives of the people do not make tax policy. Rather, it has been stated, that unelected staff makes tax policy. Now, it appears that both perceptions are wrong. In fact, it appears that The Wall Street Journal is in charge of tax policy, at least insofar as it involves tax-exempt organizations.

Monica Langley, the philanthropy reporter for The Wall Street Journal, has written two major articles on philanthropy this year. One was a controversial article about perceived abuses in the Fidelity Investments Charitable Gift Fund and, to a lesser degree, of donor-advised funds in general. Later, Ms. Langley wrote an article on support organizations of public charities [i.e., organizations described in Section 509(a)(3) of the Code.] Now, dutifully, it appears that Congress and the IRS is gearing up to handle Ms. Langley's complaints.

Specifically, in an apparent response to the Fidelity article and to conferences with the IRS and key members of congressional staff, Fidelity Investments Charitable Gift Fund has altered the rules under which it will operate. Specifically, Fidelity has announced that annual giving from the Fund will exceed 5% of the Fund's average net assets, an act intended to prevent the perception that many of the constituent funds which comprise the Gift Fund were allowed to accumulate income indefinitely, thus failing to serve a charitable purpose. In addition, new training procedures will be implemented by Fidelity as well. Finally, Fidelity will apparently place additional limits on the ability to designate foreign charities as

beneficiaries of its donor advised funds.

Fidelity and other "corporate charities" are regarded as controversial by some in the charitable world. Nonetheless, it appears that IRS and congressional intent is to allow these organizations to continue to operate, at least for now. However, the attention that these organizations have received has now raised the whole concept of donor-advised funds to a new level of scrutiny.

And, it is not only the "corporate" funds that are receiving critical attention. Governmental authorities have noted, amazingly, that most community foundations and other organizations which operate donor-advised funds seem to follow the donor's advice in almost every instance. The perception of regulators appears to be that, upon close evaluation, these funds operate as de facto private foundations without the strict rules and disadvantageous deduction limitations that apply to foundations. Proposals for legislation, apparently next year, include a limitation on donor-advised funds that would subject these funds to private foundation status unless the donor's advice is ignored by the charity on a much more routine basis. Should this legislation be enacted, it would have a dramatic affect on how community foundations and many charities operate. This is a subject that will require close scrutiny and active involvement as Congress and the IRS deal with these issues in coming months.

On a similar note, Ms. Langley's article on supporting organizations has resulted in serious considerations at Treasury and Congress of new rules that would limit the activities of supporting organizations. Many supporting organizations, following the letter and spirit of the regulations, have obtained rulings that have allowed them to support myriad charities with no apparent relationship to each other. Again, this is perceived by some in authority as a means of circumventing the private foundation rules. Consequently, legislation that would limit supporting organizations to one supported organization or perhaps a class of related organizations such as the charities of one religious denomination may be in the offing. All in all, The Wall Street Journal seems to be doing better than the President or the Chairmen of the two tax-writing committees in gaining attention for its (implied) legislative priorities!

IRS Warning on Donated Car Values

The IRS recently made available an unusual type of advice (a Service Center Advice, or "SSA") concerning valuation of used cars for charitable contribution purposes. Many donors claim values listed in guidebooks, such as the Kelley Bluebook or the NADA Used Car Guide. However, donee organizations file Forms 8282 reporting sales of such cars that may occur within days of the contribution for less than the donors' claimed value. On such facts, the IRS drew two obvious conclusions: First, such sales are an indication of the value of the donated cars. Second, the fair market value of cars must be determined on a case-by-case basis and, in some cases, may have little or no relation to the amount the donee organization received upon disposing of the car.

We wonder what the Brooklyn District of IRS, which raised the question, thought about this either/or answer. One thing is certain - the IRS is concerned about car donation programs as a potential source of excessive deductions. An organization that regularly sells donated cars below deduction values claimed by donors can expect an audit and its donors can expect trouble. In extreme cases, according to this year's IRS Exempt Organization Continuing Professional Education Text, tax shelter penalties may even be applied (to the donee, not the donor).

IRS Activities List Includes Several Charitable Contribution Items

In connection with a recent public appearance, Marcus Owens, Director of the IRS Exempt Organizations Division, listed the following charitable deduction items as emerging issues and developments of interest:

- Used automobile programs
- Scrip Sales
- Donor-directed funds - injunction in US v. Estate Preservation Services, Civ. No. S-97-1166, issued

10/5/98 by the US District Court, Eastern District of California

While no additional information was provided, this word to the wise should be a sufficient warning to gift planners with active projects underway in any of these areas. Remember, the IRS wasn't born yesterday, and here are some areas it will be examining closely. If you correct any potentially bad practices before they come under scrutiny, you will probably be all right. For example, if you take contributions of automobiles that have to be towed away from the donor's home, they probably aren't worth very much. As with any contribution, the receipt given to the donor must reflect the TRUE value. And a donor who purchases scrip to buy $100 worth of groceries hasn't made a contribution unless he/she pays MORE than $100 for the scrip. These are simple things and do not really require a special IRS initiative to reach the right result.

Here We Go Again!

A large national bank is promoting a new CRT scheme closely resembling the notorious "Accelerated CRT" that gave birth to restrictive legislation in 1997. Under the new plan, the donor transfers highly appreciated stock (publicly-traded) to a newly formed charitable remainder unitrust, naming himself as beneficiary. Typically, the trust has a term of three years and a payout rate as close to 50 percent as can be accommodated within the 10 percent minimum charitable share rule. The trustee then arranges for a "collar" [i.e., a combination of a "put" and a "call"] on the stock in the trust. The trustee then borrows the amount necessary to make the first year's distribution. In year two, the trustee again borrows the amount needed for that year's distribution. [Apparently the collar is designed to facilitate these borrowings by the trustee.] In year three, the trustee sells the stock, closes out the collar arrangement, and makes the final distribution, whereupon the trust terminates.

IRS Erects Stop Sign For "Son of Accelerated Charitable Remainder Trust"

As many of you will remember, only a few years ago, some creative (as opposed to ethical) people in the planning community came up with a nifty technique for manipulating the four-tier system of taxation for charitable remainder trust distributions so as to artificially recast capital gain income as tax-free return of principal under tier four. This abusive vehicle, known as the "accelerated charitable remainder trust," was attacked by both the Internal Revenue Service and Congress. Congress, acting in 1997, set a ceiling for a unitrust percentage of 50%. The Internal Revenue Service, acting through the final regulations issued last December, established bars to the abuse by requiring certain standard charitable remainder unitrusts and certain charitable remainder annuity trusts to distribute required payment amounts in the year for which the payment applies, as opposed to within a reasonable period after the end of the year in question.

However, creativity being evolutionary, a variation on this technique has arisen which the actions of Congress and the Internal Revenue Service did not address. Now, on October 18, the IRS issued new proposed regulations to address the "Son of Accelerated Charitable Remainder Trust." Under these regulations as proposed, the new technique would be thwarted by requiring that any tax-free return of principal under the four-tier system be treated as a pro rata deemed distribution of appreciated assets where the targeted abuse is present. The abuse, the IRS prescription for addressing it, and examples provided by the IRS in proposed regulations are set out below.

Explanation of Provisions

A. Tax-Avoidance Arrangements Using Charitable Remainder Trusts

The IRS and the Treasury Department are aware of certain abusive transactions that attempt to use a section 664 charitable remainder trust to convert appreciated assets into cash while avoiding tax on the gain from the disposition of the assets. In these transactions, a taxpayer typically contributes highly appreciated assets to a charitable remainder trust having a relatively short term and relatively high payout rate. Rather than sell the assets to obtain cash to pay the annuity or unitrust amount to the beneficiary, the trustee borrows money, enters into a forward sale of the assets, or engages in some similar transaction. Because the borrowing, forward sale, or other similar transaction does not result in current income to the trust,

the parties attempt to characterize the distribution of cash to the beneficiary as a tax-free return of corpus under section 664(b)(4). Distributions may continue to be funded in this manner for the duration of the trust term (which is usually short, so as to meet the 10-percent remainder requirement of section 664(d)(1)(D) or 664(d)(2)(D)). The appreciated assets may be sold and the transaction closed out (e.g., the loan is repaid) in the last year of the trust, or the trustee may distribute the appreciated assets, subject to a contractual obligation to complete the transaction (e.g., the forward sale contract), to the charitable beneficiary.

A mechanical and literal application of rules and regulations that would yield a result inconsistent with the purposes of the charitable remainder trust provisions will not be respected. When section 664 was amended by the Revenue Reconciliation Act of 1997, Congress indicated that a scheme that, in effect, attempts to convert appreciated assets to a tax-free cash distribution to the non-charitable beneficiary is "abusive and is inconsistent with the purpose of the charitable remainder trust rules." S. Rep. No. 33, 105th Cong., 1st Sess. 201 (1997). Although the particular scheme that was the focus of Congress's attention in 1997 involved an attempt to exploit the interplay of rules under section 664 governing the timing of income and the character of trust distributions, the attempted result of the scheme (commonly referred to as an "accelerated charitable remainder trust") was the same as that claimed by the promoters of the transactions described above - that is, a literal application of rules governing trust distributions in an attempt to convert appreciated trust assets into tax-free cash in the hands of the non-charitable beneficiary. The latest schemes involving charitable remainder trusts are no less "abusive" or "inconsistent with the purpose of the charitable remainder trust rules" than were the accelerated charitable remainder trust schemes addressed by Congress in 1997.

B. The Proposed Regulations

Section 643(a)(7) authorizes the Secretary to prescribe regulations to carry out the purposes of the provisions of the Code relating to the taxation of estates, trusts, and beneficiaries including regulations to prevent avoidance of such purposes. The proposed regulations exercise this authority by modifying the treatment of certain distributions by charitable remainder trusts for purposes of section 664(b) to prevent a result that, as discussed above, is inconsistent with the purposes of the charitable remainder trust rules.
The proposed regulations provide that, to the extent that a distribution of the annuity or unitrust amount from a charitable remainder trust is not characterized in the hands of the recipient as income from the categories described in section 664(b)(1), (2), or (3) (determined without regard to the rules in these proposed regulations) and was made from an amount received by the trust that was neither a return of basis in any asset sold by the trust (determined without regard to the rules in these proposed regulations) nor attributable to a contribution of cash to the trust with respect to which a deduction was allowable under section 170, 2055, 2106, or 2522, the trust shall be treated as having sold, in the year for which the distribution is due, a pro rata portion of the trust assets. Any transaction that has the purpose or effect of circumventing this rule will be disregarded. For example, a return of basis in an asset sold by a charitable remainder trust does not include basis in an asset purchased by the charitable remainder trust form the proceeds of a borrowing secured by previously contributed assets.

The proposed regulations include examples that illustrate the application of the above rule. The IRS and the Treasury Department request comments on whether there are situations where the application of this rule would be inappropriate.

These proposed regulations adopt a pro-rata [sic] sale approach to determine the amount of gain on the distribution of funds acquired in advance of income recognition. The IRS and the Treasury Department also considered an approach that more directly related the distributed funds to the asset that is the subject of the borrowing or forward sale. Comments are requested on this alternative approach.

C. Proposed Effective Date

The regulations are proposed to apply to distributions made by charitable remainder trusts after October 18, 1999.

Welcome Back to an Old Friend

For a number of years, the IRS Exempt Organizations Division issued a text for use in the Continuing Professional Education ("CPE") program administered for its exempt organization employees. The 1997 text, released in 1996, was noteworthy for its chapter discussing the self-dealing aspects of NIMCRUTs that adjusted the flow of distributions to suit the needs of a donor-beneficiary. The IRS did not have sufficient funds to continue this tradition last year, but now the tradition continues with a new CPE text for 1999 Training Sessions.

The new text offers an important insight into what issues the IRS regards as important enough to bring to the attention of its exempt organizations personnel. Several of the chapters are important for charitable gift planners.

Donor Control. Chapter O, entitled "Donor Control," deals with several charitable gift issues. The chapter opens with a review entitled "Gift Funds: A New Direction in Charity?" This article notes developing rivalry between the new gift funds being offered by mutual fund companies and financial firms on the one hand, and "traditional" community funds on the other hand, and points out -

"The Service is not the arbiter between these two groups. Rather, its mission is to even-handedly administer the tax law. The 1996 article discusses commercially sponsored donor directed funds and whether they offered potential for tax abuse. It should be clearly understood, however, that both groups are subject to the same rules and both raise many similar issues."

After reviewing the applicable authorities, the article notes that "the Service is likely to view more favorably those organizations that live up to a well-defined exempt purpose, provide for a minimum 5% payout amount (where appropriate), and monitor and police donor abuse."

Another donor-control topic discussed in this chapter is the emergence of plans that involve a sharing of life insurance benefits between charities and donors. Here, the IRS points out that "the insurance aspect of this arrangement raises concerns that the interests of charity are sacrificed to the private interests of the donor, and, thus may be operated for the substantial private benefit of donors."

The final (and longest) topic in this chapter is entitled "If It's Too Good to be True, It's Too Good to be True." Here, the Service reviews the tax flaws in various trust plans that are often marketed via seminars and the Internet. Because these plans sometimes include trusts that are allegedly charitable, they are included in the CPE text to call attention to the exempt organization issues presented.

Tax Shelter Rules. Chapter M of the CPE text introduces an important topic that is often overlooked by planners - the potential application of tax shelter penalties to charitable contribution deductions. Although these do not apply to the typical charitable arrangement, they may have application where various aggressive techniques are employed. The penalties in question appear in Code Secs. 6700 and 6701.

Code Sec. 6700 deals with the sale of plans or other arrangements which include either (1) statements with respect to the allowability of any deduction, or (2) gross valuation overstatements. A sister provision, Sec. 6701, penalizes any person who "aids, assists in, procures or advises with respect to the preparation or presentation of any portion of a return, affidavit, claim, or other document," knowing that it will be used for tax purposes and would result in an understatement of tax.

While these penalties originated as attempts by Congress to rein in various noncharitable tax-shelter plans, the point of this part of the CPE text is that they may apply to people promoting charitable deduction arrangements as well. Several examples are given, including various used car donation arrangements, a purported charity that "conducts little or not charitable activities," and the backdating of donation receipts. One example that may surprise some people is the issuance of a written acknowledgment that overlooks a $100 premium given to a $1,000 contributor. While the Service takes pains to note that these penalties will not be invoked in routine charitable arrangements involving innocent mistakes, gift planners would be well advised to review operations from the standpoint of whether these penalties could

possibly apply.

IRS Releases Regulations on Excess Benefit Transactions/Intermediate Sanctions

In 1996, Congress enacted Section 4958 of the Code, creating "intermediate sanctions" for excess benefit transactions (EBT). The statute was intended to give the IRS an intermediate alternative between ignoring excessive compensation and other benefits to individuals connected with charities and outright revocation of exemption.

The provision provides that a disqualified person, as defined for those purposes within the Code and Regulations, who engages in an EBT transaction with an organization described in Sections 501(c)(3) or 501(c)(4) will be subject to a tax of 25% on the excess benefit with a penalty tax of 200% if a correction is not timely made. An additional tax is imposed on an organization manager who knowingly and willfully takes part in an EBT transaction. That person would be subject to a 10% tax on the excess benefit, up to a maximum of $10,000.

The regulations closely follow the statute. In remarks prepared for an AICPA meeting reported in Tax Notes Today, IRS Exempt Organizations Division Director Marcus S. Owens stated that the regulations were not intended to treat as inappropriate payments that have been acceptable under the Code is old private benefit and innurement rules. Instead, their purpose is to give the IRS the tools needed to correct excessive compensation. "We are not intending . to create a new class of bad acts but simply to provide some guidance, a window on how organizations can keep a tax problem from happening."

We will report further on the regulations as events warrant.

State Attorney Generals May Piggy-Back on Intermediate Sanctions Actions

According to Tax Notes, Marcus Owens, Director of the IRS Exempt Organizations Division, recently stated in a speech to the Washington, D.C. Bar's Health Law Section that Attorneys General from around the country are expressing interest to the IRS in sharing information collected by the IRS with regard to intermediate sanctions. Apparently, the National Association of Attorneys General has indicated a desire to establish a mechanism for advising state attorneys general of charities against which excess benefit transaction taxes have been assessed. Armed with that knowledge, it is presumed that the attorneys general will begin their own actions for correction and restitution, where warranted. Consequently, while the intermediate sanctions themselves seem reasonable and manageable, they may turn out to be a Pandora's Box with regard to dealing with the state attorneys general. This is a subject that will bear monitoring.

In the same speech, Mr. Owens made it clear that the excess benefit transaction rules would be rigorously enforced, and that the enactment of intermediate sanctions laws by no means replaced the inherent right of the Internal Revenue Service to revoke the exempt status of a charitable organization if wrongs committed are sufficiently egregious. Mr. Owens made it clear that newly-published Treasury regulations on intermediate sanctions place the IRS squarely in charge of charity regulation. It appears that the IRS will take this obligation very seriously.

Rock and Roll in the News

According to an article in The Washington Post on June 12, 1998, the ageless wonders, The Rolling Stones, have postponed four tour dates in England because of a recent change in tax laws. Prior to the change, citizens of Great Britain who lived and worked abroad for more than one year were exempt from British taxes on their earnings so long as they did not spend more than 62 days per tax year on native soil. However, that provision has now been restricted to individuals who spend most of their time at sea. Under the new law, citizens of Britain who work in Britain must pay tax on the entire year's earnings. According to The Washington Post this would cost the Stones an additional $19.6 million in taxes. This gives new meaning to the term "you can't go home again!"

How to Avoid Tax on CLT

LR 9823005. Often, a person in a position of influence at a charitable institution will choose to establish a charitable lead trust for that institution. While this is certainly laudable, this is a process that can be laden with traps for the unwary. Specifically, the purpose of most charitable lead trusts is to obtain a gift and/or an estate tax charitable deduction that reduces the value of the asset in the donor's estate or takes it from the donor's estate entirely. While the retention of the right of to control how the charity will utilize the gift will not normally create a problem under the income tax grantor trust rules, that is not necessarily the case under the gift and estate tax rules of Section 2501 and 2511 and Sections 2035, 2036, or 2038, respectively.

In this instance, the grantor of the trust was the president of the charity and is on the board of directors of the charity. To avoid the gift and estate tax retention issue, it is proposed that the bylaws of the charity will be changed to cause any gifts from the donor or the charitable lead trust to be held in a separate fund. The separate fund will be administered and distributed by a separate fund committee consisting of one or more members of the board of directors, other than the donor. The members of the board of directors serving on such separate fund committee will be selected by the board of directors excluding the donor. The donor will have no right to vote or otherwise participate in any decisions relating to the composition of the separate fund committee, the administration of the separate fund, or distribution of any of the principal of or income from such fund. Finally, the donor will have no right to participate in any decision relating to amendments to the governing instruments of the organization which will alter the changes just described or otherwise affect the separate fund or the separate fund committee.

As a result of this process, the IRS has said that the necessary separation under the gift and estate tax provisions has occurred, so that the gift will be complete and that no portion of the assets will be retained in the donor's estate.

CLT Distribution to PF-Something to Remember

LR 9823043. This ruling provides an ingenious solution to a problem planners often encounter.

Donors and clients often ask if a proposed charitable lead trust can make distributions into their family foundation, and the answer is a clear "yes, but ..." The "but" here deals with the estate tax aspects of the trust. If a donor transfers cash or property to a trust and retains the right to designate where the income goes, the trust will be included in the donor's estate for estate tax purposes. The same result occurs if the right to designate is indirectly retained, as where the trust distributions go to a private foundation in which the trust donor has any say so, even if the donor can't direct or reject a specific distribution.

This ruling approved a new approach to a comparable situation. Here's what happened in this ruling. W was the sole executor of the estate of her husband (D), a co-trustee of D's QTIP trust for her benefit, and a co-trustee of the family foundation (F). W proposed to disclaim a fixed-dollar amount of her portion of the QTIP trust, and since F is the remainder beneficiary of that trust, the disclaimed portion would then go directly to F.

But before W executes the disclaimer agreement, the foundation will amend its governing instrument to set up a Separate Fund, which will receive the amounts disclaimed by W. The separate fund will be administered by the trustee of F OTHER THAN W, and W will have no rights or powers whatsoever over the Separate Fund, its assets or its grants.

On these facts, the IRS ruled that W's disclaimer would be qualified and D's estate would be entitled to an estate tax charitable deduction for the amount passing to F.

This technique fits many planning situations where a surviving spouse wishes to shift a portion of his/her interest in a QTIP trust to a family foundation. However, it also offers a route for the person who proposes to create a charitable lead trust paying current distributions to a family foundation, and wants to do so without incurring estate tax in his/her estate. [Normally the grantor would have to relinquish all positions with the family foundation in order to avoid this estate tax.] By setting up a Separate Fund arrangement of the sort described here, this result should be obtained without

requiring the donor to resign from the private foundation.

Breaking Up is Not (Necessarily) Hard to Do

LR 9826041. A husband and wife are the sole officers and directors of Original Foundation. As the world turns, husband and wife have entered into divorce proceedings, and along with the china, wish to divide up the private foundation as well.

Under the private foundation termination provisions of Code Section 507, a termination tax will result unless the foundation terminates to a public charity, becomes a public charity or transfers all or substantially all of its assets to another private foundation. In that event, the new foundation will not be treated as a new entity, and the termination tax of Section 507(c) will not apply.

Husband and wife wish to create two new foundations from Original Foundation. The new foundations H Foundation and W Foundation will each receive one-half of the assets of Original Foundation. Husband will be the sole director of H Foundation and Wife will be the sole director of W Foundation. How will this be treated taxwise? Because this constitutes a transfer of substantially all of the assets to another foundation, a new foundation will not be deemed to have been created and a termination tax will not result. Specifically, the IRS ruled:

1. H and W Foundation will not be treated as newly created under Chapter 42 of the Code;

2. The transfer of Original Foundation's assets to H Foundation and W Foundation will not be a termination of Original Foundation under Section 507;

3. The subsequent voluntary termination of Original Foundation at least one day after the transfer of assets to H Foundation and W Foundation will not be a taxable termination subject to tax under Section 507(c);

4. The two new organizations will be treated proportionately for purposes of Sections 507-509 as the Original Foundation, i.e., proportionate to the assets of the Original Foundation that each receives. Here H Foundation and W Foundation will each receive half of the assets of Original Foundation;

5. The transfer of the assets from Original Foundation to H Foundation and W Foundation will not be a taxable expenditure under Section 4945(d)(4) of the Code nor will it require Original Foundation to exercise expenditure responsibility under Section 4945(h).

6. The distribution requirements under Section 4942 that existed for the Original Foundation will proportionately be the responsibility of H Foundation and H Foundation from the time of the distribution to the two new foundations on;

7. The audit tax payable under Section 4940 by Original Foundation will proportionately be payable by H Foundation and W Foundation;

8. No act of self-dealing will occur because of this transaction;

9. The transfer of the assets to the new foundations will not constitute jeopardizing investments for purposes of Section 4944;

10. (You get the message).

This ruling is certainly logical, but as you read the provisions of the requested ruling and the responsiveness listed out one after another after another after another, one feels like you are reading a divorce decree! One assumes that such a result is unavoidable when matrimonial law and private foundation law intersects!

CRT Split Upon Divorce of Donors

LR 9851006. Husband and wife created a charitable remainder unitrust payable to them in equal proportions during their joint lifetimes, and after the death of either of them to the survivor for life. Subsequently, H&W terminated their marriage by divorce. In this ruling they propose to divide their trust into two separate charitable remainder unitrusts, each having identical terms and receiving 50% of trust principal and undistributed income. Each would be the trustee of his or her own trust, and neither would have a survivorship interest in the trust of the other ex-spouse.

The Internal Revenue Service held that the division of the couple's trust into two separate trusts would not disqualify the original trust or either of the two surviving trusts as charitable remainder trusts under Code Sec. 664.

Gift to Foreign Foundation Deductible for Gift Tax and Estate Tax Purposes

LR 9821044. Donor, a U.S. citizen and resident, created a charitable foundation under the laws of a foreign country (call it "FC") FC certified the entity as a tax-exempt organization under its laws, and the organization is required to file yearly reports to maintain that status. Donor plans to make several inter vivos transfers to the foundation, and on her death will leave the bulk of her estate to it.

The IRS held that the donor's gifts and bequests will qualify for gift tax and estate tax charitable deductions provided four conditions are met: (1) the proposed gifts and bequests do not inure to the benefit of any private shareholder or individual other than an appropriate charitable beneficiary; (2) the gifts and bequests are not used for a noncharitable purpose; (3) the governing instrument meets the requirements of Code Sec. 508(e) regarding compliance with the private foundation restrictions imposed under Chapter 42 of the Internal Revenue Code; and (4) the foundation maintains its tax-exempt status in country FC.

This ruling provides a good handle for donors considering such a transfer. Note that the foreign entity must comply with many U.S. tax rules in order to qualify for gift tax and estate tax charitable deductions.

Bequest to Foreign Charity Deductible

LR 9853037. The decedent, a United States citizen and resident, provided substantial bequests to three U.S. organizations and one foreign charity (a Roman Catholic orphanage for girls). The orphanage is located in a foreign country and is a part of a Roman Catholic Church organization, administered as part of The Papal Estates.

The IRS held that an estate tax charitable deduction is allowed for U.S. estate tax purposes, notwithstanding foreign character of the beneficiary organizations. The ruling points out that the estate tax regulations (in Sec. 20.2055-1(a)(4)) expressly provide that the estate tax charitable deduction is not limited to transferred to domestic charities.

Treasury correspondence discusses a somewhat related situation. Dr. Wolfram Hoppenstedt, writing on behalf of a German organization formed to preserve the memory of Willy Brandt in his efforts for freedom, peace and the unity of the German people and for insuring democracy in Germany and the Third World, asked whether U.S. donors may deduct contributions to the organization. A Treasury official responded, pointing out that U.S. taxpayers are not entitled to deduct contributions to non-U.S. organizations. However, the Treasury went on to provide the following tax lesson: "Under certain circumstances, however, U.S. taxpayers may make deductible contributions to a U.S. charity that has among its purposes the support of a foreign charitable organization, provided that the U.S. charity has full control of the contributed funds and discretion as to their use. Accordingly, you may wish to consult with a knowledgeable tax advisor to consider forming an U.S. charity for this purpose and arranging for that entity to file an application for exemption with the U.S. Internal Revenue Service. Although the applicable rules in this area are somewhat technical, this option is often considered by foreign charitable organizations when confronted with the difficulty you have described."

The bottom line is easy to remember. For INCOME tax purposes, the donee must be a U.S. organization, but for

ESTATE tax (or GIFT tax) purposes, this is not necessary.

Deferred Annuities and the NIMCRUT

Another portion of the new 1999 CPE text (Chapter P, entitled " Thirty Years After The 1969 TRA - Recent Developments Under Chapter 42") discusses the ongoing IRS study of the income deferral technique as used by NIMCRUTs and provides just a tiny bit of insight into that study. There are two separate problems involved in this situation - self-dealing and qualification under section 664 - and the CPE text notes that while one has been largely resolved, the other remains an open question.

As for self-dealing, the IRS has largely concluded that the self-dealing issues presented by manipulation of a NIMCRUT to serve the donor's needs and desires are probably less serious than suggested by its initial discussion of this topic in the 1997 CPE text. The CPE text notes that IRS, in TAM 9825001, "has, in theory, left open the door to apply the self-dealing prohibition for the income deferral NIMCRUT in a truly egregious situation." However, the IRS went on to say, "[a]s a practical matter, the vast majority of income deferral NIMCRUTs adhering to ordinary fiduciary standards under state law will not run afoul of this problem."

The issue that remains open is whether a NIMCRUT that is manipulated in this fashion should be allowed to qualify under section 664. In the April 1997 Proposed Regulations on CRTs, the IRS asked for comments on this issue, and TAM 9825001 held that the NIMCRUT involved there qualified "under the existing regulations," leaving open the question of whether the regulations might be revised to change this result. Specifically, in the Proposed Regulations the IRS questioned "whether investing the assets of an income exception CRUT to take advantage of the timing difference between the receipt of trust income and income for federal tax purposes causes the trust to fail to function exclusively as a charitable remainder trust." The new CPE text indicates that (1) the study initiated by the proposed regulations is not complete, (2)the proposed regulations under IRC 664 that will likely become final in 1998 probably will not address this issue, and (3) there may be some resolution of the IRS and Treasury study on this issue in 1999.

The CPE text did appear to suggest, although the statement is far from clear, that the IRS may have limited the scope of the ongoing section 664 study to some extent. The original announcement appeared to deal with any sort of income deferral techniques a NIMCRUT might engage in. Now however, the scope of the study seems to be more limited. The CPE text indicates that "[t]he study is limited to income deferral by virtue of receipt of trust income from a partnership or a deferred annuity contract." Thus, it seems, realization of income on the sale of an appreciating asset held by the NIMCRUT would no longer be a part of the study.

Texas Bar Gives Accounting Firm Intentional Walk

In the May 1998 CGPN, we noted that the Texas State Bar Committee on Unauthorized Practice of Law (UPL) had instituted an investigation of Arthur Andersen and Deloitte & Touche for possible unauthorized practice of law in the State of Texas. As we noted at the time, Texas has a new and very strong statute regarding unauthorized practice of law.

Now, the UPL has announced that the investigation against Arthur Andersen has been dropped. No mention was made of the action against Deloitte & Touche, but the implication is that the UPL is through with this matter, at least for the time being.

The allegations were that the accounting firms participated in preparing legal documents, giving legal advice in areas such as mergers and acquisitions, estate planning, compensation and related matters and, in fact, drafted documents in these areas, and that the accounting firms had actually represented clients in litigation in Tax Court. The Committee gave no specific reason for its termination of the investigation. However, cost had to be a factor. The annual UPL budget is $40,000. Apparently, Arthur Andersen retained the law firm of Weil, Gotshal & Manges to represent it, and Arthur Andersen stated that it was "fully prepared to make a lengthy presentation, supported by expert witnesses, addressing the legal and factual matters of the allegations." It also is rumored that Weil, Gotshal & Manges overwhelmed the UPL with the proposed scope of its defense.

Obviously, Arthur Andersen has almost bottomless pockets, while the UPL would have been out of business in the first week of the proceedings. Whether this means that the UPL will receive more substantial funding in the future to pursue such matters or whether this marks a watershed in determining whether accounting firms are practicing law in Texas as defined by Texas statute remains to be determined. It should be noted, however, that big accounting firms are represented by big law firms, just as is the case for any multinational business. While there may be grumbling behind the scenes, it is unlikely that big accounting firms are going to be challenged on a point like this by the Bar establishment, when to do so would be to challenge a major current or potential client. This all sounds interesting. We will keep you informed of any future developments.

New Fundraising Idea - Sue the Donor!

Sierra Club Foundation v. Graham, California Court Of Appeals No. A078387 (June 10, 1999). The court itself said that this case had a "stranger than fiction flavor." and we have to agree. In short, the case found a California charity in the unusual position of suing a former donor for money damages, and winning BIG.

In 1970, Ray A. Graham III contributed stock to the Sierra Club Foundation to be added to a fund ("Frontera") primarily for conservation projects in New Mexico. Although several parcels of land were investigated, none was ever purchased. In 1980, at the request of the Foundation, Mr. Graham and Frontera consented to the release of the conditions on his gift, allowing it to be used for the general support of the Sierra Club.

Now we flash forward to 1989, when the Foundation and Mr. Graham owned adjacent parcels of land in California, and a deed survey revealed that there was an overlap of 1.884 acres. Mr. Graham asked the Foundation to deed the overlap to him, in order to resolve dispute over a land development project. When the Foundation refused, Graham filed suit in federal court in California claiming a breach of fiduciary duty. Later he caused a separate accounting action to be brought by the New Mexico Attorney General in a state court in New Mexico. The California federal action was eventually dismissed (after several procedural skirmishes) and the New Mexico case was later settled (at a cost to the Foundation of some $900,000).

Mr. Graham, apparently still bitter about these disputes and the use of his earlier contribution, and particularly angry with one Foundation official, implemented a "media strategy" aimed at discrediting the Foundation. This occurred at a time when the Foundation was conducting a special fundraising campaign for the Sierra Club's 100th anniversary. For example, Articles in newspapers and magazines appeared with titles such as "Sierra Club Misused $100,000 Donation, Suit Says." The result, the court found, was to raise questions in the minds of potential donors and this adversely affected the Foundation's ability to raise funds.

This prompted the Foundation to sue Mr. Graham alleging malicious prosecution in the California federal action. The trial court found that Mr. Graham did not have a "good faith belief," in most of the essential allegations of his complaint, and that he had acted with malice. The appeals court agreed, and upheld the judgment amounting to $672,638.07 in compensatory damages and $2,017,914.21 in punitive damages.

This (fortunately) isn't a routine case, but there may nevertheless be a lesson or two here. First, and to no one's surprise, donee organizations normally treat their donors in such a manner that they are unlikely to bring such lawsuits. There is nothing in the case to suggest that the Sierra Club did anything questionable, but we all know that a satisfied donor is unlikely to undertake a legal vendetta of the sort described in the case. When the donor is happy, everyone is happy. Second, the case is a reminder to donees and donors alike that litigation can have unexpected results, particularly with a jury in the picture.

FMV of Gifted Stock Reduced by Potential Capital Gains Tax

Eisenberg v Commissioner, __F2nd__ (2nd Circuit 8/18/98). Here's a noncharitable tax case that bears watching by gift planners. Irene Eisenberg owned all the stock of Avenue N Realty Corporation; that corporation owned a commercial building which it rented out to tenants. Ms. Eisenberg made gifts of her stock to several family members, and the

Internal Revenue Service challenged the values that she reported for gift tax purposes.

Ms. Eisenberg valued the stock by starting with the fair market value of the corporation's only asset, the building, then deducting a 25% minority discount and an additional amount representing the capital gains tax the corporation would incur if it either sold the building or liquidated. All that is fine, said the IRS, except for that capital gain thing. Ms. Eisenberg went to the Tax Court, where she lost and this appeal to the U.S. Court of Appeals for the Second Circuit followed.

The appeals court held for Ms. Eisenberg, noting that since the Tax Reform Act of 1986, the corporation would have incurred a capital gain tax on the building's increase in value if it sold or distributed the building, or if it liquidated. Before 1986, this tax was incurred only if the asset in question was sold by the corporation. This 1986 change in the tax law, known to tax lawyers as the repeal of the General Utilities doctrine, makes it virtually impossible for the corporation to avoid this capital gains tax. Thus, said the appeals court, an adjustment for the potential capital gains tax liability should be taken into account in valuing the stock of this closely-held C corp. (Different factors apply, of course, to an S corp, but that is another story.)

What if this had been a charitable gift instead of a gift to children? Would the fair market value be computed in the same manner? Although there is no authority squarely on this point, the existence of this appellant decision suggests that the IRS will probably try to reduce donor's income tax charitable deductions under these circumstances. Watch this space for future developments.

Formula Clause in Lead Trust Works

LR 9840036. This ruling provides some extremely useful reading for charitable planners.

The ruling involves a revocable trust which contains conventional planning in a community property context. A survivor's trust is created for the surviving spouse upon the first spouse's death while the deceased spouse's share of the trust estate will be divided between a credit shelter trust and a marital trust. Upon the death of the survivor, a charitable lead trust will be created equal to the lesser or $500 million or 25% of the adjusted gross estate as defined in Code Section 6166.

The trust provides that the surviving settlor's GST exemption will be allocated to the charitable lead trust at the survivor's death. Furthermore, the charitable lead trust, which is more specifically a charitable lead unitrust, provides that an 8% unitrust amount will be paid to charity during the term of the trust. But what is the term of the trust? Rather than stating the term as a term of years or tying it to a life or lives in being at the time of the trust's creation, the document provides for a formula to establish the term of the trust. Specifically, the trust will run for a term of whole years sufficient to produce an initial value for the remainder interest that comes closest to, but does not exceed, the survivor's available GST exemption. The document provides that in the event the GST tax has been repealed, the trust will run for a term of years sufficient to produce a charitable deduction of 80% of the value of the property funding the charitable lead trust, based on the charitable mid-term federal rate for the month preceding the surviving settlor's death.

The IRS found this formula acceptable. While a term was not specified, the formula makes the term "ascertainable and determinable as of the survivor's date of death," since as of the date of death, all of the variables in the formula needed for determining the unitrust interest will be fixed and determinable.

Finally, with regard to the GST exemption allocation, the IRS ruled that, if a sufficient amount of the surviving settlor's GST exemption is available and allocated to the charitable lead trust on the survivor's death, the lead trust will be excluded from taxation under the generation-skipping transfer tax.

No Tax on Retirement Plan Proceeds Paid to CRT

LR 9901023. In this ruling, the IRS considered the tax treatment of retirement plan proceeds paid to a charitable remainder trust upon the death of the plan participant. The plan participant created a charitable remainder trust for the

benefit of his children and designated his trust as the beneficiary of his retirement plan, with the proceeds payable to the trust in a lump sum upon his death.

The IRS held on these facts that the proceeds in question are includable in the gross income of the charitable remainder trust as income in respect of a decedent, and are not included in the gross income of the participant's estate. However, because the trust is a qualified charitable remainder unitrust under Code Sec. 664, the trust will not be taxed on this income for that year (unless it has unrelated business taxable income).

Private Foundation Audit Tax Does Not Reach Retirement Account Proceeds

LR 9838028. In the May 1998 issue of CGPN, we discussed LR 9818009, which dealt with a private foundation that was the beneficiary at a donor's death of the proceeds of IRAs and other qualified plans. In that ruling, the IRS stated that the retirement plan proceeds would be included in the estate of the decedent, but that an equal and offsetting charitable deduction would result. Furthermore, the IRS noted that the retirement plan proceeds would constitute income in respect of a decedent (IRD) to the private foundation, but that it would not be IRD in the decedent's estate. However, the IRS deferred the questions of whether or not the retirement proceeds would be taxable to the private foundation generally or to the private foundation under the audit tax of Section 4940.

Now, in this ruling, the IRS has essentially closed the books on this issue. Without specifically addressing the issue of whether the private foundation would be taxed on the proceeds of the retirement plans, the IRS specifically ruled that Section 4940 was intended to reach "gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents, and royalties." The IRS noted that retirement proceeds did not fall into these specific categories of income, and consequently were not subject to the tax under Section 4940.

Charitable Lead Trusts Are Reformable, Too!

LR 199936010. We are accustomed to reformation or amendment of nonqualified charitable remainder trusts under Section 2055(e) of the Code to cure defects, but the same provision provides the basis for reformation or amendment of a charitable lead trust that does not meet the requirements for a qualified charitable lead trust.

Here, an individual created a testamentary charitable lead trust which would run for a period of ten years. During the term of the trust, the trustee was given discretion as to distributions to charity. When the trust terminates, the trust is to be equally divided between charities and individuals.

The IRS noted that the trust, as drafted, did not constitute a qualifying charitable lead trust because the payment to charity was not in the form of an annuity or a unitrust amount. There were ancillary provisions to the trust were also inconsistent with a qualified charitable lead unitrust. These included a provision for fixed annual payments to a charity for four years to establish scholarship funds. It was unclear when these payments were to be made during the 10-year term. Consequently, it was proposed that the trust be reformed to create two separate trusts, one wholly charitable and one a conventional charitable lead unitrust. That trust would pay a 6% unitrust amount for 10 years, with the trust then terminating and passing to the designated non-charitable beneficiaries. The reformation action also provided for the immediate commencement of the four-year scholarship payout.

The IRS noted that the reformation action was timely filed and found further that the reformation would constitute a qualified reformation. Consequently, the reformation was allowed to proceed and a qualified charitable lead unitrust resulted.

Kinder, Gentler IRS

Several recent news items suggest that the Internal Revenue Service will stop at nothing in its new quest to be nice and to do the right thing.

First, in response to growing concerns about Y2K problems, IRS Commissioner Charles Rossotti announced that relief will

be available for taxpayers who are unable to fulfill their tax obligations because of Y2K-related matters beyond their expectations or control. Most beneficiaries of this relief, at least initially, will be businesses rather than individuals, because businesses face more immediate payment deadlines. For example, companies that pay salaries in the last week of December must deposit employment taxes as early as Monday, January 3. Procedures will be announced for requesting a rollback of penalties for late payment resulting from Y2K computer problems. Only one catch - the taxpayer must show a good faith effort to become Y2K compliant.

The other announcement (and as comedian Dave Barry says, we are not making this up) is that the Internal Revenue Service will join forces with the National Center for Missing and Exploited Children (NCMEC) to distribute photographs of lost, abducted, and runaway children. Pictures of missing children will be posted in IRS walk-in centers and on otherwise blank pages of IRS tax forms, instructions, and taxpayer information publications, including the Internal Revenue Bulletin. The IRS will also establish a link from its website (www.irs.gov) to the NCMEC website (www.missingkids.com).

Now doesn't that make you regret all those bad thoughts you had about the Internal Revenue Service? Can this link between the tax-collecting agency and a nonprofit organization suggest other combinations for the future?

IRS Notice 99-36. The Other Shoe Falls: IRS Follows Lead of Congress, Comes Down Hard on Charitable Split-Dollar Insurance

Charitable split-dollar life insurance legislation continues to evolve. The Joint Committee on Taxation has clarified the intent of proposed legislation concerning charitable split-dollar life insurance. Charitable gift annuities are excluded, as is reinsurance of gift annuities. Charitable remainder trusts holding life insurance policies are not necessarily included, but Treasury is given the authority to produce regulations to assure that the intent of the legislative proposal is carried out, particularly in areas where abuses of gift annuities and charitable remainder trusts are not readily apparent (but based on experience, certainly may appear in the future!). Now, the IRS has, as expected, taken a punitive position with regard to these arrangements. The exempt status of a charity participant may be challenged on private inurement or private benefit theories. The IRS threatens, where applicable, to apply an excess benefit transactions tax under Section 4958, a self-dealing tax under Section 4941, and a taxable expenditure tax under Section 4945. In addition, a charity that provides written substantiation of a charitable contribution in connection with a charitable split-dollar insurance transaction may be subject to penalties for aiding and abetting the understatement of tax liability under Section 6701. In a particularly creative but appropriately punitive measure, the IRS also will consider whether to require charities to report participation in charitable split-dollar insurance transactions on their annual Form 990s! Individuals who participate in charitable split-dollar life insurance arrangements may be hit with the accuracy-related penalty, the return preparer penalty under Section 6694, the promoter penalty under Section 6700, and the penalty under Section 6701 for aiding and abetting the understatement of tax liability. Note, message to the split-dollar guys: it looks like it's time to fold the tent and call it a day!

Appellate Court Agrees - No Appraisal, No Deduction

Last year the Tax Court handed down John and Linda Hewitt v. Commissioner, involving a charitable contribution of closely-held stock. The donors did not obtain an appraisal, but instead relied upon the share prices in several arms' length sales of the stock. The IRS claimed and the Tax Court held, that the donors could not deduct the full fair market value of the stock unless they complied with the regulations requiring a qualified appraisal. The donors appealed, alleging they had substantially complied with the regulation by providing a valid and believable basis for the values claimed.

The Fourth Circuit Court of Appeals agreed with the Tax Court and held the deduction was not allowable unless the donors verified their contribution under the applicable regulations. Since those regulations required a qualified appraisal and they failed to obtain one, they were not entitled to a full deduction.

An earlier case (Bond, discussed in CGPN February 1993), was distinguished on its facts. There, the donors did obtain a professional appraisal and attached a summary to their tax return, but the appraiser failed to complete a document that

complied in full with the requirements for a "qualified appraisal." The Tax Court held that the donors in the Bond case were entitled to a deduction despite this shortcoming, on grounds they had substantially complied with the regulations. This analysis was held inapplicable to the Hewitts' situation, in which no appraisal was ever obtained.

The moral is clear, so much so that it should be obvious. Donors should closely follow all applicable requirements, including the qualified appraisal rules, for all contributions.

One point here is interesting for gift planners to note. The IRS and the courts allowed the taxpayer in the Hewitt case to deduct an amount equal to their basis, notwithstanding their failure to obtain a qualified appraisal. The regulations suggest that "no deduction under Sec. 170 shall be allowed" for such a contribution unless the substantiation requirements are met. One wonders what basis exists for allowing this partial deduction, given the Court's analysis.

Charitable Split-Dollar Legislation Finally Becomes Law

In the January 1999 issue of *CGPN*, we reported on the introduction of HR 630, legislation sponsored by Ways and Means Committee Chairman Bill Archer (R-TX) and ranking minority member Charles Rangel (D-NY). This legislation has now been enacted as part of a tax bill extending certain expiring provisions. Under the provisions of the bill, charitable contributions made by an individual to facilitate premium payments in a charitable reverse split-dollar arrangement would be denied deductible status under Section 170. The denial of deduction would apply to any transfers made after February 8, 1999 (the date the bill was introduced in the House of Representatives). The legislation also enacts an excise tax equal to the amount of premiums paid on a covered policy which will be assessed against the charity making the payment. This portion of the Act applies to premiums paid after the date of enactment of the legislation, December 17, 1999.

The bill also imposes reporting requirements on charities with regard to any premiums paid. The Treasury is directed to promulgate regulations and forms to enable charities to meet the new reporting requirement. The obligation to report applies to transfers made after February 8, 1999 as well. Specifically, a charity making a transfer in payment of a premium covered by the statute would be required to report to the Internal Revenue Service the name and taxpayer identification number of every beneficiary under the insurance contract with regard to which premium payments are made. Charities would also be required to provide such other information as the Secretary of the Treasury may deem appropriate. A charity failing to file a proper report would be subject to the same penalties otherwise applicable to exempt organizations filing late returns as provided in Section 6033 of the Code.

The Act makes appropriate exceptions for insurance policies owned by charitable remainder trusts, for gift annuities, and for reinsurance contracts for gift annuities.

The enactment of this legislation, together with IRS Notice 99-36 which outlines an aggressive program of attacking charitable reverse split-dollar life insurance policies on the part of the IRS, means that charitable split-dollar life insurance is an idea that never had a time but is gone nonetheless!

No Estate Tax Deduction for Settlement

Lindberg v. United States, U.S. Court of Appeals for the 10th Circuit (1/13/99). When Temple H. Buell died, he left most of his $17 million estate to charity, partly through family trusts and partly by outright bequests. Family members brought a number of claims against the estate, the trusts, the foundations and others, and the situation culminated in a negotiated settlement agreement, pursuant to which the estate paid $2,700,000 to Mr. Buell's children and grandchildren. When the estate claimed a deduction for this payment, the IRS disallowed the deduction and this litigation ensued. The trial court held that this amount was neither a claim against the estate, and expensive administration, nor a charitable deduction. While the charitable beneficiaries of the estate may have benefited from the settlement (since the cost of litigation could have reduced the amount they ultimately received) that was an uncertain conclusion. The amount in question was paid to Mr. Buell's descendants, and not to charity, so the charitable deduction was disallowed.

Now, on appeal, the Tenth Circuit has affirmed the judgment in favor of the government, following essentially the same

reasoning as the trial court.

For a more complete discussion, see CGPNews, September 1996.

Inflation Adjustments for Calendar Year 2000 Announced by Internal Revenue Service

Rev. Proc. 99-42, 1999-46 I.R.B.

Inflation may seem irrelevant in today's economy, but even modest price increases annually can make substantial differences over time. Inflation still exists, and even though modest, it has its effects on everything, including tax planning. The IRS has its own obligations to make inflation adjustments each year for the standard deduction, personal exemptions, the level at which personal exemptions will be phased out, and numerous other provisions. A number of these provisions are addressed each year in a revenue procedure published at year-end for the coming year. By statute, the inflation adjustments for a calendar year are based upon the average of the increase in the consumer price index for each of 12 consecutive months ending on August 31 of the prior year.

The annual gift tax exclusion, which is currently $10,000, is subject to inflation adjustment in $1,000 increments. However, since inflation for the past two years (the period during which the inflation adjustment provision has been in effect) was insufficient to result in rounding to the next $1,000, the $10,000 amount will remain constant in 2000. Such is not the case for the second number, which is the amount of the GST exemption. Until 1999, the GST exemption was $1 million. Beginning in 2000, the GST exemption is adjusted upwards for inflation to $1,030,000.

For charities, donors, and their advisors, one important inflation adjusted number is the level at which certain itemized deductions will begin to be phased out. For 2000, the inflation-adjusted number is $128,950. How does this number fit into the equation? Specified itemized deductions, which include the charitable deduction, will be reduced by an amount equal to 3% times adjusted gross income in excess of the inflation adjusted $128,950. In the case of a separate return filed by a married individual, the phase out will begin for adjusted gross income in excess of $64,475 per year.

Additional inflation adjustments related to the substantiation rules promulgated in 1993 and their adoption of older rules established in Rev. Proc. 90-12, 1990-1 CB 471 are also established annually. In that revenue procedure, the IRS stated that certain insubstantial benefits provided to the donor would not have to be accounted for in giving the donor a receipt for a gift. Specifically, that revenue procedure provides that no benefit has to be accounted for if the value of the benefit or benefits to a donor in relation to a gift amount is not more than 2% of the value of the contribution or $50, whichever is less. An alternative provision provides that a benefit to a donor can be disregarded if the donor's contribution is $25 or more and the benefits that the donor received in turn constitute a "low-cost article" under Sec. 513(h)(2). A low-cost article is one that cost the charity $5 or less and has the name of the charity, its insignia or logo on the article.

The low-cost article exception is also important for purposes of Sec. 513(h)(1)(A), which provides that unrelated business income will not include these low-cost articles if they are provided to a donor in a manner incidental to the solicitation of charitable contributions.

Each of these numbers is adjusted by inflation annually. The $50 amount described above, referred to as the "$50 benefit," is $74 for 2000. The "$25 payment" limitation is $37 for 2000. Finally, the "low-cost article" limitation is $7.40 for calendar year 2000.

In summary, no longer can planners comfortably expect an environment free of changes. Even without a change in the tax law, the ever-multiplying number of inflation-adjusted numbers (witness the Taxpayer Relief Act of 1997 provisions which provided for adjusting the annual exclusion for gift tax purposes and the GST exemption beginning this year). However, fortunately, the IRS provides the numbers we need on an annual basis. We hope that our readers find these relevant numbers in Charitable Gift Planning News helpful.

Seventh Circuit Takes Swipe at Tax Court and IRS, Reverses UCC Decision

United Cancer Council, Inc. v. Commissioner, 83 AFTR 2d Par. 99-416; No. 98-2181; No. 98-2190 (February 10, 1999).

In 1997, the Tax Court upheld the IRS' position that the exempt status of the United Cancer Council (UCC) should be revoked because the unique fund raising arrangement between UCC and Watson & Hughey, Co. (W&H) put W&H in an insider position and that it subsequently benefited from that position in the form of private inurement, resulting in revocation of UCC's exempt status retroactive to the effective date of the 5-year contract which began in 1984.

Now, in an uncharacteristically blunt decision, the Seventh Circuit has reversed the Tax Court and remanded the case for reconsideration on the question of private benefit, the alternative grounds for revocation of exemption asserted by the IRS which the Tax Court ignored in its decision.

UCC was in dire straits when it approached W&H in 1984. It had no assets and little income, and was losing donors to the American Cancer Society and other similar charities. W&H agreed to enter into a 5-year fund raising contract with UCC, and agreed to front the cost of the fund raising effort because UCC did not have the funds to do so. In return, the contract made W&H the exclusive fund raiser for UCC during the term of the contract, made W&H the co-owner of prospect lists developed during the contract period, limited UCC's use of the resulting lists permanently to solicitations for repeat donations, and allowed W&H to use the list in future client relationships.

Prior to entering into the arrangement with W&H, UCC's fund raising budget had never exceeded $50,000. During the 5-year term of the W&H contract, UCC expended $26.5 million, but raised $28.8 million for a net of $2.3 million.

The Court noted that the inurement clause of Section 501(c)(3) has been interpreted to require that an insider be the beneficiary of inappropriate distributions to trigger the private inurement penalty of loss of exemption. It noted that the test was functional, and that the reality of control rather than the insider's place in a formal table of organization is key. Here, the Court noted that W&H received substantial benefits above and beyond its compensation from its contract, but noted that it went to extraordinary lengths to revive UCC. Fundamentally, however, the fund raising contract was still a fund raising contract.

The Court noted that "if a charity's contract with a fund raiser makes the fund raising an insider, triggering the inurement clause of Section 501(c)(3) and so destroying the charity's tax exemption, the charity sector of the economy is in trouble." The Court acknowledged that the IRS said that not every contract makes a fund raiser an insider, but rather, the IRS said that the initial funding of the fund raising effort made W&H literally a founder of UCC or as the Court said "rather a refounder" of UCC. The IRS asserted that, as UCC's only fundraiser, W&H had UCC at its mercy and thus W&H "controlled" UCC. The Court stated that "singly and together, these points bear no relation that we can see to the inurement provision. The provision is designed to prevent the siphoning of charitable receipts to insiders of the charity, not to empower the IRS to monitor the terms of arm's-length contracts made by charitable organizations with the firms that supply them with essential inputs, whether premises, paper, computers, legal advice or fund raising services."

Breaking the arguments down to their essentials, the Court said that if providing the up front money made a fund raiser a founder, then the result would mean denial of tax exemption to any new or small charity that wanted to grow by soliciting funds. The Court made it clear that whether there was one fund raiser or ten, the fund raiser was taking a huge chance in taking on UCC as a client, and was benefited accordingly. W&H did not make repeated infusions into UCC. The fund raising receipts were placed in an escrow account controlled by W&H until its expenses had been repaid, including its up-front amount, but after that, W&H distributed funds to UCC. All of these facts were viewed as details by the Court, having nothing to do with private inurement.

The Court noted that "the other point that the Service makes about the exclusivity provision in the contract - that it put the charity at the mercy of the fund raiser, since if W&H stopped its fund raising efforts UCC would be barred from hiring another fund raiser until the contract with W&H expired - merely demonstrates the Service's ignorance of contract law." The Court went on to note that when a company is given an exclusive contract, it assumes an obligation to use its best efforts to promote the contract's objectives. W&H did so here, but had it "folded its tent and walked away" it would have been in breach of its obligations under the contract and UCC would have been free to terminate the contract without liability.

Addressing the huge amount of fund raising costs relative to funds raised, the Court noted that much of UCC's purpose for existing as a charity was to inform the public on cancer awareness. Under appropriate accounting conventions, UCC was permitted to classify $12.2 million of its fund raising expenses as educational expenditures because of the cancer information contained in the fund raising letters (80 million of which were sent out during the 5-year contract year period).

Finally, with regard to this point, the Court noted that W&H received only a modest profit after its mailing and other expenses were considered. Having observed all this, the Court said that the ratio of expenses to net charitable receipts was unrelated to the issue of inurement. Rather, as the Court noted, that issue would bear on matters not raised by the IRS or the Tax Court, specifically the efficiencies of UCC in operating its fund raising operation. Without saying UCC was efficient or inefficient, those judgement issues exercised by the board would be the context in which the ratio of fund raising expenses to funds raised should be considered, if at all. The Court noted that the charity drove the best bargain it could, based on the record, given its position. The Court stated that "maybe desperate charities should be encouraged to fold rather than to embark on expensive campaigns to raise funds. But that too is a separate issue from inurement. W&H did not, by reason of being able to drive a hard bargain, become an insider of UCC. If W&H was calling the shots, why did UCC refuse to renew the contract when it expired, and instead switch to another fund raiser?"

The Court completed its analysis of the inurement issue by saying that no evidence whatsoever of control of UCC by W&H was apparent under any legal definition of control. The Court noted "as the amicus curiae briefs filed in support of UCC point out, (the IRS action) threatens to unsettle the charitable sector by empowering the IRS to yank a charity's tax exemption simply because the Service thinks its contract with its major fund raiser is too one-sided in favor of the fund raiser, even though the charity has not been found to have violated any duty of faithful and careful management that the law of nonprofit corporations may have laid on it. The resulting uncertainty about the charity's ability to retain its tax exemption - and receive tax-exempt donations - would be a particular deterrent to anyone contemplating a donation, loan, or other financial contribution to a new or small charity. That is the type most likely to be found by the IRS to have surrendered control over its destiny to a fund raiser or other supplier, because it is the type of charity that is most likely to have to pay a high price for fund raising services. ... It is hard enough for new, small, weak, or marginal charities to survive, because they are likely to have a high expense ratio, and many potential donors will be put off by that. The Tax Court's decision if sustained would make the survival of such charities even more dubious, by enveloping them in doubt about their tax exemption."

Continuing its lambasting of the IRS' case, the Court said "we are not reassured when the government's lawyer, in response to a question from the bench as to what standard he was advocating to guide decisions in this area, said that it was the 'facts and circumstances' of each case. That is no standard at all, and makes the tax status of charitable organizations and their donors a matter of the whim of the IRS."

The Court noted that the line of reasoning employed by the IRS and the Tax Court would be relevant only if it were shown that the UCC Board acted sloppily in employing W&H and provided an extravagant contract without justification, things not shown here. The Court said the presence of such facts might be a route for using the tax law to deal with the problem of "improvident or extravagant expenditures" by a charitable organization, but that that circumstance still would not mean that the windfall to the fund raising organization constituted benefits to insiders, the key to private inurement.

The Court closed its opinion by noting that the Service's alternative argument of private benefit had "been given a bye by the Tax Court." In reference to that issue, the Court said, "The board of a charity has a duty of care, just like the board of an ordinary business corporation, and a violation of that duty which involved the dissipation of the charity's assets might (we need not decide whether it would - we leave that issue to the Tax Court in the first instance) support a finding that the charity was conferring a private benefit, even if the contracting party did not control or exercise undue influence over the charity. This, for all we know, may be such a case."

To test whether it is such a case, the case was summarily remanded to the Tax Court for reconsideration.

We have provided a lengthy analysis of the Seventh Court's opinion, employing liberal quotations from the opinion itself. We couldn't help it: rarely is the IRS and the Tax Court "taken to the woodshed" in language like this by an appellate court. We thought you should hear (or at least read) these blunt assessments word-for-word. What does this have to do with

charitable gift planning? Directly, very little. But this is a momentous case in exempt organizations law, and since it involves contracts with fund raising firms and the eligibility of charities to receive tax deductible gifts, we felt that our readers should have a full airing of this case, to date, in CGPNews. We assume the Tax Court will dutifully reconsider the case, addressing the private benefit issue, and if and when an opinion is issued, we will bring the results to you.

Finally, how might a case of this nature be decided in the future where the IRS asserts intermediate sanctions which depend heavily on the "facts and circumstances test" summarily dismissed by this court? Only time -- and facts and circumstances -- will tell.

NIMCRUT Trustee Allowed to Allocate Capital Gain to Income

LR 9907013. The trust examined in this ruling was established by A to provide a life income to B. The trust was a net income with makeup provision unitrust (NIMCRUT) and the trust document gave the trustee the freedom to allocate to trust income some or all of the post contribution capital gain realized by the trust on capital assets subsequently sold.

Under the law of the state in question, capital gains are generally allocable to principal. However, again under the applicable state law, if the trust document "gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference that the trustee has improperly exercised discretion arises because the trustee has made an allocation contrary to a provision of state law."

Here, the IRS noted that the post-contribution allocation of gain to income, given the provisions of the state law in question, would not constitute a fundamental departure from state law. Consequently, the power of the trustee to allocate post-contribution gain to income, and the trustee's actual allocation of such gain to income, would not disqualify the trust.

Promoters of this arrangement contend that it fits within the CRT rules, so that the trust is a qualified charitable remainder trust. If that is so, the trust would be tax-exempt in year three when the sale occurs. In addition, because it had no income year one or year two, distributions in those years would be tax-free to the donor. The high payout rate assures that by the time the stock is sold in year three, the donor has already extracted much of the gain without incurring capital gains taxes.

Does this scheme work? We're not sure about that, but if it does work it can't last for long. Watch the space for future developments.

Planned Giving Director May Owe His Employer a Fiduciary Duty

Esposito v. Connecticut College, No. 543055 (Superior Court at New London, Feb. 10, 1999). A planned giving officer at a college became upset at how the college handled two gifts in particular. He was so concerned that he complained to the State Attorney General <u>and</u> sent a copy of his complaint to the local newspaper. All this apparently happened before he had discussed the matter with college officials. When the planned giving officer was fired, he sued the college for wrongful termination of employment. The college promptly counterclaimed for breach of fiduciary duty, based upon his failure to discuss his problems with the college before going public.

The court held that must go forward to determine (1) whether a fiduciary duty existed, and (2) if so, whether a breach of that duty occurred. Stay tuned for future developments.

Although the facts in this case are not entirely clear, and the court did not finally resolve the matter, this case does present some important issues. Even though the legal points remain unresolved, it is not too early to reach one conclusion -- better discuss your problems with your employer before you take such drastic action.

Appeals Court Affirms Tough Assignment of Income Case

Ferguson v. Commissioner, ___*F. 2d* ___(4/7/99). In our May1997 issue, we described the Tax Court opinion in this case [108 T.C. 244 (1997)]. There, the Tax Court held that charitable contributions of stock made immediately before the

Corporation was acquired in the tender offer produced capital gain taxable to the donors. The case challenged long-held notions of how late is too late for a contribution under these circumstances, and now the Ninth Circuit has affirmed that Tax Court opinion.

Michael D. Ferguson's family owned nearly 20 percent of the stock of American Health Companies, Inc. ("AHC"). Here is the chronology of events:

7/28/88	AHC entered into a merger agreement with CDI Holdings, Inc. ("CDI")
8/3/88	A tender offer was made to the AHC shareholders conditioned on CDI acquiring 85 percent of the AHC stock.
8/15/88	Michael Ferguson signed a "donation-in-kind record" indicating his intention to donate a 30,000 AHC shares to two charitable donees
8/16/88	Ferguson's broker help him open a new brokerage account and placed 391,651 AHC shares into it
8/22/88	A SEC filing indicated that the Fergusons would tender their stock to CDI
8/26/88	Ferguson formed a charitable foundation to receive a part of his contribution.
9/8/88	The broker arranged the actual transfers from Ferguson's account to accounts for his church and the new foundation (and Ferguson signed an authorization for this transfer on the following day)

The AHC shareholders tendered stock throughout August and September 1988. The proportion tendered reached 50 percent on August 31 and 95.2 percent on Sept. 9. CDI accepted the tendered stock on Sept. 12, and purchased the shares on the following day. Was the transfer made in time for Ferguson to avoid a capital gains tax on the shares? The Tax Court said "NO" and the Ninth Circuit Court of Appeals agreed.

Rather than propound a general principle of law, the Ninth Circuit undertook a horticultural fact-finding mission - when did the stock "ripen" into a right to receive the sale proceeds? On these facts, it simply held that, "because the Fergusons' contributions of their AHC stock were not completed until September 9, 1988 -- at least nine days after their stock had ripened, we affirm the Tax Court's decision holding the Fergusons taxable on the gain in the appreciated stock." The Tax Court opinion had stated a more general rule, reaching the same result because of the reality and substance of the events surrounding merger agreements, the tender offer, and the gifts to the charities all indicated that, prior to the date of gift, the Fergusons' ANC stock had been converted from an interest in a viable corporation to a fixed right to receive cash.

As we stated before, this case should required reading for every gift planner facing a present sale contribution transaction. Despite scrutiny by a second court, there continues to be no single event or condition that provides a bright-line test for determining whether a given contribution will or will not be sufficient to shift the tax burden from the donor to the donee. Rather, this depends upon a realistic view of all the facts. It is not sufficient to see whether the pending transfer of the property is or is not subject to a binding obligation. If you are facing such a problem, read the Ferguson decisions and then make a realistic evaluation. As so often seems to be the case, there is no easy answer.

IRS Extends Deadline for Converting NIMCRUTS and NICRUTS to FLIP Trusts

IRS Notice 99-31. When the Treasury issued final regulations last December under Sec. 664, it provided an opportunity for persons who over the years had created net income with make-up provision unitrusts (NIMCRUTS) or net income unitrusts (NICRUTS) to get in on the reformation fun. These people had presumably accepted the assumption and later the IRS' own initial position that Flip trusts (trusts which start out as NIMCRUTS or NICRUTS but convert to straight unitrusts at some future date, such as upon the sale of an illiquid asset) were not permitted under Section 664. Specifically, Treasury gave these persons the opportunity to convert their trusts to Flip trusts. However, the opportunity to do so was limited to a period of six months from the time the regulations were issued. Specifically, June 8 was the deadline.

Now, in a surprising move in response to the requests of many planners, Treasury has extended that deadline to June 30, 2000, and has given additional guidance. Treasury indicated that, in addition to requests of planners, they had become aware of difficulties arising under state law which presented potential impediments to meeting the June 8, 1999 deadline.

The IRS also indicated that the regulations would be amended to clarify that the term "legal proceedings" includes non-judicial reformation where valid under state law, provided that the non-judicial reformation is completed by June 30, 2000. This is important enough that we will repeat this: as under the original regulations, where trustees initiate reformation proceedings in the form of a judicial action before June 30, 2000, the reformation will be effective even if the action is completed after that date. However, where non-judicial actions are allowed under state law, a qualifying reformation must be completed by June 30, 2000.

It is important to note that some states do not allow non-judicial reformation of irrevocable trusts. Consequently, this procedure will not be available in those states. Furthermore, while the initiation of a judicial reformation is within the control of the trustee, the completion of a non-judicial reformation is not. Everything from a dilatory state attorney general to recalcitrant beneficiaries or contingent beneficiaries of the trust can prevent a non-judicial reformation from being completed on time. Consequently, while a non-judicial reformation in the right circumstances can be very attractive, unless all potential pitfalls have been analyzed and resolved in advance, the decision to utilize a non-judicial reformation as opposed to a judicial reformation must be taken with great care.

IRS Explains the Current State of the Treatment of Capital Gains Distributions from Charitable Remainder Trusts

IRS Notice 99-17. Notice 99-17 revises the rules set out in Notice 98-20 (discussed in the March 1998 issue of CGPNews) in light of the changes made to the capital gains rules applicable to charitable remainder trusts by the Tax and Trade Relief Extension Act of 1998. That Act provides that long-term capital gain properly taken into account in 1997 by charitable remainder trusts at the 28% rate will nonetheless be treated as 25% capital gain or 20% capital gain, depending on its nature, for distributions of that gain occurring in calendar years ending after December 31, 1997.

As a result of the new legislation and the guidance provided by this notice, the treatment of capital gains in charitable remainder trusts has been simplified somewhat. The emphasis is on somewhat. Specifically, under the new Code section and Notice 99-17, the following rules apply to long-term capital gain distributions in tax year 1997: pre-1997 long-term gain will be taxed at 20%. Long-term capital gain realized between January 1, 1997 and May 6, 1997 will be taxed at the rate of 28% if the property was held more than 12 months but not more than 18 months. Long-term capital gain realized between May 7, 1997 and July 28, 1997 will be subject to a tax rate of 28% if the gain results from the sale of collectibles. The rate will be 25% if the property was held more than 12 months and is made up of long-term capital gain which is unrecaptured Section 1250 gain. The rate will be 20% for all other property held more than 12 months. For long-term capital gain realized from July 29, 1997 to December 31, 1997, the tax rate will be 28% if the property was held more than 12 months but not more than 18 months or if it came from the sale of collectibles. The rate will be 25% for Section 1250 gain. The rate will be 20% for all other property held more than 18 months.

The rules for the distribution of long-term capital gain after December 31, 1997 will be as follows: pre-1997 long-term capital gain will be taxed the same way, i.e., 20%. Long-term capital gain realized from January 1, 1997 to May 6, 1997 will be taxed at a 20% rate if the property had been held more than 12 months when sold. Long-term capital gain realized from May 7, 1997 to July 28, 1997 will be taxed at 28% if it results from collectibles (no change). Likewise, the same rules will apply to 25% property. Finally, no change will result for the treatment of other property, i.e., property held more than 12 months will be taxed at 20%. For long-term capital gain realized from July 29, 1997 to December 1997, the 28% rate will apply only for collectibles gain. The tax rate will be 25% if the gain results from property held more than 12 months and is Section 1250 property. Finally, the tax rate will be 20% for all other property held more than 12 months. There will be an open-book test at the end of this issue, and yes, this will be on the exam.

Now, remember, this is simplification. Thank goodness it's not as complicated as it used to be! (Yes, that was sarcasm!).

It's That Time of the Decade Again: IRS Revises Actuarial Tables

T.D. 88-19. In 1988, Congress enacted legislation directing that the actuarial valuations in estate planning and charitable gift planning settings where actuarial values were at issue were to use a floating rate system equal to 120% of the mid-term applicable federal rate as compounded annually. The legislation also provided that the actuarial tables used in the computation were to be revised every 10 years by the Internal Revenue Service to reflect the most recent mortality experience. In a series of notices in 1989, the IRS issued tables in compliance with the new law, utilizing census data from the 1980 census. Now, the IRS has issued new tables utilizing census data from 1990. The regulations employing the new tables will apply for valuations made on transactions entered into after April 30, 1999. According to initial analysis by actuaries, the change in mortality reflects increased longevity as one would anticipate, but the changes are relatively slight. Consequently, the changes to the tables are equally minimal. Nonetheless, in doing your planned giving calculations, make sure that your Section 7520 rate calculation employs the new actuarial tables. Otherwise, a miscalculation could range from inconvenient to disastrous if all or nothing thresholds such as the 5% probability test for charitable remainder annuity trusts, the 10% minimum charitable remainder for charitable remainder trusts generally, and the greater than 10% charitable deduction requirement for gift annuities under Section 514(c)(5) or breached.

Sloppy Drafting by Son Loses Estate Tax Charitable Deduction in Father's Estate

Estate of Kenneth E. Starkey v. United States, 83 AFTR 2d Par. 99-843. Kenneth Starkey owned several million dollars of real estate and personal property. In his will, Starkey named his wife and four children as trustees of a trust with half of the income to go to Lawndale Community Church in Chicago and the balance of the income being designated for missionaries preaching the Gospel of Christ, and Milligan College. No requirement was made that the income be used exclusively for charitable purposes. Because the inexact nature of the designation was insufficient in the eyes of the IRS, the family initiated a reformation action with regard to the trust created under the will (which was drafted by Mr. Starkey's son) so as to provide the necessary charitable qualifications and specificity.

The District Court held that the reformation actions in the probate court were prospective only, and had no effect on the qualification of the bequests for the estate tax charitable deduction. The court noted that the critical issue with regard to the reformations was that the taxes were on the transfer of the taxable estate, not a tax on the property, so that the subsequent actions by the state court with regard to the property at hand were irrelevant. The District Court provided that "to the extent that the state court's order attempted to resolve whether the testamentary trust actually qualified for a charitable deduction from the gross estate, it cannot be given any weight. That is strictly a matter of federal law and could not be resolved without the presence of the U.S. in the proceedings."

The gift to the church, had it been a gift free of trust, would have been a gift qualifying for the estate tax deduction under Section 2055. The same argument could be made for the gift to the college. But, contrary to the arguments of the estate, the gift to the missionaries preaching the Gospel of Christ was not a gift made to or through the church, but was an independent third gift over and above the gift to the church and the gift to the college. Consequently, since the gift in trust provided for potential charitable and noncharitable beneficiaries (the trust not having required that the trust assets be utilized exclusively for charitable purposes), then no qualifying charitable gift is identifiable or discernible for purposes of the estate tax charitable deduction. Consequently, no estate tax deduction was allowed in the estate.

IRS Grants Favorable Ruling for Minority Scholarship Program

LR 199920042. Since the Fifth Circuit handed down its decision *in Hopwood v. State of Texas,* 78 F3d 932 (5th Cir.), providing that state universities could not take race (specifically, minority status) into consideration in its admission policies, some uncertainty has existed among planners as to whether or not the rationale of Hopwood might be expanded to prevent the establishment of new scholarships exclusively for minority students. While this is merely a letter ruling, and while it answers only the specific question of whether or not the proposed minority scholarship program constitutes a taxable expenditure under Section 4945, the ruling is nonetheless a promising one.

Under the facts involved, a private foundation intends to provide grants to minority students to attend schools and universities. Under the terms of the proposed private foundation grant procedure, the private foundation will make grants

to an intermediary public charity that will supervise and administer the grant program. All administrative details relating to the scholarships will be handled by the intermediary charity, and recipients of the scholarships will be determined solely by the intermediary charity utilizing selection criteria which will evaluate each scholarship candidate based on scholastic aptitude as measured by the SAT, scholastic performance measured by class rank, a counselor appraisal, and interests, activities and leadership contributions.

Section 4945 of the Internal Revenue Code sets out the types of expenditures by a private foundation that will be deemed inappropriate and consequently subject to the excise tax for taxable expenditures. Section 4945(g) provides that the taxable expenditure tax will not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the IRS, if it is demonstrated to the satisfaction of the IRS that the grant constitutes a scholarship or a fellowship grant, which in turn constitutes a tax-exempt scholarship or grant under Section 117 of the Code to be used for study at an educational institution described in Code Sec. 170(b)(1)(A)(ii).

Here the proposed scholarship program was found to be, as presented, one providing objectivity and nondiscrimination in the awarding of scholarship grants, so that the penalty tax under Section 4945 would be inapplicable.

Hopwood has created a tremendous uproar throughout the country, but particularly in the Fifth Circuit, which is the only jurisdiction governed by the decision. Is the decision limited only to state universities or does it apply to private universities as well? Does it apply only to admissions policies, or does it extend to grant and scholarship programs? Was Hopwood decided correctly in the first place? All of these questions and others remain. However, while this cannot be considered a definitive answer from the IRS, this ruling gives strong guidance to the effect that philanthropic individuals desiring to create scholarship funds for the benefit of minority students may do so without fear that the IRS will challenge the gift establishing the fund as discriminatory and thus nondeductible and subject to tax on its investment income. However, because of the uncertainty in this area, anyone desiring to establish such a fund would do well to obtain a private letter ruling first.

If It Weren't For Those Blasted Computers and People, The IRS Would Be Perfect

On April 30, the IRS released new actuarial tables for use in calculating the Section 7520 rate for planned gifts and other estate planning transactions. Now, in a correction retroactive to the original effective date of the new tables, which was May 1, 1999, the IRS has issued regulations correcting its errors.

Bankrupt Taxpayers Out of Money, But Not Out of Ideas

In Re Smihula, United States Bankruptcy Court for the District of Rhode Island, 83 AFTR 2d Par. 99-889; No. 98-13949, May 24, 1999. The law of bankruptcy and charitable giving continues to intertwine and evolve. This action, under the "The Religious Liberty and Charitable Donation Protection Act of 1998," makes it clear that some giving to charity which reflects a trend prior to a bankruptcy filing may be protected from creditors, but once someone files for bankruptcy, the debtor deciding that he or she would rather have a charity have the money than his or her creditors still doesn't work! In this case, the husband and wife who were the debtors actually made that statement!

James and Jean Smihula filed a Chapter 13 bankruptcy action on September 23, 1998, but on November 5, 1998, they filed a notice of voluntary conversion to Chapter 7, together with a motion to amend two schedules of their filing. (Chapter 13 provides for an orderly payment of a bankrupt's debts, while Chapter 7 provides for total discharge of indebtedness subject to discharge.) The original schedules showed a net income after reasonable living expenses of $865 per month. Under the amended schedules, the only change was to provide for $700 per month in charitable contributions.

The Smihulas argued that their amended action should be allowed and not dismissed as prejudicial on the basis of the statement in The Religious Liberty and Charitable Donation Protection Act of 1998 (the "Act") that "in making a determination whether to dismiss a case under this section, the Court may not take into consideration whether a debtor has made or continues to make, charitable contributions (that meet the definition of "charitable contribution" under Section

548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in Section 548(d)(4)). The Smihulas argued that the phrase "have made, or continued to make" applied to their circumstances, arguing that "It is highly discriminatory and perhaps even unconstitutional to interpret 707(b) so as to allow an individual debtor who "found God" prior to bankruptcy and gave to charity regularly to escape payment of his debts in favor of charitable and/or religious giving, yet deny the same relief to a debtor who "found God" subsequent to seeking bankruptcy protection."

The Court ruled, however, that recent legislation and its history did not support the Smihulas position. Specifically, the Court stated that "the amendment states clearly that the Court cannot consider whether a debtor 'has made or continues to make' charitable contributions, when determining substantial abuse. This language, which needs no interpretation or construction, requires that as of the petition date, the debtor had established a history of charitable giving. This bolsters a major purpose of the legislation: to protect religious and charitable organizations from having to turn over to bankruptcy trustees donations these organizations received from individuals who subsequently filed for bankruptcy relief. In addition, the bill protects the rights of debtors to continue to make religious and charitable contributions after they file for bankruptcy relief," (quoting from the House Report accompanying the Act). The Court noted that throughout its legislative history, the proponents of the Act had made it clear that the amendment was not intended to allow debtors to begin making charitable contributions on the eve of bankruptcy. The record reflected that the Smihulas readily admitted that the decision to make charitable contributions of $700 per month was made after the Chapter 13 filing, and the Court noted that it was undisputed that the Smihulas had actually been making these contributions after the petition was filed. The Smihulas also readily admitted that they preferred to use their disposable income for charitable purposes rather than paying their creditors.

The Court was clearly not amused by the Smihulas creative planning. It ruled that the filing was abusive, and provided that the Smihulas had 15 days to revert to Chapter 13 status for their bankruptcy action.

The Accuracy of That Appraisal Really Does Matter

Kellahan v. Commissioner of Internal Revenue, T.C. Memo 1999-210; No. 22540-96 (June 23, 1999). Here, a donation of real estate was acknowledged to have been overvalued in the donor's appraisal in the Tax Court proceedings. Even in the face of the confession, the donor was hit with an accuracy-related penalty of 40% of the tax underpayment.

In this fact-intensive case, an experienced real estate professional ended up with the ownership of a private, man-made canal. The taxpayer never visited the property before or after acquiring it, until one month before the trial. However, he had special knowledge of real estate in the area, and the tax foreclosure proceedings by which he succeeded to ownership of the property. He was advised upon acquisition of the property that the 28 surrounding lot owners were very disgruntled that the canal was being treated as separate property and had been conveyed. The South Carolina Public Service Authority (SCPSA) advised the donor that his best course of action, in light of the disgruntled landowner's complaints, would be to contribute the property to the SCPSA. The taxpayer did so.

In valuing his deduction, the taxpayer determined from a licensed contractor that it would cost $107,134.50 to dig a comparable canal. Additionally, he obtained an appraisal that the canal had a value of $111,750.

The IRS, however, felt differently about the value of the property. It valued the property at $5,950.

The Court analyzed the appraisals offered by both the IRS and the taxpayer, and found them both wanting. It felt that comparables of private ponds to the canal, used by both appraisers, were inappropriate. While the owner of the pond may restrict access, everyone involved agreed that the owner of the Canal could not restrict access by the public via Lake Marion. This dramatically reduced the value of the Canal in the view of the Court. The failure of the appraisals to address the publicly accessible canals issue rendered the appraisals unreliable in the view of the Court.

Furthermore, the taxpayer included in the valuation of his property several piers constructed by the lot owners surrounding the canal. Implicit in the appraisal conducted on behalf of the taxpayer was a conclusion that the taxpayer owned the piers as part of the canal. However, there was no support for this premise.

Another defect lay with the valuation of a strip of land between the ordinary water level and the high water level of the Canal. The land was valued, subject to a discount deemed inappropriate, as if it were another lot in the area, failing to take into account that it was subject to flooding at any time, should the SCPSA choose to "open the flood gates." Consequently, it could be used neither for residential or agricultural purposes.

However, perhaps the determinative issue was the position taken by the IRS, which the Court accepted, that the lot owners would pay nothing for water access through the Canal and that the lot owners would sue any owner of the strip of land included in the Canal proper who sought to restrict their water access. Without deciding whether South Carolina law gave the adjacent lot owners easements with respect to the Canal parcel, the Court found it sufficient for its purposes to conclude that there was a significant risk that such was the case. The Court believed that it was obvious that whatever property rights were conveyed with ownership of the Canal parcel were subject to significant litigation hazards which were not considered in the taxpayer's appraisal.

The taxpayer also lost when it came to the accuracy-related penalties under Section 6662(h) for both the year of gift (1990) and year 1992, the year in which the carryover after the application of percentage limitations was utilized. The taxpayer was found to have employed a substantial valuation overstatement with regard to the donated property. That provision applies when an overvaluation of 400% or more is utilized in a tax return, and where the substantial overvaluation overstatement exceeds $5,000. While the valuation penalty can equal 20% or 40% of the amount involved, if both the 400% threshold and the $5,000 threshold are crossed, the 40% rule applies. The reasonable cause exception in Section 6664(c) was found to be unavailable here because of the extensive experience of the taxpayer with regard to real estate matters and with regard to the process by which this property was acquired indirectly through a tax foreclosure. He is consequently charged with sophistication in real estate matters. He was already negligent in failing to inspect the property himself until one month before the trial in the Tax Court. Consequently, no "good faith investigation" of the value of the contributed property occurred.

In summary, the Tax Court noted that the position of the taxpayer "did not hold water!"

This is a clear message from the Tax Court: you bring us a bad appraisal, we will send you a bad tax bill!

Mutual Fund Shares Get Respect, Are Treated as Qualified Appreciated Stock

LR 199925029. Section 170(e)(5)(B) of the Code provides that "qualified appreciated stock" is eligible for a full fair market value deduction when contributed to a private foundation. Qualified appreciated stock is stock traded on a public exchange without restrictions, shares of which given to charity by the donor and those related to him have not cumulatively exceeded 10% of the outstanding shares of the corporation.
Now, this ruling poses the question of whether or not mutual fund shares can constitute qualified appreciated stock. The IRS' answer is: yes.

Private Foundation May Pay Certain Expenses of Its Members

LR 199927046. A private foundation has a Board of Trustees elected by its members, who are all lineal blood descendants of the foundation's creator. The programs of the Foundation are aimed at producing "a salutary impact on national or international problems or public policy areas." In recent years, the members have had differences of opinion as to how program areas should be selected for the Foundation. Rather than split the Foundation into three or four new foundations, the Foundation proposes an internal reorganization, enabling members to participate more directly in the awarding of grants.

Under the new plan, members will play a much more active role in considering proposed grants. Because the members are widely dispersed across the country, they will necessarily incur travel expenses, as well as office expenses in fulfilling their new obligations. Consultants and other experts will have to be retained to assist the members, and these costs, as well as the costs of travel and other members' expenses will be paid by the foundation.

The Internal Revenue Service held that the services to be performed by the members of the Foundation will qualify as "personal services" within the meaning of Code Sec. 4941(d)(2)(E), and are reasonable and necessary to carry out the Foundation's exempt purposes. Therefore, the expenses of the members will incur in performing these services may be reimbursed (provided they are not excessive) without violating the prohibition on self dealing.

It may be worth noting that, while the Foundation's board traditionally met three times each year, the reorganization calls for one combined annual meeting of trustees and members. The IRS ruling specifically holds that the members' expenses "including the expense of attending one annual meeting per year" are reasonable and necessary. This underscores the need for realistic assessment of such expenses and their logical relationship to the work of the Foundation.

Investment Bankers and Charity

An article in the December 20 issue of Barron's describes a forthcoming public offering of securities in Goldman Sachs Group (see "Sweet Charity" by Jack Willoughby, at page 48). Based on recent prices, the securities would bring some $632 million. The article notes that the Goldman Sachs partners have engaged in a bit of timely gift planning, apparently transferring the entire issue to charity prior to the offering (and prior to December 31, certainly).

What may be of particular interest to gift planners is the nature of the donees that will receive the benefit of this offering. Barron's reports that $159 million will go to public charities "ranging from Ivy League colleges to posh prep schools." The balance, amounting to $473 million or 75 percent, will go to private foundations created by the Goldman partners. But wait, there's more. More than half of the $159 million destined for public charities, some $80.5 million, goes to a single charity – The Fidelity Charitable Gift Fund. This charity, ranked number 3 in donations in 1998 is a donor-advised fund formed and administered by the Fidelity Investments mutual fund group. Another $3.26 million will go to a similar charity, the Vanguard Charitable Fund.

The article speculates about the reasons for the Fidelity preference, noting that Goldman Sachs does a lot of brokerage business for Fidelity's mutual funds and that Vanguard reportedly refused to give Goldman partners a volume discount on their management fee. Is this a portent of things to come – perhaps as the nation's new internet zillionaires start to unload their holdings?

Favorable Treatment for Charitable Bequests of Deferred Compensation

LR 200002011. In an important ruling, the Internal Revenue Service has for the first time acknowledged that favorable tax treatment is available for deathtime transfers of various types of deferred compensation to charitable beneficiaries.

The ruling involved three categories of deferred compensation for an executive we will call T. T was the founder of a corporation and is now its Chairman of the Board. In the course of his employment with the corporation, T elected to defer receipt of certain amounts: (1) some compensation was payable to him but deferrable at his election under the corporation's deferred compensation plan; and (2) some shares of stock were available to him under a nonstatutory stock option plan, but receipt of the stock was deferrable under the terms of the corporation's deferred stock option plan. In addition, and T had negotiated an arrangement whereby the corporation would ay a death benefit to T's estate, or to beneficiaries designated by him, upon T's death.

In the ruling, T proposed to name qualified charities as the beneficiaries of the deferred compensation and the death benefit, and to bequeath the stock options to charity in his will. The Internal Revenue Service ruled that, while all of these items will be included in T's estate for federal estate tax purposes upon his death, the transfers will qualify for an estate tax charitable deduction.

More importantly, however, the ruling holds that the income tax burden on all of these items will fall not on T's estate but rather on the charitable beneficiaries that receive them. Since those beneficiaries are exempt from tax under section 501(c)(3), no tax will be payable. Had T left these items to individual beneficiaries, they would have been income in respect of a decedent (or "IRD") taxable to those individuals at ordinary income rates. Here, IRS held that the transfers to charity are sufficient to shift this burden to tax-exempt charities. Prior to this ruling, the IRS position had never been

clarified and planners had feared that the income in question might be taxable to the estate of the employee/owner (T, in this case). Thus, this ruling provides welcome clarification that the estate will not be taxed.

Of course, this is only a private letter ruling and, as such, may not be relied upon by taxpayers other than T, the taxpayer who sought and received this ruling. Nevertheless, the ruling's issuance shows the current thinking at the IRS National Office and a contrary ruling on similar facts is unlikely. Let us hope that the Internal Revenue Service will see fit to issue a published Revenue Ruling on this issue, and thus provide guidance that all taxpayers may rel upon.

Gift planners should study this ruling closely as a model for other gifts. While most planners are by now familiar with the manner in which amounts in an Individual Retirement Account or "IRA" can be diminished by upwards of 90% by income taxes due on such IRD, this ruling reminds us that there are other categories of IRD and that they may likewise provide a fruitful source of potential charitable bequests. As with IRA gifts, the use of a charitable beneficiary can dramatically reduce the tax bill that otherwise applies to these assets, and this effect is limited primarily to transfers at death.

Still unresolved is the issue of how such deferred compensation assets will be treated when used for lifetime transfers to such gift vehicles as charitable remainder trusts and charitable gift annuities. Despite the still-unresolved questions, this is a welcome ruling.

Formula Clause OK for Lead Trust Payout

LR 199947022. One difficulty planners face in planning a charitable lead trust to be included in a donor's will is the problem of how to define the payout amount. Since the time of the donor's death is typically not known, the applicable federal rate to be used in determining the estate tax charitable deduction will likewise be unknown. This can be particularly important for a lead trust for several reasons. First, planners sometimes seek to establish a low or even zero value for the family share (the remainder interest that is subject to tax). Moreover, charitable lead trusts are exempt from the restrictions on excess business holdings and jeopardizing investments if the value of the charitable lead share in the trust do not exceed 60 percent of the total trust value. Tailoring the value charitable share of a testamentary trust to meet these standards can be difficult, and this ruling provides a how-to-do-it guide to solving this problem.

The trust in the ruling was a charitable lead annuity trust included in the will of a living person. The annual amount payable to charity was defined as that percentage of the initial fair market value of trust assets as shall produce a guaranteed charitable annuity and estate tax deduction equal (or as nearly equal as possible) to X percent of the initial fair market value of the entire trust fund. The Internal Revenue Service approved this approach, holding that this formula was sufficient to create a guaranteed annuity interest as required by Code Sec. 2055(e)(2)(B) for an estate tax charitable deduction.

Final Regulations on Estate Administrative Expenses

The IRS suffered a Supreme Court defeat in Hubert v. United States, 520 U.S. 93 (1997), involving the effect of estate administrative expenses on the estate tax charitable and marital deductions. That case held that the payment of such expenses from income generated by assets left to charity or a spouse did not reduce these deductions, rejecting the IRS view that such an application of funds was always a material limitation on the right of the charity or spouse to income from such a bequest. In 1998, the IRS reacted with proposed regulations on the subject. Hearings were held last April, and now the IRS has finalized those regulations, with minor changes, effective for estates of decedents dying on or after December 3, 1999,

Insofar as the charitable deduction is concerned, the regulations divide estate administration expenses into two categories: management expenses and transmission expenses. Management expenses are those incurred in connection with the investment, preservation or maintenance of estate assets during a reasonable period of estate administration. Examples would include investment advisory fees, brokerage commissions and interest. Trans mission expenses are those that would not be incurred but for the decedent's death and the resultant necessity of administering the estate. Examples would include attorneys' fees, executors' commissions, and probate fees. Under the final regulations, any administration expenses that fail to qualify as management expenses are categorized as transmission expenses.

The regulation provides that the value of the charitable share in an estate (and hence the estate tax charitable deduction) is reduced by the amount of any estate transmission expenses paid from the charitable share. Management expenses attributable to and paid from the charitable share do NOT reduce the charitable deduction, except where such expenses are deducted on the estate tax return (rather than the estate's income tax return). Finally, estate management expense paid from the charitable share but attributable to a noncharitable part of the estate WILL reduce the allowable charitable deduction.

While that may be more than you wanted to know about estate administration expenses, these regulations are important for planners who handle the administration of decedents' estates. They will have to be taken into account in planning for such expenses and deciding how and from what source they are to be paid.

New Bills, Presidential Candidates Propose Charitable Changes

Although Congress has not yet turned to reconsideration of the various charitable tax changes included in the massive tax bill vetoed by President Clinton last fall, new proposals already surfacing. Some of these have been introduced by members of Congress, while others have originated on the Presidential campaign trail.

Congressman Amo Houghton (R-NY), with 18 cosponsors, introduced HR 3249, which would allow an income tax deduction equal to fair market value for contributions of literary, musical, artistic, or scholarly compositions created by the donor. This would create a new statutory exception to the rule in Code Sec. 170(e) governing contributions of ordinary income property. Another bill, HR 3197, introduced by Congressman Lloyd Doggett (D-TX) and more than 50 cosponsors, would prevent abuse of the charitable deduction for contributions of drugs to be administered outside the United States by tightening labeling and shelf life requirements. These two bills may have a better-than-average chance of eventual consideration because the principal sponsors and many of the cosponsors of both are members of the tax-writing Ways and Means Committee.

Republican presidential candidate Senator John McCain of Arizona, in an attempt to "eliminate tax breaks for the wealthy," proposes to <u>abolish</u> the deduction for appreciated property gifts, limiting the deduction for property gifts to the donor's tax basis.

Meanwhile, Republican presidential candidate George W. Bush has thrown his support behind two familiar proposals – the effort to extend the income tax charitable deduction to the millions of taxpayers who do not itemize their deductions, and the proposal to allow tax-free withdrawals from Individual Retirement (IRA) Accounts to make charitable contributions. In a speech to the Greater Des Moines Chamber of Commerce, Mr. Bush floated these proposals plus a suggestion that the present limit on charitable deductions for contributions by corporations be raised from 10 percent of the company's taxable income to 15 percent.

Election year rhetoric is just beginning, and we will probably see more proposals for expanded charitable incentives as the campaigns continue. We will keep readers posted on these AND any eventual action by Congress and the new President after the election.

Not All Nonprofit Organizations Are Charities

Estate of Vesta K. Alward v. Commissioner, T.C. Memo 1999-262. Vesta Alward died in 1994 and her will provided a $50,000 bequest to the Emerson Cemetery in Emerson, Missouri, to be used for historical preservation and maintenance. This cemetery is a Missouri not-for-profit corporation formed in 1961 by members of the Emerson Baptist Church, and its original by-laws stated that of the cemetery's six directors, two would be members of Emerson Baptist Church and two would be members of Emerson Christian Church.

The Tax Court rejected the estate's contention that this was a charitable bequest, and denied the estate tax charitable deduction claimed by the estate. Although the cemetery "may be religiously influenced" it was not solely a church burial ground for the Emerson Baptist Church and was not shown to be devoted to an exclusively charitable purpose.

This is an important point for estate planners to confirm when drafting wills that provide for bequests to unfamiliar nonprofit entities. In many cases, the testator's aims can be served equally well by providing for a slightly different bequest. In this case, for example, the estate tax deduction would have been preserved if the bequest in question had been left to the church rather than the cemetery. When in doubt, check IRS Publication 78, the two-volume Cumulative List of Qualified Charitable Organizations Described in Section 170(c) of the Internal Revenue Code (also available in a CD-ROM version or on the IRS website).

Make Sure Your Expert is an Expert (and Watch for Those Rodents)!

Samuel Jacobson v. Commissioner, T.C. Memo 1999-401. Mr. Jacobson contributed his stamp collection and certain religious articles to an Episcopal Church unit. The stamp collection consisted of 60,484 "first day pages," which were pages including prints, photographs, and other documentary material depicting various historical scenes and events, with theme-appropriate first day of issue stamps affixed to each page. The court emphasized that these were not "first day covers," for which there is a well established market.

Mr. Jacobson hired an appraiser who valued the first day pages at $900,430, and the entire contribution at $949,030; his report offered no methodology for the valuation, no rationale for the prices quoted, and no reference to sales of comparable property. Moreover, the report made no reference to any experience the appraiser had which would support the values he assigned. The donor kept the contributed property in a rodent-infested bakery warehouse, did not insure it, and took no steps to prevent its deterioration. The court observed: "If the contributed property had a value of $949,030 or anything approaching that value, as petitioner claims, petitioner would have treated it with more care."

It is not surprising that the court took a value more in line with that established by the IRS appraiser ($12,973), who had more experience with stamp valuations and prepared a detailed report. Besides the large reduction in the deduction, the court imposed the 40 percent penalty for gross valuation misstatement and a late filing penalty as well.

What is "Charitable"? – State Courts Decide for Themselves

Pittman v. Sarpy County Board of Equalization, Nebraska Supreme Court (No. S-99-063, 12/17/99). Mercy Crestview Village ("MCV"), a nonprofit corporation sponsored by a Catholic religious order, purchased an apartment complex in Sarpy County, Nebraska, in 1996. The mission of MCV is to "create and strengthen healthy communities through the provision of quality, affordable, service-enriched housing" for poor families. Although a property tax exemption was initially granted, an assessor recommended denying exemption for 1998 on grounds the complex was used for low-income housing, which he concluded was not charitable within the meaning of the Nebraska exemption statute. When the County Board approved the exemption, the assessor appealed. After discussing the procedural steps that led to the dispute, the court concluded that the assessor had proven that the County Board's decision was unreasonable and arbitrary. It went on to the merits of the case and concluded that the charitable and educational uses of the property were merely "incidental," even though they provided a valuable community service. The bottom line – no property tax exemption.

This case demonstrates what is a growing trend on the part of state courts to impose their own standards in determining what sorts of activities will qualify for state tax exemptions. Getting IRS to recognize the organization's exemption under Code Sec. 501(c)(3) is only part of the battle!

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CHARITABLE GIFT PLANNING
CASES & PROBLEMS

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1. On June 1, Donor calls her bank and instructs her trust officer to re-register 1,000 shares of General Motors stock in the name of ABC Charity. Donor's purpose is to establish a gift annuity with ABC. Donor calls ABC and tells Jane, ABC's planned giving director, that the General Motors stock is being re-registered in ABC's name, that Donor wishes to establish a gift annuity, and that she (Donor) is about to leave on an around-the-world vacation for six weeks.

   Question: What should Jane say in response?

2. On November 1, Donor calls ABC and tells Jane that he wants to use several different stocks to establish a gift annuity. As events subsequently unfold, ABC receives from Donor (a) 100 shares of Qualcomm on November 12, (b) 200 shares of AOL on November 24, and (c) 600 shares of General Magic on December 1.

   Question: How should Jane advise Donor?

3. At year's end, Donor calls Jane and says he wants to give a painting to ABC but that he cannot deliver the painting before January 1 (Donor calls on December 30). Donor, a lawyer, wants to know whether if he mails a notarized "deed of gift" to Jane before January 1, his gift will be complete on the date of mailing.

   Question: What answer to Donor's question? How should Jane respond?

4. TRUE or FALSE: If an individual establishes a gift annuity with appreciated stock payable just to herself and subsequently, before receiving and reporting all the capital gain with respect to the annuity, relinquishes (assigns to the charity) the annuity, she need not report or pay tax on the yet-to-be-reported gain as of the date of the relinquishment.

5. Donor wants to establish a $100,000 gift annuity with ABC Charity. The gift portion of the proposed transaction will be about $45,000. Donor wants to pay for a $1,000 place at ABC's upcoming Spring Dinner using the gift portion of his gift annuity.

   Would this be OK? Why?

6. Speaking of dinners, would it be OK for Donor's private foundation to pay for the gift part of the $1,000 place at ABC's Spring Dinner (Donor would pay the non-deductible part out of his own pocket)?

7. On May 20, Husband and Wife mail a certificate and stock power for 100 shares of IBM stock to ABC Charity, intending to establish a joint-and-survivor gift annuity for their lives. The stock is owned jointly by Husband and Wife with right of survivorship. ABC's clearly stated policy is to use the value of stock on the date ABC receives the stock to determine gift annuity payments.

   ABC receives the stock certificate and stock power on the afternoon of May 24th. At 5:00 a.m. on May 24th, Wife died.

   Question: Is it all right for Husband and ABC now to enter into a one-life gift annuity for the Husband's life? Second question: How is Husband's basis in the stock determined?

8. Math problem: Donor establishes a gift annuity that is to pay her $11,000 a year. For the first 14 years, $6,000 of each year's annuity payment will be a tax-free return of investment.

   Assuming Donor is in a 40-percent tax bracket, to what fully taxable income anount is the tax-free portion of Donor's annuity equivalent?

9. Donor lives in New York. Charity is located in another state ("State X"). Charity issues a gift annuity to Donor pursuant to an agreement stating that the annuity is governed by the laws of State X.

   Does New York have the constitutional authority to impose its gift annuity regulatory scheme on this transaction?

10. In 1998, Jill received 1,000 shares of IBM stock under the will of her mother, a lifelong citizen and resident of Canada, who had no U.S. assets. Jill, since 1947, has been a U.S. citizen and resident. Jill does not know what her mother paid for the IBM stock or when she bought it (there had been some stock splits along the way, apparently), but she does know that on the date of her mother's death, the stock had a fair market value of $67.50 per share.

    Jill wants to use the stock to establish a gift annuity. What is her basis in the stock?

11. Donor would like to establish a plan that would pay income to his favorite charity for 20 years, then would pay income for life to his daughter (age 65 at that point), with ultimate distribution of all plan assets to his favorite charity.

    What gift plan(s) match up with Donor's objectives?

12. Donor wants to use farm land to establish a gift annuity with ABC Charity. ABC is able (under applicable state law and its charter) to accept real estate in exchange for gift annuities but to-date hasn't done so.

    Donor insists that the land is worth $600,000. ABC isn't so sure and wants to propose that the amount it nets from selling the land be used as the amount on which gift annuity payments are based.

    Does ABC's proposal make sense? Why?

13. Donor wants to use a commercial annuity she purchased in 1990 to establish a gift annuity. Donor bought the annuity for $10,000. Today the annuity has a value of $34,000.

   a. Is Donor's plan OK under New York law?

   b. How would things basically play out from a federal income tax standpoint if Donor went forward with her plan?

   c. If Donor does go forward with this plan, will she be well advised to get a "qualified appraisal" with respect to the annuity?

14. Jack, aged 84, has a disabled son aged 60. Jack wants to establish a gift annuity for his son's life but have the annuity payments made to a trust for the son's benefit.

   Is this doable? If so, how would the annuity payments be taxed? How should the trust be designed (assuming Jack is not concerned about qualifying his son for governmental assistance)?

15. Donor owns a quantity of Qualcomm stock that she wants to use to establish a gift annuity. A very saavy individual, Donor wants to arrange matters so that her gift is complete when Qualcomm reaches a certain share price, which is about $50 above the current share price.

   How might Donor and her intended charitable beneficiary arrange things so that if and when Qualcomm reaches the target price, the gift will be complete?

   The charity, by the way, uses the value of donated stock on the date it receives the stock as the amount on which to base gift annuity payments. Currently, Donor's Qualcomm stock is held in Donor's brokerage account.

16. Donor wants to use zero-coupon bonds to establish a net-income flip unitrust. Donor wants the triggering event causing the flip to be whichever occurs first: December 1, 2010, or the next date on which the yield on 30-year Treasury Bonds is at or below 5.75 percent.

    (a) Is the proposed triggering event OK?

    (b) What potential problem having to do the zero-coupon nature of the bonds arising under applicable state law (e.g., New York law) needs to be avoided in order for this plan to work?

17. Question: Given that IRS has issued several favorable private rulings on the so-called college tuition deferred payment gift annuity plan, is it safe to say without qualification that this plan is OK to use?

18. If an individual assigns his or her interest in a charitable remainder trust to the charitable remainder beneficiary (let's assume causing the trust to terminate), he or she is deemed to make a gift of a capital asset to the remainder beneficiary. (This is well established under IRS rulings and case law.)

    Assume now that an individual relinquishes (assigns to the issuing organization) her right to receive gift annuity payments. Has she made a gift of a capital asset, for which a full fair market value deduction is allowable? Or, alternatively, has she simply made a gift of the right to receive payments, part of which would have treated as a tax-free return of principal and part of which would have been treated as ordinary income?

Notes

1. The gift won't be complete for federal income tax purposes until re-registration. Federal Income Tax Regulation §1.170A-1(b).
2. If Donor wants to do one gift annuity, there won't be a completed gift (at the earliest) until ABC receives all the stock.
3. According to the Tax Court, physical delivery is generally required to complete a gift of tangible personal property for federal income tax purposes. Murphy, TCM 1991-276. Greer, 70 T.C. 294 (1978).
4. True. See Federal Income Tax Regulation §1.1011-2(a)(4)(iii)(*b*).
5. No. See Internal Revenue Code §§514(c)(5) and 501(m).
6. No. Letter Ruling 9021066.
7. It's all right. H's basis = his share of the purchase price + date-of-death value of W's one-half joint interest.
8. Divide the tax-free part by (1 - donor's tax bracket).
9. Yes. See, for example, Clay v. Sun Insurance Office, Ltd., 377 U.S. 179 (1964).
10. zero
11. Maybe a lead trust that would, upon its termination, establish a gift annuity.
12. No, because it puts Donor at risk from a capital gain tax standpoint, assuming the land is appreciated.
13. (a) not according to the New York Insurance Department; (b) any disposition of a commercial annuity purchased after 4-22-87 is treated as a sale under Code §72; (c) probably yes
14. Probably OK if son is treated for federal income tax purposes as the owner of all trust assets (son would need to have a general power of appointment).
15. Donor could transfer the stock to the charity with the agreement that the gift won't be complete until and unless Qualcomm reaches the target price. The charity should not sell the stock until and unless the gift is complete.
16. (a) yes; (b) need to make sure the bond doesn't generate trust accounting income under the applicable state principal and income law.
17. No -- state law may be a problem.
18. Answer here is not clear. A Supreme Court case suggests that the right to receive gift annuity payments is not a capital asset (Hort v. Comm'r, 313 U.S. 28 (1941)).

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GIFT PLANNING IN CANADA

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INTRODUCTION

North Americans, on both sides of the U.S. - Canada border, are known for their generosity. The inclination to make charitable gifts found here is matched in very few other countries around the globe. As the extension of that charity does not stop at any of our borders, and, due to the fact American-Canadian cross-border charitable gifts are on the increase, an awareness of the planned giving environment in Canada is helpful to U.S. planners.

Before looking at Canadian gifting "plans" or "agreements", this paper shall consider the tax system in Canada which has some similarities to but also several important differences from that of the United States. Then we shall look at planned giving instruments which are used in Canada (with particular attention to gift annuities) and, finally, discuss the treatment of Canadians giving to American charities and vice-versa.

TAXES IN CANADA

Other than provincial and federal sales taxes and municipal or county property taxes, most of the taxes Canadians pay arise out of the income-tax system governed by the Canadian Income Tax Act. There is no gift tax nor are there estate taxes, as such. (Some might argue that the probate taxes charged by provincial courts are, in fact, an estate tax rather than a fee for service, but these never exceed 1.5% of the estate value.)

One must realize, however, that the Canadian Income Tax Act calls for much higher rates than the Code in the U.S. and that in addition to including taxes on earned and investment income, it imposes capital gains taxes on all appreciated assets other than one's principal residence as well. Dividends from a Canadian corporation do enjoy reduced income-tax. However including the formula for this is beyond the scope of this paper.

At death, there is a "deemed disposition" of all assets. Taxes become payable on 75% of the capital gains on the deceased's final return. In addition, due to the fact that tax-sheltered "registered" retirement funds are not taxed as they accumulate, their total value (100%) becomes subject to the disposition rule and income taxes at regular rates. Rollover provisions might pass them on to a spouse but that only postpones the tax. At the present time, there is still a $500,000 capital gain exemption per person available for small businesses and farms.

The first $7,000 of income is exempt. All income above that is taxable. There are three basic federal income tax rates, 17% on income up to $29,590, then 26% on income over $29,590 up to $59,200, and 29% on all income exceeding $59,200. Until the end of last year, nine of the ten provinces then added their income tax based on a percentage of the federal tax rate. These provincial taxes range from 40.5% to 52.9% of the federal tax figure, depending on the province. The province of Quebec has its own income tax system with similarities to, but not dependent on, federal taxation regulations.

TAX RELIEF FOR CHARITABLE GIFTS

Contributions to registered charities do bring tax relief to both the living tax-payer and to the estate of the deceased. On the income-tax return, a federal tax credit is given based on the total of receipted donations made: 17% of the first $200 for the year and 29% of all donations in excess of $200. As this reduces the federal tax payable, the provincial taxes based on same are similarly reduced. Because the tax rate varies from province to province, the total tax savings for charitable gifts would equally vary.

Since 1996, when the limit was increased, a donor may claim charitable contributions up to a limit of 75% of net income for the year. Any contributions made in excess of this 75% limit may be carried forward for use up to five years.

Charitable contributions made in the year of death (including bequests) may be included up to 100% of net income in the year of death. Excess contributions may be carried back one year and allowed to 100% of the net income in the year prior to death. (This is brought about by re-filing the return for the year prior to death.)

Gifts to the Crown (government), including Crown Foundations, are included in and subject to the same 75% for other charitable contributions.

The tax value of deferred gifts will be addressed in each section in which the gift is discussed later in this paper. We shall first look at the area of current gifts of property or securities.

Since 1997, for gifts of appreciated property (to either registered charities or the Crown), the normal contribution limit is increased by 25% of the capital gain. Normally, when depreciated property is sold, any amount above the depreciated value is recaptured and is taxable as income. However, when depreciable property is gifted outright to a charity, there is now a tax credit which fully offsets the recapture.

Gifts of listed securities currently enjoy a special tax status. Listed securities include stocks, bonds, warrants and futures which are traded on any of the approved Canadian, U.S. or foreign exchanges.

Up until 1996, gifts of securities made directly to registered charities (or to the crown) were considered dispositions in the same manner as if the securities had been sold. Thus, 75% of any capital gain needed to be reported as income for tax purposes. However, since 1997 the taxation of these gifts changes when they are donated to charities, public or crown foundations. While the donor still receives a charitable receipt for the full market value of the gift, he or she needs only to report 37.5% of the capital gain. In effect, even for those in the highest tax bracket, the receipt not only wipes out the tax that would accrue on the capital gain, but provides additional tax relief for other income in the current year. (The excess may be carried forward if the full value of the receipt is not currently needed.) This special tax incentive, as it now stands, continues only to December 31, 2001. The Canada Customs and Revenue Agency will review the effectiveness of this provision before that date and a determination made as to its effectiveness in motivating gifts. A decision as to whether or not it will be continued will be announced before the expiry date.

If the afore-mentioned gift is made to a private foundation, this special privilege does not apply and 75% of the capital gain remains taxable.

The picture changes when a donor gifts shares (or debt instruments) of a private company. Up to and including 1996, donors could give shares of a privately-owned company to a registered charity, public or private foundation and receive a donation receipt for the fair market value (appraised). On occasion, such gifts could and would be made to a private foundation and then the money loaned back to the donor's company at a specified rate of interest.

Significant changes were introduced in 1997. A donation receipt may be issued for the appraised fair market value of a gift of shares of a privately-owned company if the gift is made to a public charity (includes public foundations) *and the donor deals at arm's length with the charity and its directors.*

If the gift of privately-owned company shares is made to a private foundation, tax credit for the donation is not allowed until the shares are sold by the foundation, and that only if they are sold within five years of the gift. The donation receipt must be for *the lesser of* the fair market value at the time of the gift or the selling price. The capital gain is not taxable to the donor until and unless a donation receipt is issued.

If the gift is a debenture in the donor's privately-owned company to a charity with which the donor does not deal at arms length, there is no donation value allowed.

PLANNED GIVING INSTRUMENTS IN CANADA AND THEIR TAX IMPLICATIONS

1) *Gift Annuities (Self-Insured)*

(a) The Agreement

Not all charities in Canada are able to issue their own gift annuities. (Indeed foundations are forbidden to do so by law.) Those who do, issue an agreement promising to pay a level income for life to an annuitant (or to two co-annuitants in the case of joint and survivorship annuities) in exchange for a gift of capital. While a few charities take an administration fee (up to 8%) off the top, most invest the entire contribution in a fund totally segregated from the normal moneys of the charity. Rates are generally based on a conservative investment earning and are designed to produce a balance for the charity of at least 50% of the original gift if the annuitant (or last survivor in the case of a joint agreement) lives to the expected mortality date. Payments must commence in the year of the donation or the next calendar year. (Deferred gift annuities are rarely issued by charities in Canada due to tax being payable during the deferral period.)

(b) Tax Implications

Under the regulations of the Canada Customs & Revenue Agency, in accordance with mortality tables set out in Income Tax Interpretation Bulletin 111R2, part of each annuity payment is considered to be a return of capital. Therefore, only a portion of the income received by the donor(s) is taxable. As the tax-free portion increases with the age of a donor at the time of the commencement of the agreement, those who take out annuities when they are older will have very little income they must declare or, possibly, none at all. If the government-accepted mortality tables indicate that the donor is not expected to receive back in total payments over his/her lifetime as much as was given, then the income is totally tax-free. The donor will qualify for a charitable receipt for the amount by which the donation exceeds the anticipated return (that is, the difference between the contribution and the total annuity payments receivable). Please take note that two different mortality tables are used, one to determine the taxable portion of an annuity, the other to determine the receipt value. Unlike the situation in the United States, the tax-free portion of the annuity payments continues for life even if the donor lives well beyond the anticipated mortality date.

(2) *Using Reinsurance: (1) Gift and Annuities*
(2) GiftPlus Annuities

(a) The Agreements

Under either of these plans, which is accessible to all charitable organizations, a commercial insurance company underwrites the annuity rather than the charity itself. When the gift is made, the donor signs an agreement authorizing the charity to arrange for a commercial annuity that provides payments of a stipulated amount to the annuitant. The charity then pays the single premium for the annuity contract and keeps the difference between the gift amount and the premium as an immediate donation. If the annuity purchased is for a term certain or has a "guaranteed" period, and the donor does not survive to the end of the said term or guaranteed period, the charity may benefit further by receiving the annuity payments from the insurer to the end of the term.

(b) Tax Implications

If the annuity purchased is for a term certain, or is a life annuity with a guaranteed period of payment, the taxable portion of the annuity payments would be the same as if the donor had personally purchased the annuity from the insurance company. Under the Gift and Annuity, the donor is entitled to a receipt for tax purposes in the amount of the portion (usually 25% to 30%) of his/her original gift that was retained by the charity.

If the annuity purchased is simply payable for the life of the annuitant (or annuitants in the case of a joint and survivorship plan), the tax situation can be handled in one of two ways. If it is preferable, it can be treated as a gift and annuity in exactly the same manner as outlined in the previous paragraph. The donor can get a charitable receipt for the amount of the difference between the gift and the premium and be taxed on the same basis as any other "prescribed" commercial annuity. However, as is often to the

donor's advantage, there is the option of treating the arrangement as a GiftPlus annuity under Income Tax Bulletin 111R2, basing the tax-free portion on the entire amount transferred to the charity rather than just the amount the charity passes on to the insurance carrier. Similar to the Gift Annuity issued by charities, the donor would qualify for a receipt for the amount contributed which exceeds the total annuity payments to be paid during the life expectancy. Particularly at younger ages, the GiftPlus annuity will provide a much higher tax-free portion of payments than the Gift and Annuity option.

(3) *Life Insurance Policies*

(a) The Methods

Charity as Beneficiary: A donor can always name any charity as the beneficiary of any type of life insurance -- whether an individual policy or a certificate of insurance under a group policy, and no matter whether the insurance coverage is of a term, permanent life or endowment in nature. Of course, the designation is always changeable during the lifetime of the insured. If the policy is still in force at the time of the donor's death, the insurance benefit is paid directly to the charity and does not form a part of the estate.

Charity as Owner: An irrevocable gift is made when the donor assigns title to an individual insurance policy (i.e. transfers the ownership of the contract) to a charity. This is preferable to the simple beneficiary designation as it assures the charity will receive some benefit and it brings certain tax advantages to the donor.

Wealth Replacement: On occasion life insurance is purchased with a view to "wealth replacement" in connection with a direct donation of property or a charitable remainder trust. The tax savings from the gift to the charity are used to purchase a policy payable either to the estate or directly to children. For the heirs, this replaces the value of the gift made to the charity.

(b) Tax Implications

From an estate planning perspective, simply naming the charity as a beneficiary is not recommended. Where the gift of insurance proceeds is effected simply by a beneficiary designation, there is no tax saving--not when the gift is made nor in the year of death. There is just one advantage to the donor's heirs: as the proceeds are paid directly by the insurer to the charity, they do not become a part of the estate and are, therefore, excluded from the calculation of the probate fees charged by the courts. (These fees can be up to 1.5% of estate value depending upon province.)

Insurance policies which have their title assigned to a charity create two tax advantages. First, all premiums paid by the donor subsequent to the transfer of ownership are fully receiptable for tax purposes, whether those premiums are paid directly to the insurer or paid to the charity for forwarding to the insurer. Secondly, if the policy has a cash value at the time of transfer, the charity may issue a receipt for the then cash value. Note that on older policies, a taxable capital gain will be triggered if the cash value exceeds the donor's costs (net premiums paid).

(4) *Charitable Remainder Trust*

(a) The Agreement

A charitable remainder trust is created by the donor with an irrevocable gift of cash, bonds, shares of stock, or real estate, the donor retaining the right to the income earned by the asset or the right to use the property. The remainder capital passes to the charity upon the death of the donor or at the pre-determined date if written for a certain term of years rather than for a lifetime. Charitable organizations (not foundations) often act as a corporate trustee (assuming it is authorized and so able to serve), but the trustee could equally be a trust company or a person named by the donor. Trust companies have become much more active in this area the last five years.

(b) Tax Implications

In the United States, the Charitable Remainder Trust is a well-developed and well-used planned giving agreement. However, in Canada, in spite of the efforts of the Canadian Association of Gift Planners, there is no specific legislation pertaining to Charitable Remainder Trusts, nor is it recognized in the Income Tax Act. Accordingly, this agreement has been developed in Canada based upon many inquiries to Revenue Canada (now the Canada Customs and Revenue Agency – hereinafter referred to as the CCRA) and the application of Interpretation Bulletin 226R. That bulletin deals with gifts of real property or *an equitable interest in a trust.* (Italics mine) The CCRA has recently discovered that the bulletin is flawed in that it does not agree with some sections of the Income Tax Act. It will be revised, probably some time in the year 2000, but its tax provisions can be used and will be accepted by CCRA until the revision is published.

Depending on the nature of the trust assets, the CRT may provide a lifetime income for the donor, beneficial treatment of capital gains and an immediate tax receipt. The receipt is based upon the value of the trust property, discounted at a "reasonable" rate based upon the donor's life expectancy. At this time, the CCRA has accepted the use of the 1990-92 Canada Life Tables for CRTs, a table that is both more practical and more beneficial to the donor than those used for gift annuities. At the same time, through several inquiries, the "reasonable" rate that seems acceptable is the current yield rate of Canada bonds for the period closest to the mortality figure. According to advice from the Canadian Association on Charitable Gifts, this formula is recommended for gifts of cash, bonds or other publicly listed securities. Some charities have also used this with real property as well (real estate, paintings, etc.) and the receipts used by the donors have not been challenged to date.

In Canada, some charities have the power to and agreed to act as a corporate Trustee of its CRTs. Others have chosen to use a Trust Company. That decision will obviously affect the structure of the CRT agreement to be used.

In either case, because it is the charity's responsibility, the question arises, "How does one calculate the amount of the charitable receipt?" First, one must be aware of the fact that if the trustee or the donor/trust holder (sometimes referred to as a "life tenant") has the right to encroach upon the principal of the trust, then no receipt can be issued at all. As the receipt is to reflect the present value, the standard formula used is:

$$PV = P \div (1 + DR)^n$$

Present Value equals Principal divided by (One plus Discount Rate to the power of the Life Expectancy)

Example: $100,000 divided by $(1.061)^{10.5}$ equals $53,701.75

Now, we come to the matter of reporting capital gains. At the present time, only the present value of the residual interest must be recognized. The Interpretation Bulletin sets out the formula. Please keep in mind, that it is probable that this method will change in the future and the present value of the entire amount transferred into the trust will need to be reported. However, we will look at the situation as it is today. The calculation is a two-step process. The example is based upon a $100,000 gift which had an adjusted cost base of $65,000.

First you must calculate the Adjusted Cost Base of the Residual Interest:

$$\frac{\text{FMV of Residual Gift}}{\text{FMV of the Gift}} \times \text{ACB of the Gift} = \text{ACB of the Residual Interest}$$

Then, you can calculate the Reportable Capital Gain:

FMV of Residual Interest minus ACB of Residual Interest = Reportable Gain

Example:

$$\frac{\$53{,}701.75}{\$100{,}000.00} \times \$65{,}000.00 = \$34{,}906.14$$

$$\$53{,}701.75 - \$34{,}906.14 = \$18{,}795.61$$

Income tax would then be payable on 75% of the $18,795.61 (not 75% of $35,000) but the charitable receipt ($53,701.75) would more than cover this gain. The excess charitable gift value can then be applied to other income in the current year or carried forward to future years under the normal tax regulations.

(5) *Strip Bonds*

(a) The Agreement

For the donor, this plan is used to create a future gift of what they might consider to be a most meaningful amount. Using a simple agreement, the donor agrees to gift an amount that will provide a set amount at a particular date in the future. In turn the

charity buys a strip bond for the said amount and date. Strip bonds are also known as "zero coupon" bonds: they are outstanding government or corporate bonds that are separated into the two components of principal and interest payments. The agreement between the donor and the charity may include an option where the charity has the right to sell the coupon after ten years but before the expiry date if the funds are needed for a particular project/program. This instrument can be used by a donor who is uninsurable and wants to establish a large gift.

(b) Tax Implications

While the donor might be "recognized" for the ultimate value of the gift, he/she receives a receipt for the actual amount given to purchase the strip bond. For tax purposes, it is treated in the same manner as any current donation

(6) *Wills*

(a) Bequests

In Canada, wills may be formally prepared with or without the help of a lawyer. (Using a lawyer is highly recommended.) To be effective, in addition to the signature of the testator and the date of that signature, two disinterested persons (of legal age) must sign as witnesses in the presence of the testator and each other. Holograph (handwritten) wills are also acceptable in all provinces. However, such a will must be completely written in the hand of the testator and contain the date of signature. No witness is necessary to make a holograph will legal. When a will is witnessed, the signatures of the witness(es) must follow the date and signature of the testator and should be identified as being that of witnesses. Special regulations apply to the province of Quebec and one should contact a notary there if your donor is a resident of that province.

Charitable bequests made through a will may be specific, residual or conditional in nature. Charitable trusts may be set up in a will. Care should be given to spell out the terms of such a trust as well as identify the person(s) who are to act as trustees. There are certain tax advantages to having insurance proceeds and balances of registered retirements funds flow to beneficiaries through the will rather than directly to those who are to benefit from them.

(b) Tax Implications

Since 1997, credit for charitable contributions (including bequests) are allowed up to 100% of the net income for the year of death and the year preceding death. A charitable receipt is issued to the estate of the deceased donor and may be used on any of the returns completed for the year of death. Any excess charitable gift amount not usable may be carried back one year, that is, the return for the year-prior-to-death may be resubmitted to claim an additional refund.

Where appreciated assets are bequeathed to a charity, the executor may elect to value the gift at (and receive a donation receipt for) any amount between the cost base and the fair market value of the asset in order to reduce the taxable capital gain.

U.S.A. – CANADA CROSS BORDER GIFTS

We now come to the consideration of cross-border gifts. Some thought will be given to the tax consequences of both U.S. charities receiving gifts from Canadian residents and Americans making gifts to Canadian charities. This paper does not pretend to cover all the various possibilities and charitable organizations involved in cross-border gifts are urged to consult the Third Protocol to the Canada-U.S. Income Tax Convention for definitive answers to specific questions.

(1) Canadians Giving to American Charities

Canadians, who spend their time divided between the U.S. and Canada and who earn both Canadian and American income, must apply a formula under the tax treaty to determine whether they are considered U.S. or Canadian residents for income tax purposes. Canadian resident individuals (except U.S. citizens) with U.S. source income who are considered residents of both countries, and who claim to be U.S. non-residents under the treaty, are required to file U.S. treaty-based disclosure returns to avoid penalties. (Individuals are normally considered by the U.S. to be U.S. residents if they hold a green card or if they meet the "substantial presence" test.)

With some exceptions, Canadians who make a gift to a charity in the United States are not able to claim a donation credit on their tax returns. Any of the following circumstances result in a tax credit being available. (1) The Canadian donor makes a gift to an American university which is listed in Schedule VIII of the Income Tax Regulations. (2) The Canadian lives near the border, commutes to a workplace in the United States and gives to a charity which issues receipts deductible on a U.S. return. (3) The government of Canada has made a gift to the foreign charity in the same year or the year previous to the donor's gift. (4) The Canadian gives to a qualified American charity and although he is not employed in the United States, he/she has a U.S. source of income. (5) The gift is made by bequest. (6) The American charity has set up a registered charity in Canada to receive gifts.

(2) Canadians Donating American Property

If real estate in the United States is donated by a Canadian to a Canadian charity, the donor will be taxed on the capital gain in both the United States and Canada. However, to avoid double taxation, Canada will allow a tax credit for the amount of tax paid in the United States. The donor will also be subject to gift tax in the U.S., but the allowable credit will likely be sufficient to offset any tax due.

If U.S. real estate is bequeathed to a Canadian charity, the estate of the donor will not be subject to U.S. capital gains tax. The gain will be recognized on the Canadian tax return but the charitable credit will exceed the tax on the gain.

(3) Americans Giving to Canadian Charities

If an American has income from Canadian sources, and the gift is to any registered charity in Canada which, if it were in the United States would qualify to receive deductible contributions, then the gift would be deductible against the Canadian income subject to the normal U.S. percentage limitations.

If an American does not have a Canadian source of income, deduction is not normally allowed in the U.S. Please note the following exceptions:

a) If the gift is made to a Canadian university where either the donor or a member of his or her family is attending, or has in the past attended, as a student, the deduction will be allowed.

b) If the Canadian charity has set up a supporting charity (foundation) in the U.S. to receive support, the gift can be made to that foundation and the gift made treated as a normal deduction. There are a number of strict regulations concerning control by an independent U.S. board that must be adhered to by the American charity. (Often, they maybe referred to as "Friends of XYZ Canadian Charity".)

c) An American is allowed a gift tax charitable deduction (for lifetime gifts) if the gift is made to any Canadian charity that, if situated in the United Sates, would have so qualified.

d) An American who makes a gift by bequest to a Canadian charity can receive an estate tax deduction for same.

CROSS-BORDER PLANNED GIFTS

The material presented earlier in this paper has clearly indicated that the easiest and most tax-efficient planned gifts either way across the border are cash bequests. The regulations are quite clear.

Unfortunately, that clarity disappears when we venture into other areas of planned giving. It is, therefore, most important that planned giving practitioners, the charities they represent, and the donors themselves obtain legal counsel before entering into any other type of planned gift arrangement.

Here are some points to consider:

1. If an American creates a U.S. charitable remainder trust in order to benefit a Canadian charity, the remainder beneficiary should be that charity's American supporting organization, not the Canadian charity directly.

2. If an American wishes to donate property located in Canada to a Canadian charity, he or she can avoid paying capital gains tax in Canada by electing to value the gift at cost. However, if the gift is to a charity other than a university, no income tax deduction will be allowed on the U.S. tax return.

3. While not widespread, some Canadian charities (notably universities) have issued Gift Annuities and/or Gift/Plus annuities to American donors. Where the Canadian regulations allow, a charitable donation receipt has been issued. To date, the gift arrangement has not been challenged by any of the States which regulate annuities nor has there been any question as to the deductibility of the receipted gift portion. (It is noted that generally the donation receipt is lower for Canadian annuities than for American.)

4. Some Canadians have likewise purchased gift annuities from American charities they wish to support. The annuity payments are, of course, considered as U.S. source income and the value of the charitable receipt may be applied on Canadian returns toward that and any other U.S. source income. Again, there appears to be no definite regulations concerning this and although the CCRA has not questioned the use of U.S. tax rules and calculations for annuities to date, there is always a possibility it will do so in the future.

TABLES & SCHEDULES

1. IAM 1971 Tables

   Used to determine the portion of a gift annuity which is taxable.

2. IAM 1983 Tables

   Used to determine the amount of charitable receipt allowed under gift annuities found to be totally tax-free under Table 1.

3. Canada Life 1990-92 Tables

   Used to determine the amount of the charitable receipt allowed for a gift of residual interest (including Charitable Remainder Trusts).

4. Recommended Rates for Canadian Gift Annuities (January, 2000)

5. Recommended Rates for Gift/Plus Annuities (January, 2000)

6. Schedule VIII – Universities Outside of Canada

IAM 1971 MORTALITY TABLES

MALE	AGE	FEMALE
24.71	55	28.61
23.91	56	27.71
23.13	57	26.83
22.35	58	25.96
21.59	59	25.10
20.83	60	24.25
20.08	61	23.41
19.34	62	22.57
18.61	63	21.75
17.89	64	20.92
17.17	65	20.10
16.47	66	19.29
15.78	67	18.47
15.09	68	17.67
14.42	69	16.87
13.76	70	16.08
13.11	71	15.30
12.48	72	14.53
11.86	73	13.79
11.26	74	13.05
10.68	75	12.34
10.10	76	11.64
9.55	77	10.97
9.01	78	10.32
8.49	79	9.68
8.00	80	9.08
7.51	81	8.49
7.05	82	7.94
6.60	83	7.41
6.17	84	6.90
5.75	85	6.43
5.34	86	5.99
4.95	87	5.58
4.57	88	5.20
4.21	89	4.86
3.87	90	4.55
3.55	91	4.28
3.26	92	4.04
2.98	93	3.83
2.73	94	3.63
2.50	95	3.46
2.30	96	3.29
2.11	97	3.13
1.94	98	2.97
1.79	99	2.81
1.65	100	2.65

JOINT & SURVIVOR LIFE EXPECTANCY (71 TABLE)

↓ MALE LIFE (Read down) FEMALE LIFE (Read Across) →

	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	
87	23.6	22.7	21.9	21.1	20.3	19.5	18.7	17.9	17.2	16.4	15.7	15.0	14.3	13.6	12.9	12.3	11.7	11.1	10.6	10.1	9.6	87
86	23.6	22.8	22.0	21.1	20.3	19.6	18.8	18.0	17.2	16.5	15.7	15.0	14.3	13.7	13.0	12.4	11.8	11.3	10.7	10.2	9.8	86
85	23.6	22.8	22.0	21.2	20.4	19.6	18.8	18.0	17.3	16.5	15.8	15.1	14.4	13.8	13.1	12.5	12.0	11.4	10.9	10.4	9.9	85
84	23.7	22.8	22.0	21.2	20.4	19.7	18.9	18.1	17.4	16.6	15.9	15.2	14.5	13.9	13.3	12.7	12.1	11.6	11.1	10.6	10.2	84
83	23.7	22.9	22.1	21.3	20.5	19.7	18.9	18.2	17.4	16.7	16.0	15.3	14.7	14.0	13.4	12.8	12.3	11.8	11.3	10.8	10.4	83
82	23.7	22.9	22.1	21.3	20.6	19.8	19.0	18.3	17.5	16.8	16.1	15.4	14.8	14.2	13.6	13.0	12.5	12.0	11.5	11.0	10.6	82
81	23.8	23.0	22.2	21.4	20.6	19.9	19.1	18.4	17.6	16.9	16.2	15.6	14.9	14.3	13.7	13.2	12.7	12.2	11.7	11.3	10.9	81
80	23.8	23.0	22.2	21.5	20.7	19.9	19.2	18.5	17.7	17.0	16.4	15.7	15.1	14.5	13.9	13.4	12.9	12.4	12.0	11.6	11.2	80
79	23.9	23.1	22.3	21.5	20.8	20.0	19.3	18.6	17.9	17.2	16.5	15.9	15.3	14.7	14.2	13.6	13.1	12.7	12.3	11.9	11.5	79
78	24.0	23.2	22.4	21.6	20.9	20.1	19.4	18.7	18.0	17.3	16.7	16.1	15.5	14.9	14.4	13.9	13.4	13.0	12.6	12.2	11.9	78
77	24.0	23.3	22.5	21.7	21.0	20.3	19.5	18.8	18.2	17.5	16.9	16.3	15.7	15.2	14.6	14.2	13.7	13.3	12.9	12.5	12.2	77
76	24.1	23.4	22.6	21.8	21.1	20.4	19.7	19.0	18.3	17.7	17.1	16.5	16.0	15.4	14.9	14.5	14.0	13.6	13.3	12.9	12.6	76
75	24.2	23.5	22.7	22.0	21.3	20.5	19.9	19.2	18.5	17.9	17.3	16.8	16.2	15.7	15.2	14.8	14.4	14.0	13.6	13.3	13.0	75
74	24.3	23.6	22.8	22.1	21.4	20.7	20.0	19.4	18.8	18.2	17.6	17.0	16.5	16.0	15.6	15.1	14.7	14.4	14.0	13.7	13.4	74
73	24.5	23.7	23.0	22.3	21.6	20.9	20.2	19.6	19.0	18.4	17.8	17.3	16.8	16.3	15.9	15.5	15.1	14.8	14.5	14.2	13.9	75
72	24.6	23.9	23.1	22.4	21.8	21.1	20.5	19.8	19.2	18.7	18.1	17.6	17.2	16.7	16.3	15.9	15.5	15.2	14.9	14.6	14.4	72
71	24.7	24.0	23.3	22.6	22.0	21.3	20.7	20.1	19.5	19.0	18.5	18.0	17.5	17.1	16.7	16.3	16.0	15.7	15.4	15.1	14.9	71
70	24.9	24.2	23.5	22.8	22.2	21.6	21.0	20.4	19.8	19.3	18.8	18.3	17.9	17.5	17.1	16.8	16.4	16.1	15.9	15.6	15.4	70
69	25.1	24.4	23.7	23.1	22.4	21.8	21.2	20.7	20.1	19.6	19.2	18.7	18.3	17.9	17.6	17.2	16.9	16.6	16.4	16.2	15.9	69
68	25.3	24.6	23.9	23.3	22.7	22.1	21.5	21.0	20.5	20.0	19.6	19.1	18.7	18.4	18.0	17.7	17.4	17.2	16.9	16.7	16.5	68
67	25.5	24.8	24.2	23.6	23.0	22.4	21.9	21.4	20.9	20.4	20.0	19.6	19.2	18.8	18.5	18.2	17.9	17.7	17.5	17.3	17.1	67
66	25.7	25.1	24.5	23.9	23.3	22.7	22.2	21.7	21.3	20.8	20.4	20.0	19.7	19.3	19.0	18.8	18.5	18.3	18.1	17.9	17.7	66
65	26.0	25.3	24.7	24.2	23.6	23.1	22.6	22.1	21.7	21.3	20.9	20.5	20.2	19.9	19.6	19.3	19.1	18.8	18.7	18.5	18.3	65
64	26.2	25.6	25.1	24.5	24.0	23.5	23.0	22.5	22.1	21.7	21.4	21.0	20.7	20.4	20.1	19.9	19.7	19.4	19.3	19.1	19.0	64
63	26.5	26.0	25.4	24.9	24.4	23.9	23.4	23.0	22.6	22.2	21.9	21.5	21.2	21.0	20.7	20.5	20.3	20.1	19.9	19.7	19.6	63
62	26.9	26.3	25.8	25.2	24.8	24.3	23.9	23.5	23.1	22.7	22.4	22.1	21.8	21.5	21.3	21.1	20.9	20.7	20.5	20.4	20.3	62
61	27.2	26.7	26.1	25.7	25.2	24.8	24.3	23.9	23.6	23.2	22.9	22.6	22.4	22.1	21.9	21.7	21.5	21.3	21.2	21.1	20.9	61
	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	

IAM 1983 MORTALITY TABLES

MALE	AGE	FEMALE
26.77	55	30.83
25.93	56	29.92
25.09	57	29.01
24.26	58	28.11
23.44	59	27.21
22.62	60	26.32
21.80	61	25.44
20.99	62	24.56
20.20	63	23.69
19.41	64	22.83
18.63	65	21.98
17.87	66	21.14
17.12	67	20.31
16.38	68	19.49
15.66	69	18.67
14.96	70	17.87
14.28	71	17.07
13.61	72	16.29
12.96	73	15.52
12.33	74	14.76
11.72	75	14.02
11.13	76	13.30
10.56	77	12.60
10.00	78	11.91
9.47	79	11.25
8.96	80	10.61
8.47	81	9.99
8.01	82	9.40
7.57	83	8.83
7.15	84	8.28
6.75	85	7.77
6.37	86	7.28
6.02	87	6.81
5.69	88	6.38
5.37	89	5.98
5.07	90	5.60
4.78	91	5.26
4.50	92	4.94
4.24	93	4.64
3.99	94	4.37
3.75	95	4.12
3.51	96	3.88
3.29	97	3.65
3.07	98	3.44
2.86	99	3.22
2.66	100	3.01

JOINT & SURVIVOR LIFE EXPECTANCY (83 TABLE)

↓ MALE LIFE (Read down) FEMALE LIFE (Read Across) →

	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	
97	14.24	13.54	12.86	12.21	11.58	10.98	10.40	9.85	9.33	8.84	8.37	7.94	7.54	7.17	6.83	6.51	6.23	5.97	5.74	5.53	5.33	97
96	14.27	13.58	12.90	12.26	11.63	11.03	10.46	9.92	9.40	8.91	8.46	8.03	7.64	7.27	6.94	6.63	6.36	6.10	5.87	5.67	5.48	96
95	14.31	13.62	12.95	12.31	11.69	11.09	10.53	9.99	9.48	9.00	8.55	8.13	7.74	7.38	7.06	6.76	6.49	6.24	6.02	5.82	5.63	95
94	14.35	13.66	13.00	12.36	11.75	11.16	10.60	10.07	9.57	9.09	8.65	8.24	7.86	7.51	7.19	6.90	6.63	6.39	6.17	5.98	5.79	94
93	14.39	13.71	13.06	12.42	11.82	11.24	10.68	10.16	9.66	9.20	8.76	8.36	7.98	7.64	7.33	7.04	6.78	6.55	6.34	6.15	5.97	93
92	14.45	13.77	13.12	12.49	11.89	11.32	10.77	10.25	9.77	9.31	8.88	8.49	8.12	7.78	7.48	7.20	6.95	6.72	6.52	6.33	6.16	92
91	14.50	13.83	13.19	12.57	11.98	11.41	10.87	10.36	9.88	9.43	9.01	8.63	8.27	7.94	7.64	7.37	7.13	6.91	6.71	6.53	6.36	91
90	14.57	13.90	13.27	12.65	12.07	11.51	10.98	10.48	10.01	9.57	9.16	8.78	8.43	8.11	7.82	7.56	7.32	7.10	6.91	6.74	6.58	90
89	14.64	13.98	13.35	12.75	12.17	11.62	11.10	10.61	10.14	9.71	9.31	8.94	8.60	8.29	8.01	7.75	7.52	7.32	7.13	6.96	6.81	89
88	14.72	14.07	13.45	12.85	12.28	11.74	11.23	10.75	10.29	9.87	9.48	9.12	8.79	8.49	8.21	7.97	7.74	7.54	7.36	7.20	7.05	88
87	14.81	14.17	13.55	12.97	12.41	11.87	11.37	10.90	10.46	10.05	9.67	9.32	8.99	8.70	8.44	8.20	7.98	7.79	7.62	7.46	7.32	87
86	14.91	14.27	13.67	13.09	12.54	12.02	11.53	11.07	10.64	10.24	9.87	9.53	9.22	8.93	8.68	8.45	8.24	8.05	7.89	7.74	7.60	86
85	15.02	14.40	13.80	13.23	12.70	12.19	11.71	11.26	10.84	10.45	10.09	9.76	9.46	9.18	8.94	8.72	8.52	8.34	8.18	8.03	7.90	85
84	15.14	14.53	13.95	13.39	12.86	12.37	11.90	11.46	11.05	10.68	10.33	10.01	9.72	9.46	9.22	9.01	8.82	8.65	8.49	8.36	8.23	84
83	15.28	14.68	14.11	13.56	13.05	12.57	12.11	11.69	11.29	10.93	10.59	10.28	10.00	9.75	9.52	9.32	9.14	8.98	8.83	8.70	8.58	83
82	15.43	14.84	14.29	13.76	13.26	12.78	12.34	11.93	11.55	11.20	10.88	10.58	10.31	10.07	9.85	9.66	9.49	9.33	9.19	9.07	8.96	82
81	15.60	15.03	14.48	13.97	13.48	13.02	12.60	12.20	11.83	11.49	11.18	10.90	10.64	10.41	10.21	10.02	9.86	9.71	9.58	9.46	9.36	81
80	15.79	15.23	14.70	14.20	13.73	13.28	12.87	12.49	12.14	11.81	11.51	11.24	11.00	10.78	10.58	10.41	10.25	10.11	9.99	9.88	9.78	80
79	16.00	15.45	14.94	14.45	14.00	13.57	13.17	12.80	12.47	12.15	11.87	11.61	11.38	11.17	10.99	10.82	10.67	10.54	10.43	10.32	10.23	79
78	16.22	15.70	15.20	14.73	14.29	13.88	13.49	13.14	12.82	12.52	12.25	12.01	11.79	11.59	11.42	11.26	11.12	11.00	10.89	10.79	10.70	78
77	16.47	15.96	15.48	15.03	14.60	14.21	13.84	13.51	13.20	12.92	12.66	12.43	12.22	12.03	11.87	11.72	11.59	11.48	11.37	11.28	11.20	77
76	16.74	16.25	15.78	15.35	14.94	14.56	14.22	13.89	13.60	13.33	13.09	12.87	12.68	12.50	12.35	12.21	12.09	11.98	11.88	11.80	11.72	76
75	17.04	16.56	16.11	15.69	15.31	14.95	14.61	14.31	14.03	13.78	13.55	13.34	13.16	12.99	12.85	12.72	12.61	12.51	12.42	12.34	12.27	75
	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	

Single Male or Female Life Expectancy
1990-92 Canada Life Tables

Age	Male	Female
55	23.31	28.26
56	22.48	27.38
57	21.67	26.51
58	20.87	25.65
59	20.08	24.79
60	19.31	23.94
61	18.55	23.10
62	17.81	22.27
63	17.09	21.45
64	16.38	20.64
65	15.68	19.84
66	15.00	19.05
67	14.33	18.27
68	13.67	17.50
69	13.04	16.74
70	12.42	15.99
71	11.81	15.25
72	11.22	14.53
73	10.66	13.83
74	10.10	13.14
75	9.57	12.46
76	9.06	11.80
77	8.56	11.17
78	8.09	10.55
79	7.63	9.95
80	7.20	9.37
81	6.78	8.82
82	6.39	8.28
83	6.01	7.77
84	5.66	7.28
85	5.32	6.81
86	5.00	6.37
87	4.70	5.94
88	4.41	5.54
89	4.14	5.17
90	3.89	4.81
91	3.65	4.47
92	3.42	4.15
93	3.21	3.86
94	3.01	3.58
95	2.82	3.31

Life Expectancy of Male/Female Last Survivor

1990-92 Canada Life Tables (based on 1991 Census)

based on monthly payments continuing while either is alive

Male - across / Female - down	55	56	57	58	59	60	61	62	63	64
55	32.01	31.68	31.38	31.10	30.85	30.61	30.39	30.18	30.00	29.83
56	31.42	31.07	30.75	30.45	30.18	29.92	29.69	29.47	29.27	29.08
57	30.85	30.49	30.14	29.83	29.53	29.26	29.00	28.77	28.56	28.36
58	30.31	29.92	29.56	29.22	28.91	28.62	28.34	28.09	27.86	27.65
59	29.79	29.38	29.00	28.64	28.31	27.99	27.71	27.44	27.19	26.96
60	29.30	28.87	28.46	28.08	27.73	27.40	27.09	26.80	26.54	26.29
61	28.83	28.38	27.95	27.55	27.18	26.82	26.50	26.19	25.91	25.65
62	28.38	27.91	27.46	27.04	26.65	26.27	25.93	25.60	25.30	25.02
63	27.96	27.47	27.00	26.56	26.14	25.75	25.38	25.04	24.72	24.42
64	27.57	27.05	26.56	26.10	25.66	25.25	24.86	24.50	24.16	23.84
65	27.20	26.66	26.15	25.67	25.21	24.77	24.37	23.98	23.62	23.29
66	26.85	26.30	25.76	25.26	24.78	24.32	23.89	23.49	23.11	22.76
67	26.53	25.95	25.40	24.87	24.37	23.90	23.45	23.02	22.62	22.25
68	26.23	25.63	25.06	24.51	23.99	23.50	23.03	22.58	22.16	21.77
69	25.95	25.33	24.74	24.18	23.64	23.12	22.63	22.17	21.73	21.31
70	25.69	25.06	24.45	23.86	23.30	22.77	22.26	21.78	21.32	20.88
71	25.45	24.80	24.17	23.57	22.99	22.44	21.91	21.41	20.93	20.48
72	25.23	24.56	23.92	23.30	22.71	22.14	21.59	21.07	20.57	20.10
73	25.02	24.35	23.69	23.05	22.44	21.85	21.29	20.75	20.24	19.75
74	24.84	24.15	23.48	22.83	22.20	21.59	21.01	20.46	19.93	19.42
75	24.67	23.97	23.28	22.62	21.97	21.35	20.76	20.19	19.64	19.11
76	24.52	23.80	23.10	22.42	21.77	21.14	20.52	19.94	19.37	18.83
77	24.38	23.65	22.94	22.25	21.58	20.94	20.31	19.71	19.13	18.57
78	24.26	23.52	22.80	22.09	21.41	20.75	20.11	19.50	18.91	18.33
79	24.14	23.39	22.66	21.95	21.26	20.59	19.94	19.31	18.70	18.12
80	24.04	23.29	22.55	21.82	21.12	20.44	19.78	19.14	18.52	17.92
81	23.95	23.19	22.44	21.71	21.00	20.31	19.63	18.98	18.35	17.74
82	23.87	23.10	22.34	21.61	20.89	20.18	19.50	18.84	18.20	17.58
83	23.80	23.02	22.26	21.51	20.79	20.08	19.39	18.72	18.07	17.44
84	23.74	22.95	22.18	21.43	20.70	19.98	19.28	18.61	17.95	17.31
85	23.68	22.89	22.12	21.36	20.62	19.90	19.19	18.51	17.84	17.19
86	23.63	22.84	22.06	21.30	20.55	19.82	19.11	18.42	17.74	17.09
87	23.59	22.79	22.01	21.24	20.49	19.75	19.04	18.34	17.66	17.00
88	23.55	22.75	21.96	21.19	20.43	19.70	18.97	18.27	17.58	16.92
89	23.52	22.71	21.92	21.15	20.39	19.64	18.92	18.21	17.52	16.84
90	23.49	22.68	21.89	21.11	20.34	19.60	18.87	18.16	17.46	16.78
91	23.46	22.65	21.86	21.07	20.31	19.56	18.82	18.11	17.41	16.73
92	23.44	22.63	21.83	21.05	20.28	19.52	18.79	18.07	17.36	16.68
93	23.42	22.61	21.81	21.02	20.25	19.49	18.75	18.03	17.33	16.64
94	23.41	22.59	21.79	21.00	20.22	19.47	18.73	18.00	17.29	16.60
95	23.39	22.57	21.77	20.98	20.20	19.44	18.70	17.97	17.26	16.57

Life Expectancy of Male/Female Last Survivor

1990-92 Canada Life Tables (based on 1991 Census)

based on monthly payments continuing while either is alive

Male - across / Female - down	65	66	67	68	69	70	71	72	73	74
55	29.67	29.53	29.40	29.28	29.18	29.08	28.99	28.91	28.84	28.77
56	28.92	28.76	28.62	28.49	28.38	28.27	28.18	28.09	28.01	27.94
57	28.18	28.01	27.86	27.72	27.59	27.48	27.37	27.28	27.20	27.12
58	27.45	27.27	27.11	26.96	26.82	26.70	26.59	26.49	26.39	26.31
59	26.75	26.56	26.38	26.22	26.07	25.94	25.81	25.70	25.60	25.51
60	26.07	25.86	25.67	25.49	25.33	25.19	25.06	24.94	24.83	24.73
61	25.40	25.18	24.98	24.79	24.61	24.46	24.31	24.18	24.07	23.96
62	24.76	24.52	24.30	24.10	23.91	23.74	23.59	23.45	23.32	23.21
63	24.14	23.89	23.65	23.43	23.23	23.05	22.88	22.73	22.59	22.47
64	23.55	23.27	23.02	22.79	22.57	22.38	22.20	22.03	21.88	21.75
65	22.97	22.68	22.41	22.16	21.93	21.72	21.53	21.35	21.19	21.04
66	22.42	22.11	21.83	21.56	21.31	21.09	20.88	20.69	20.52	20.36
67	21.90	21.57	21.26	20.98	20.72	20.48	20.25	20.05	19.86	19.69
68	21.40	21.05	20.73	20.43	20.15	19.89	19.65	19.43	19.23	19.05
69	20.92	20.56	20.21	19.89	19.60	19.32	19.07	18.83	18.62	18.42
70	20.47	20.09	19.73	19.39	19.07	18.78	18.51	18.26	18.03	17.82
71	20.05	19.65	19.27	18.91	18.57	18.26	17.98	17.71	17.46	17.24
72	19.65	19.23	18.83	18.45	18.10	17.77	17.47	17.19	16.92	16.68
73	19.28	18.84	18.42	18.03	17.66	17.31	16.99	16.69	16.41	16.15
74	18.93	18.47	18.04	17.62	17.24	16.87	16.53	16.21	15.92	15.65
75	18.61	18.13	17.68	17.25	16.84	16.46	16.10	15.77	15.46	15.17
76	18.31	17.82	17.35	16.90	16.47	16.08	15.70	15.35	15.02	14.72
77	18.04	17.53	17.04	16.57	16.13	15.72	15.33	14.96	14.61	14.29
78	17.78	17.26	16.75	16.27	15.82	15.39	14.98	14.59	14.23	13.90
79	17.55	17.01	16.49	16.00	15.53	15.08	14.65	14.25	13.88	13.53
80	17.34	16.79	16.26	15.75	15.26	14.80	14.36	13.94	13.55	13.18
81	17.15	16.58	16.04	15.52	15.01	14.54	14.08	13.65	13.25	12.86
82	16.98	16.40	15.84	15.31	14.79	14.30	13.83	13.39	12.97	12.57
83	16.83	16.23	15.66	15.12	14.59	14.09	13.60	13.15	12.71	12.30
84	16.69	16.09	15.50	14.94	14.41	13.89	13.40	12.93	12.48	12.06
85	16.56	15.95	15.36	14.79	14.24	13.72	13.21	12.73	12.27	11.84
86	16.45	15.83	15.23	14.65	14.09	13.56	13.04	12.55	12.08	11.63
87	16.35	15.73	15.12	14.53	13.96	13.42	12.89	12.39	11.91	11.45
88	16.26	15.63	15.02	14.42	13.85	13.29	12.76	12.25	11.76	11.29
89	16.19	15.55	14.93	14.32	13.74	13.18	12.64	12.12	11.62	11.14
90	16.12	15.47	14.85	14.24	13.65	13.08	12.53	12.00	11.50	11.01
91	16.06	15.41	14.78	14.16	13.57	12.99	12.44	11.90	11.39	10.89
92	16.01	15.35	14.72	14.10	13.50	12.92	12.35	11.81	11.29	10.79
93	15.96	15.30	14.66	14.04	13.43	12.85	12.28	11.73	11.21	10.70
94	15.92	15.26	14.62	13.99	13.38	12.79	12.22	11.66	11.13	10.62
95	15.89	15.22	14.57	13.94	13.33	12.74	12.16	11.60	11.06	10.55

Life Expectancy of Male/Female Last Survivor

1990-92 Canada Life Tables (based on 1991 Census)

based on monthly payments continuing while either is alive

Male - across / Female - down	75	76	77	78	79	80	81	82	83	84
55	28.72	28.66	28.62	28.58	28.54	28.51	28.48	28.45	28.43	28.41
56	27.88	27.82	27.77	27.73	27.69	27.65	27.62	27.59	27.57	27.54
57	27.05	26.99	26.93	26.89	26.84	26.80	26.77	26.74	26.71	26.69
58	26.24	26.17	26.11	26.06	26.01	25.97	25.93	25.89	25.86	25.84
59	25.43	25.36	25.30	25.24	25.18	25.14	25.10	25.06	25.03	25.00
60	24.64	24.56	24.49	24.43	24.37	24.32	24.28	24.24	24.20	24.17
61	23.87	23.78	23.70	23.63	23.57	23.52	23.47	23.43	23.39	23.35
62	23.10	23.01	22.93	22.85	22.78	22.72	22.67	22.62	22.58	22.55
63	22.36	22.25	22.16	22.08	22.01	21.94	21.89	21.84	21.79	21.75
64	21.63	21.52	21.42	21.33	21.25	21.18	21.11	21.06	21.01	20.97
65	20.91	20.79	20.68	20.59	20.50	20.43	20.36	20.30	20.24	20.19
66	20.21	20.09	19.97	19.86	19.77	19.69	19.61	19.55	19.49	19.43
67	19.54	19.40	19.27	19.16	19.06	18.96	18.88	18.81	18.75	18.69
68	18.88	18.73	18.59	18.47	18.36	18.26	18.17	18.09	18.02	17.96
69	18.24	18.08	17.93	17.80	17.68	17.57	17.48	17.39	17.31	17.24
70	17.63	17.45	17.29	17.15	17.02	16.90	16.80	16.70	16.62	16.55
71	17.03	16.84	16.67	16.52	16.38	16.25	16.14	16.04	15.94	15.86
72	16.46	16.26	16.07	15.91	15.76	15.62	15.50	15.39	15.29	15.20
73	15.92	15.70	15.50	15.32	15.16	15.01	14.88	14.76	14.65	14.56
74	15.40	15.17	14.95	14.76	14.59	14.43	14.29	14.16	14.04	13.94
75	14.90	14.66	14.43	14.23	14.04	13.87	13.71	13.58	13.45	13.34
76	14.44	14.18	13.94	13.72	13.52	13.33	13.17	13.02	12.88	12.76
77	14.00	13.72	13.47	13.23	13.02	12.82	12.65	12.49	12.34	12.21
78	13.58	13.29	13.02	12.78	12.55	12.34	12.15	11.98	11.83	11.69
79	13.20	12.89	12.61	12.35	12.11	11.89	11.69	11.50	11.34	11.19
80	12.84	12.52	12.22	11.95	11.69	11.46	11.25	11.05	10.87	10.71
81	12.51	12.17	11.86	11.57	11.30	11.06	10.83	10.63	10.44	10.27
82	12.20	11.85	11.52	11.22	10.94	10.68	10.45	10.23	10.03	9.85
83	11.92	11.55	11.22	10.90	10.61	10.34	10.09	9.86	9.65	9.45
84	11.66	11.28	10.93	10.60	10.30	10.01	9.75	9.51	9.29	9.09
85	11.42	11.04	10.67	10.33	10.01	9.72	9.44	9.19	8.96	8.75
86	11.21	10.81	10.43	10.08	9.75	9.45	9.16	8.90	8.65	8.43
87	11.02	10.61	10.22	9.85	9.51	9.20	8.90	8.63	8.37	8.14
88	10.84	10.42	10.02	9.65	9.30	8.97	8.66	8.38	8.12	7.87
89	10.69	10.26	9.85	9.46	9.10	8.77	8.45	8.16	7.88	7.63
90	10.55	10.11	9.69	9.30	8.93	8.58	8.26	7.95	7.67	7.41
91	10.42	9.98	9.55	9.15	8.77	8.41	8.08	7.77	7.48	7.21
92	10.31	9.86	9.42	9.01	8.63	8.26	7.92	7.60	7.30	7.02
93	10.22	9.75	9.31	8.89	8.50	8.13	7.78	7.45	7.15	6.86
94	10.13	9.66	9.21	8.79	8.39	8.01	7.65	7.32	7.00	6.71
95	10.05	9.58	9.12	8.69	8.29	7.90	7.54	7.20	6.88	6.58

Life Expectancy of Male/Female Last Survivor

1990-92 Canada Life Tables (based on 1991 Census)

based on monthly payments continuing while either is alive

Male - across / Female - down	85	86	87	88	89	90	91	92	93	94	95
55	28.39	28.38	28.36	28.35	28.34	28.33	28.32	28.31	28.31	28.30	28.30
56	27.52	27.51	27.49	27.48	27.47	27.46	27.45	27.44	27.43	27.43	27.42
57	26.67	26.65	26.63	26.62	26.60	26.59	26.58	26.57	26.56	26.56	26.55
58	25.82	25.80	25.78	25.76	25.75	25.73	25.72	25.71	25.71	25.70	25.69
59	24.98	24.95	24.93	24.92	24.90	24.89	24.88	24.86	24.86	24.85	24.84
60	24.14	24.12	24.10	24.08	24.06	24.05	24.04	24.02	24.01	24.00	24.00
61	23.32	23.30	23.27	23.25	23.23	23.22	23.20	23.19	23.18	23.17	23.16
62	22.51	22.48	22.46	22.44	22.42	22.40	22.38	22.37	22.36	22.35	22.34
63	21.71	21.68	21.65	21.63	21.61	21.59	21.57	21.56	21.54	21.53	21.52
64	20.93	20.89	20.86	20.83	20.81	20.79	20.77	20.76	20.74	20.73	20.72
65	20.15	20.11	20.08	20.05	20.02	20.00	19.98	19.96	19.95	19.93	19.92
66	19.39	19.35	19.31	19.28	19.25	19.22	19.20	19.18	19.17	19.15	19.14
67	18.64	18.59	18.55	18.52	18.49	18.46	18.44	18.42	18.40	18.38	18.36
68	17.90	17.85	17.81	17.77	17.74	17.71	17.68	17.66	17.64	17.62	17.60
69	17.18	17.13	17.08	17.04	17.00	16.97	16.94	16.92	16.89	16.87	16.86
70	16.48	16.42	16.37	16.32	16.28	16.25	16.22	16.19	16.16	16.14	16.12
71	15.79	15.73	15.67	15.62	15.58	15.54	15.50	15.47	15.44	15.42	15.40
72	15.12	15.05	14.99	14.94	14.89	14.84	14.81	14.77	14.74	14.72	14.69
73	14.47	14.40	14.33	14.27	14.22	14.17	14.13	14.09	14.06	14.03	14.00
74	13.84	13.76	13.69	13.62	13.56	13.51	13.47	13.43	13.39	13.36	13.33
75	13.24	13.15	13.07	13.00	12.93	12.88	12.83	12.78	12.74	12.71	12.68
76	12.65	12.56	12.47	12.39	12.32	12.26	12.21	12.16	12.11	12.08	12.04
77	12.09	11.99	11.89	11.81	11.73	11.67	11.61	11.55	11.51	11.47	11.43
78	11.56	11.45	11.34	11.25	11.17	11.10	11.03	10.98	10.92	10.88	10.84
79	11.05	10.93	10.82	10.72	10.63	10.55	10.48	10.42	10.36	10.31	10.27
80	10.57	10.44	10.32	10.21	10.12	10.03	9.96	9.89	9.83	9.77	9.72
81	10.11	9.97	9.85	9.73	9.63	9.54	9.45	9.38	9.31	9.25	9.20
82	9.68	9.53	9.40	9.27	9.16	9.07	8.98	8.90	8.82	8.76	8.70
83	9.28	9.12	8.98	8.84	8.73	8.62	8.52	8.44	8.36	8.29	8.23
84	8.90	8.73	8.58	8.44	8.32	8.20	8.10	8.01	7.92	7.85	7.78
85	8.55	8.37	8.21	8.06	7.93	7.81	7.70	7.60	7.51	7.43	7.36
86	8.23	8.04	7.87	7.71	7.57	7.44	7.33	7.22	7.13	7.04	6.96
87	7.93	7.73	7.55	7.39	7.24	7.10	6.98	6.87	6.76	6.67	6.59
88	7.65	7.45	7.26	7.08	6.93	6.78	6.65	6.53	6.43	6.33	6.24
89	7.40	7.18	6.99	6.81	6.64	6.49	6.35	6.23	6.11	6.01	5.92
90	7.17	6.95	6.74	6.55	6.38	6.22	6.08	5.94	5.82	5.72	5.62
91	6.96	6.73	6.51	6.32	6.14	5.97	5.82	5.68	5.56	5.44	5.34
92	6.77	6.53	6.31	6.10	5.92	5.75	5.59	5.44	5.31	5.19	5.08
93	6.59	6.35	6.12	5.91	5.72	5.54	5.37	5.22	5.08	4.96	4.84
94	6.44	6.19	5.95	5.73	5.53	5.35	5.18	5.02	4.88	4.75	4.62
95	6.30	6.04	5.80	5.57	5.37	5.18	5.00	4.84	4.69	4.55	4.42

Recommended Rates for Canadian Gift Annuities (January, 2000)

LIFE ANNUITY RATES CALCULATED USING
Gam1983 Unisex - Female rates set back 2 years

Interest rate :	**6.0%**
Maximum payment:	**100**
Front-end Load	**0.0%**

AGE	Annual Annuity per $1000 Gift	Tax Free Portion Male	Tax Free Portion Female	Tax Receipt per $1000 Gift Male	Tax Receipt per $1000 Gift Female	For Tax Receipt IAM 1983 IT-111R2 Expectancy Male	For Tax Receipt IAM1983 IT-111R2 Expectancy Female	For Tax Free Portion GAM 1971 IT-111 Expectancy Male	For Tax Free Portion GAM1971 IT-111 Expectancy Female
55	65.17	62.1%	53.6%	0.00	0.00	26.8	30.8	24.7	28.6
56	65.60	63.8%	55.0%	0.00	0.00	25.9	29.9	23.9	27.7
57	66.06	65.5%	56.5%	0.00	0.00	25.1	29.0	23.1	26.8
58	66.55	67.1%	57.8%	0.00	0.00	24.3	28.1	22.4	26.0
59	67.08	69.0%	59.4%	0.00	0.00	23.4	27.2	21.6	25.1
60	67.64	71.1%	61.1%	0.00	0.00	22.6	26.3	20.8	24.2
61	68.24	72.9%	62.6%	0.00	0.00	21.8	25.4	20.1	23.4
62	68.89	75.2%	64.2%	0.00	0.00	21.0	24.6	19.3	22.6
63	69.58	77.3%	66.2%	0.00	0.00	20.2	23.7	18.6	21.7
64	70.33	79.4%	68.0%	0.00	0.00	19.4	22.8	17.9	20.9
65	71.13	81.7%	69.9%	0.00	0.00	18.6	22.0	17.2	20.1
66	72.00	84.2%	72.0%	0.00	0.00	17.9	21.1	16.5	19.3
67	72.94	86.8%	74.1%	0.00	0.00	17.1	20.3	15.8	18.5
68	73.95	89.6%	76.4%	0.00	0.00	16.4	19.5	15.1	17.7
69	75.04	92.5%	78.8%	0.00	0.00	15.7	18.7	14.4	16.9
70	76.23	95.1%	81.5%	0.00	0.00	15.0	17.9	13.8	16.1
71	77.52	98.5%	84.3%	0.00	0.00	14.3	17.1	13.1	15.3
72	78.92	100.0%	87.4%	0.00	0.00	13.6	16.3	12.5	14.5
73	80.43	100.0%	90.1%	0.00	0.00	13.0	15.5	11.9	13.8
74	82.05	100.0%	93.0%	0.00	0.00	12.3	14.8	11.3	13.1
75	83.80	100.0%	97.0%	19.53	0.00	11.7	14.0	10.7	12.3
76	85.67	100.0%	100.0%	49.01	0.00	11.1	13.3	10.1	11.6
77	87.68	100.0%	100.0%	70.58	0.00	10.6	12.6	9.6	11.0
78	89.83	100.0%	100.0%	101.70	0.00	10.0	11.9	9.0	10.3
79	92.13	100.0%	100.0%	124.77	0.00	9.5	11.3	8.5	9.7
80	94.59	100.0%	100.0%	148.70	0.00	9.0	10.6	8.0	9.1
81	97.22	100.0%	100.0%	173.61	27.78	8.5	10.0	7.5	8.5
82	100.00	100.0%	100.0%	200.00	60.00	8.0	9.4	7.0	7.9
83	100.00	100.0%	100.0%	240.00	120.00	7.6	8.8	6.6	7.4
84	100.00	100.0%	100.0%	290.00	170.00	7.1	8.3	6.2	6.9
85	100.00	100.0%	100.0%	330.00	220.00	6.7	7.8	5.7	6.4
86	100.00	100.0%	100.0%	360.00	270.00	6.4	7.3	5.3	6.0
87	100.00	100.0%	100.0%	400.00	320.00	6.0	6.8	4.9	5.6
88	100.00	100.0%	100.0%	430.00	360.00	5.7	6.4	4.6	5.2
89	100.00	100.0%	100.0%	460.00	400.00	5.4	6.0	4.2	4.9
90	100.00	100.0%	100.0%	490.00	440.00	5.1	5.6	3.9	4.6
91	100.00	100.0%	100.0%	520.00	470.00	4.8	5.3	3.6	4.3
92	100.00	100.0%	100.0%	550.00	510.00	4.5	4.9	3.3	4.0
93	100.00	100.0%	100.0%	580.00	540.00	4.2	4.6	3.0	3.8
94	100.00	100.0%	100.0%	600.00	560.00	4.0	4.4	2.7	3.6
95	100.00	100.0%	100.0%	630.00	590.00	3.7	4.1	2.5	3.5
96	100.00	100.0%	100.0%	650.00	610.00	3.5	3.9	2.3	3.3
97	100.00	100.0%	100.0%	670.00	630.00	3.3	3.7	2.1	3.1
98	100.00	100.0%	100.0%	690.00	660.00	3.1	3.4	1.9	3.0
99	100.00	100.0%	100.0%	710.00	680.00	2.9	3.2	1.8	2.8
100	100.00	100.0%	100.0%	730.00	700.00	2.7	3.0	1.7	2.7

LIFE ANNUITY RATES CALCULATED USING
Gam1983 Unisex - Female rates set back 2 years
Interest rate : 6.0%
Maximum payment: 100
Front-end Load 0.0%

AGE	Annual Annuity per $1000 Gift	Tax Free Portion Male	Tax Free Portion Female	Tax Receipt per $1000 Gift Male	Tax Receipt per $1000 Gift Female	For Tax Receipt IAM 1983 IT-111R2 Expectancy Male	IAM1983 IT-111R2 Expectancy Female	For Tax Free Portion GAM 1971 IT-111 Expectancy Male	GAM1971 IT-111 Expectancy Female
55	65.17	62.1%	53.6%	0.00	0.00	26.8	30.8	24.7	28.6
56	65.60	63.8%	55.0%	0.00	0.00	25.9	29.9	23.9	27.7
57	66.06	65.5%	56.5%	0.00	0.00	25.1	29.0	23.1	26.8
58	66.55	67.1%	57.8%	0.00	0.00	24.3	28.1	22.4	26.0
59	67.08	69.0%	59.4%	0.00	0.00	23.4	27.2	21.6	25.1
60	67.64	71.1%	61.1%	0.00	0.00	22.6	26.3	20.8	24.2
61	68.24	72.9%	62.6%	0.00	0.00	21.8	25.4	20.1	23.4
62	68.89	75.2%	64.2%	0.00	0.00	21.0	24.6	19.3	22.6
63	69.58	77.3%	66.2%	0.00	0.00	20.2	23.7	18.6	21.7
64	70.33	79.4%	68.0%	0.00	0.00	19.4	22.8	17.9	20.9
65	71.13	81.7%	69.9%	0.00	0.00	18.6	22.0	17.2	20.1
66	72.00	84.2%	72.0%	0.00	0.00	17.9	21.1	16.5	19.3
67	72.94	86.8%	74.1%	0.00	0.00	17.1	20.3	15.8	18.5
68	73.95	89.6%	76.4%	0.00	0.00	16.4	19.5	15.1	17.7
69	75.04	92.5%	78.8%	0.00	0.00	15.7	18.7	14.4	16.9
70	76.23	95.1%	81.5%	0.00	0.00	15.0	17.9	13.8	16.1
71	77.52	98.5%	84.3%	0.00	0.00	14.3	17.1	13.1	15.3
72	78.92	100.0%	87.4%	0.00	0.00	13.6	16.3	12.5	14.5
73	80.43	100.0%	90.1%	0.00	0.00	13.0	15.5	11.9	13.8
74	82.05	100.0%	93.0%	0.00	0.00	12.3	14.8	11.3	13.1
75	83.80	100.0%	97.0%	19.53	0.00	11.7	14.0	10.7	12.3
76	85.67	100.0%	100.0%	49.01	0.00	11.1	13.3	10.1	11.6
77	87.68	100.0%	100.0%	70.58	0.00	10.6	12.6	9.6	11.0
78	89.83	100.0%	100.0%	101.70	0.00	10.0	11.9	9.0	10.3
79	92.13	100.0%	100.0%	124.77	0.00	9.5	11.3	8.5	9.7
80	94.59	100.0%	100.0%	148.70	0.00	9.0	10.6	8.0	9.1
81	97.22	100.0%	100.0%	173.61	27.78	8.5	10.0	7.5	8.5
82	100.00	100.0%	100.0%	200.00	60.00	8.0	9.4	7.0	7.9
83	100.00	100.0%	100.0%	240.00	120.00	7.6	8.8	6.6	7.4
84	100.00	100.0%	100.0%	290.00	170.00	7.1	8.3	6.2	6.9
85	100.00	100.0%	100.0%	330.00	220.00	6.7	7.8	5.7	6.4
86	100.00	100.0%	100.0%	360.00	270.00	6.4	7.3	5.3	6.0
87	100.00	100.0%	100.0%	400.00	320.00	6.0	6.8	4.9	5.6
88	100.00	100.0%	100.0%	430.00	360.00	5.7	6.4	4.6	5.2
89	100.00	100.0%	100.0%	460.00	400.00	5.4	6.0	4.2	4.9
90	100.00	100.0%	100.0%	490.00	440.00	5.1	5.6	3.9	4.6
91	100.00	100.0%	100.0%	520.00	470.00	4.8	5.3	3.6	4.3
92	100.00	100.0%	100.0%	550.00	510.00	4.5	4.9	3.3	4.0
93	100.00	100.0%	100.0%	580.00	540.00	4.2	4.6	3.0	3.8
94	100.00	100.0%	100.0%	600.00	560.00	4.0	4.4	2.7	3.6
95	100.00	100.0%	100.0%	630.00	590.00	3.7	4.1	2.5	3.5
96	100.00	100.0%	100.0%	650.00	610.00	3.5	3.9	2.3	3.3
97	100.00	100.0%	100.0%	670.00	630.00	3.3	3.7	2.1	3.1
98	100.00	100.0%	100.0%	690.00	660.00	3.1	3.4	1.9	3.0
99	100.00	100.0%	100.0%	710.00	680.00	2.9	3.2	1.8	2.8
100	100.00	100.0%	100.0%	730.00	700.00	2.7	3.0	1.7	2.7

JOINT AND SURVIVORSHIP ANNUITY RATES CALCULATED
Gam1983 mortality sex distinct, set back 2 years

Interest rate	**6.00%**
Maximum payment per $1,000	**100**
Front end load	**0%**

Female	<===	55	====	<===	56	====	<===	57	====	<===	58	====
Male Age	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt
55	63.18	48.38%	0.00	63.38	49.08%	0.00	63.57	49.76%	0.00	63.77	50.42%	0.00
56	63.30	48.81%	0.00	63.50	49.56%	0.00	63.71	50.28%	0.00	63.92	50.99%	0.00
57	63.41	49.22%	0.00	63.62	50.01%	0.00	63.84	50.78%	0.00	64.06	51.53%	0.00
58	63.51	49.61%	0.00	63.74	50.43%	0.00	63.97	51.25%	0.00	64.21	52.04%	0.00
59	63.62	49.97%	0.00	63.85	50.84%	0.00	64.10	51.69%	0.00	64.34	52.54%	0.00
60	63.72	50.31%	0.00	63.96	51.22%	0.00	64.22	52.11%	0.00	64.48	53.00%	0.00
61	63.81	50.63%	0.00	64.07	51.57%	0.00	64.34	52.51%	0.00	64.61	53.44%	0.00
62	63.91	50.92%	0.00	64.18	51.90%	0.00	64.45	52.88%	0.00	64.74	53.85%	0.00
63	64.00	51.19%	0.00	64.27	52.21%	0.00	64.56	53.23%	0.00	64.86	54.24%	0.00
64	64.08	51.44%	0.00	64.37	52.49%	0.00	64.67	53.54%	0.00	64.98	54.60%	0.00
65	64.16	51.67%	0.00	64.46	52.75%	0.00	64.77	53.84%	0.00	65.09	54.93%	0.00
66	64.24	51.88%	0.00	64.55	52.98%	0.00	64.87	54.10%	0.00	65.20	55.24%	0.00
67	64.31	52.07%	0.00	64.63	53.20%	0.00	64.96	54.35%	0.00	65.30	55.52%	0.00
68	64.38	52.24%	0.00	64.70	53.40%	0.00	65.05	54.57%	0.00	65.40	55.78%	0.00
69	64.44	52.40%	0.00	64.78	53.58%	0.00	65.13	54.78%	0.00	65.49	56.01%	0.00
70	64.50	52.54%	0.00	64.84	53.74%	0.00	65.20	54.97%	0.00	65.58	56.22%	0.00
71	64.56	52.67%	0.00	64.91	53.89%	0.00	65.27	55.14%	0.00	65.66	56.42%	0.00
72	64.61	52.79%	0.00	64.97	54.02%	0.00	65.34	55.29%	0.00	65.73	56.59%	0.00
73	64.66	52.89%	0.00	65.02	54.14%	0.00	65.40	55.43%	0.00	65.80	56.75%	0.00
74	64.71	52.98%	0.00	65.07	54.25%	0.00	65.46	55.55%	0.00	65.87	56.89%	0.00
75	64.75	53.06%	0.00	65.12	54.34%	0.00	65.51	55.66%	0.00	65.93	57.01%	0.00
76	64.79	53.13%	0.00	65.16	54.43%	0.00	65.56	55.76%	0.00	65.99	57.12%	0.00
77	64.82	53.21%	0.00	65.20	54.51%	0.00	65.61	55.84%	0.00	66.04	57.22%	0.00
78	64.86	53.26%	0.00	65.24	54.57%	0.00	65.65	55.92%	0.00	66.09	57.31%	0.00
79	64.89	53.31%	0.00	65.28	54.63%	0.00	65.69	55.99%	0.00	66.13	57.39%	0.00
80	64.91	53.36%	0.00	65.31	54.68%	0.00	65.73	56.05%	0.00	66.17	57.46%	0.00
81	64.94	53.40%	0.00	65.34	54.73%	0.00	65.76	56.10%	0.00	66.21	57.52%	0.00
82	64.96	53.44%	0.00	65.36	54.77%	0.00	65.79	56.15%	0.00	66.24	57.58%	0.00
83	64.98	53.47%	0.00	65.39	54.80%	0.00	65.82	56.19%	0.00	66.27	57.63%	0.00
84	65.00	53.50%	0.00	65.41	54.84%	0.00	65.84	56.23%	0.00	66.30	57.67%	0.00
85	65.02	53.52%	0.00	65.43	54.87%	0.00	65.86	56.26%	0.00	66.32	57.71%	0.00
86	65.03	53.55%	0.00	65.44	54.90%	0.00	65.88	56.29%	0.00	66.35	57.74%	0.00
87	65.05	53.56%	0.00	65.46	54.92%	0.00	65.90	56.32%	0.00	66.37	57.77%	0.00
88	65.06	53.58%	0.00	65.47	54.94%	0.00	65.92	56.33%	0.00	66.39	57.79%	0.00
89	65.07	53.60%	0.00	65.49	54.95%	0.00	65.93	56.36%	0.00	66.40	57.82%	0.00
90	65.08	53.61%	0.00	65.50	54.96%	0.00	65.94	56.38%	0.00	66.42	57.83%	0.00
91	65.09	53.62%	0.00	65.51	54.97%	0.00	65.96	56.38%	0.00	66.43	57.85%	0.00
92	65.10	53.62%	0.00	65.52	54.98%	0.00	65.97	56.39%	0.00	66.44	57.86%	0.00
93	65.11	53.63%	0.00	65.53	54.99%	0.00	65.98	56.40%	0.00	66.46	57.86%	0.00
94	65.12	53.63%	0.00	65.54	54.99%	0.00	65.99	56.41%	0.00	66.47	57.87%	0.00
95	65.12	53.64%	0.00	65.54	55.00%	0.00	65.99	56.42%	0.00	66.47	57.88%	0.00
96	65.13	53.64%	0.00	65.55	55.00%	0.00	66.00	56.42%	0.00	66.48	57.89%	0.00
97	65.13	53.64%	0.00	65.56	55.00%	0.00	66.01	56.42%	0.00	66.49	57.89%	0.00
98	65.14	53.64%	0.00	65.56	55.01%	0.00	66.01	56.43%	0.00	66.50	57.89%	0.00
99	65.14	53.64%	0.00	65.57	55.00%	0.00	66.02	56.42%	0.00	66.50	57.89%	0.00
100	65.15	53.64%	0.00	65.57	55.01%	0.00	66.02	56.43%	0.00	66.51	57.89%	0.00

JOINT AND SURVIVORSHIP ANNUITY RATES CALCULATED
Gam1983 mortality sex distinct, set back 2 years

Interest rate	**6.00%**
Maximum payment per $1,000	**100**
Front end load	**0%**

Female Age ==>

	<===	59	====	<===	60	====	<===	61	====	<===	62	====
Male Age	**Annual Annuity**	**Tax Free Portion %**	**Tax Receipt**	**Annual Annuity**	**Tax Free Portion %**	**Tax Receipt**	**Annual Annuity**	**Tax Free Portion %**	**Tax Receipt**	**Annual Annuity**	**Tax Free Portion %**	**Tax Receipt**
55	63.97	51.06%	0.00	64.17	51.68%	0.00	64.37	52.27%	0.00	64.57	52.83%	0.00
56	64.13	51.67%	0.00	64.34	52.34%	0.00	64.56	52.97%	0.00	64.77	53.59%	0.00
57	64.29	52.26%	0.00	64.52	52.97%	0.00	64.75	53.65%	0.00	64.98	54.32%	0.00
58	64.44	52.83%	0.00	64.69	53.58%	0.00	64.93	54.32%	0.00	65.18	55.03%	0.00
59	64.60	53.36%	0.00	64.85	54.18%	0.00	65.11	54.97%	0.00	65.38	55.73%	0.00
60	64.75	53.88%	0.00	65.02	54.74%	0.00	65.29	55.58%	0.00	65.57	56.40%	0.00
61	64.89	54.37%	0.00	65.18	55.28%	0.00	65.47	56.17%	0.00	65.76	57.05%	0.00
62	65.03	54.83%	0.00	65.33	55.79%	0.00	65.64	56.73%	0.00	65.95	57.67%	0.00
63	65.17	55.26%	0.00	65.48	56.27%	0.00	65.81	57.26%	0.00	66.14	58.25%	0.00
64	65.30	55.66%	0.00	65.63	56.72%	0.00	65.97	57.77%	0.00	66.32	58.81%	0.00
65	65.43	56.03%	0.00	65.77	57.14%	0.00	66.13	58.24%	0.00	66.49	59.34%	0.00
66	65.55	56.38%	0.00	65.91	57.52%	0.00	66.28	58.68%	0.00	66.66	59.83%	0.00
67	65.66	56.70%	0.00	66.04	57.88%	0.00	66.42	59.09%	0.00	66.82	60.29%	0.00
68	65.77	56.99%	0.00	66.16	58.22%	0.00	66.56	59.46%	0.00	66.98	60.71%	0.00
69	65.87	57.26%	0.00	66.27	58.53%	0.00	66.69	59.81%	0.00	67.12	61.11%	0.00
70	65.97	57.50%	0.00	66.38	58.81%	0.00	66.81	60.13%	0.00	67.26	61.47%	0.00
71	66.06	57.72%	0.00	66.49	59.05%	0.00	66.93	60.41%	0.00	67.39	61.80%	0.00
72	66.15	57.92%	0.00	66.58	59.29%	0.00	67.04	60.67%	0.00	67.51	62.10%	0.00
73	66.23	58.10%	0.00	66.67	59.49%	0.00	67.14	60.91%	0.00	67.63	62.37%	0.00
74	66.30	58.26%	0.00	66.76	59.67%	0.00	67.23	61.13%	0.00	67.74	62.61%	0.00
75	66.37	58.41%	0.00	66.83	59.84%	0.00	67.32	61.32%	0.00	67.84	62.83%	0.00
76	66.43	58.54%	0.00	66.91	59.99%	0.00	67.41	61.48%	0.00	67.93	63.03%	0.00
77	66.49	58.65%	0.00	66.97	60.12%	0.00	67.48	61.64%	0.00	68.02	63.20%	0.00
78	66.55	58.75%	0.00	67.04	60.23%	0.00	67.55	61.77%	0.00	68.10	63.36%	0.00
79	66.60	58.84%	0.00	67.09	60.34%	0.00	67.62	61.89%	0.00	68.18	63.49%	0.00
80	66.64	58.92%	0.00	67.15	60.43%	0.00	67.68	61.99%	0.00	68.25	63.61%	0.00
81	66.69	58.99%	0.00	67.20	60.50%	0.00	67.73	62.09%	0.00	68.31	63.71%	0.00
82	66.73	59.05%	0.00	67.24	60.58%	0.00	67.78	62.17%	0.00	68.37	63.80%	0.00
83	66.76	59.11%	0.00	67.28	60.64%	0.00	67.83	62.23%	0.00	68.42	63.89%	0.00
84	66.79	59.16%	0.00	67.31	60.70%	0.00	67.87	62.30%	0.00	68.46	63.97%	0.00
85	66.82	59.20%	0.00	67.35	60.74%	0.00	67.91	62.35%	0.00	68.51	64.02%	0.00
86	66.84	59.24%	0.00	67.37	60.79%	0.00	67.94	62.40%	0.00	68.54	64.08%	0.00
87	66.87	59.27%	0.00	67.40	60.83%	0.00	67.97	62.44%	0.00	68.58	64.13%	0.00
88	66.89	59.30%	0.00	67.43	60.85%	0.00	68.00	62.48%	0.00	68.61	64.17%	0.00
89	66.91	59.32%	0.00	67.45	60.88%	0.00	68.02	62.51%	0.00	68.64	64.20%	0.00
90	66.92	59.35%	0.00	67.47	60.90%	0.00	68.05	62.53%	0.00	68.66	64.24%	0.00
91	66.94	59.36%	0.00	67.48	60.93%	0.00	68.07	62.55%	0.00	68.69	64.25%	0.00
92	66.95	59.38%	0.00	67.50	60.94%	0.00	68.08	62.58%	0.00	68.71	64.27%	0.00
93	66.97	59.38%	0.00	67.52	60.95%	0.00	68.10	62.59%	0.00	68.73	64.29%	0.00
94	66.98	59.39%	0.00	67.53	60.96%	0.00	68.12	62.59%	0.00	68.74	64.31%	0.00
95	66.99	59.40%	0.00	67.54	60.97%	0.00	68.13	62.61%	0.00	68.76	64.31%	0.00
96	67.00	59.40%	0.00	67.55	60.98%	0.00	68.14	62.61%	0.00	68.77	64.32%	0.00
97	67.01	59.40%	0.00	67.56	60.98%	0.00	68.15	62.62%	0.00	68.79	64.32%	0.00
98	67.02	59.40%	0.00	67.57	60.98%	0.00	68.16	62.62%	0.00	68.80	64.32%	0.00
99	67.02	59.41%	0.00	67.58	60.98%	0.00	68.17	62.62%	0.00	68.81	64.32%	0.00
100	67.03	59.41%	0.00	67.59	60.98%	0.00	68.18	62.62%	0.00	68.82	64.32%	0.00

JOINT AND SURVIVORSHIP ANNUITY RATES CALCULATED
Gam1983 mortality sex distinct, set back 2 years

Interest rate	**6.00%**
Maximum payment per $1,000	**100**
Front end load	**0%**

	Female Age ==>											
	<===	63	====	<===	64	====	<===	65	====	<===	66	====
Male Age	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt
55	64.77	53.37%	0.00	64.97	53.88%	0.00	65.16	54.37%	0.00	65.36	54.82%	0.00
56	64.99	54.17%	0.00	65.20	54.73%	0.00	65.41	55.26%	0.00	65.62	55.77%	0.00
57	65.21	54.95%	0.00	65.44	55.56%	0.00	65.67	56.14%	0.00	65.89	56.70%	0.00
58	65.42	55.73%	0.00	65.67	56.39%	0.00	65.92	57.02%	0.00	66.16	57.63%	0.00
59	65.64	56.47%	0.00	65.91	57.19%	0.00	66.17	57.88%	0.00	66.44	58.53%	0.00
60	65.85	57.20%	0.00	66.14	57.97%	0.00	66.42	58.72%	0.00	66.71	59.44%	0.00
61	66.07	57.90%	0.00	66.37	58.74%	0.00	66.67	59.55%	0.00	66.98	60.32%	0.00
62	66.27	58.58%	0.00	66.60	59.47%	0.00	66.92	60.34%	0.00	67.25	61.19%	0.00
63	66.48	59.22%	0.00	66.82	60.18%	0.00	67.17	61.11%	0.00	67.52	62.02%	0.00
64	66.68	59.84%	0.00	67.04	60.86%	0.00	67.41	61.86%	0.00	67.79	62.83%	0.00
65	66.87	60.43%	0.00	67.25	61.51%	0.00	67.65	62.57%	0.00	68.05	63.62%	0.00
66	67.06	60.97%	0.00	67.46	62.12%	0.00	67.87	63.26%	0.00	68.30	64.37%	0.00
67	67.23	61.50%	0.00	67.66	62.70%	0.00	68.10	63.89%	0.00	68.54	65.09%	0.00
68	67.41	61.97%	0.00	67.85	63.24%	0.00	68.31	64.50%	0.00	68.78	65.77%	0.00
69	67.57	62.42%	0.00	68.04	63.74%	0.00	68.52	65.07%	0.00	69.01	66.40%	0.00
70	67.73	62.83%	0.00	68.21	64.21%	0.00	68.71	65.60%	0.00	69.23	67.00%	0.00
71	67.87	63.21%	0.00	68.38	64.63%	0.00	68.90	66.09%	0.00	69.44	67.56%	0.00
72	68.01	63.55%	0.00	68.53	65.03%	0.00	69.08	66.53%	0.00	69.64	68.07%	0.00
73	68.14	63.86%	0.00	68.68	65.39%	0.00	69.24	66.95%	0.00	69.83	68.54%	0.00
74	68.27	64.14%	0.00	68.82	65.71%	0.00	69.40	67.32%	0.00	70.01	68.97%	0.00
75	68.38	64.40%	0.00	68.95	66.00%	0.00	69.55	67.66%	0.00	70.18	69.36%	0.00
76	68.49	64.62%	0.00	69.07	66.27%	0.00	69.69	67.96%	0.00	70.34	69.71%	0.00
77	68.59	64.82%	0.00	69.19	66.49%	0.00	69.82	68.23%	0.00	70.49	70.02%	0.00
78	68.68	65.00%	0.00	69.29	66.71%	0.00	69.94	68.47%	0.00	70.62	70.31%	0.00
79	68.77	65.15%	0.00	69.39	66.89%	0.00	70.05	68.69%	0.00	70.75	70.56%	0.00
80	68.85	65.29%	0.00	69.48	67.05%	0.00	70.16	68.87%	0.00	70.87	70.77%	0.00
81	68.92	65.41%	0.00	69.56	67.19%	0.00	70.25	69.04%	0.00	70.98	70.97%	0.00
82	68.98	65.52%	0.00	69.64	67.31%	0.00	70.34	69.18%	0.00	71.08	71.14%	0.00
83	69.04	65.62%	0.00	69.71	67.42%	0.00	70.41	69.31%	0.00	71.17	71.29%	0.00
84	69.09	65.70%	0.00	69.77	67.51%	0.00	70.49	69.42%	0.00	71.25	71.42%	0.00
85	69.14	65.78%	0.00	69.82	67.60%	0.00	70.55	69.52%	0.00	71.32	71.54%	0.00
86	69.19	65.83%	0.00	69.87	67.68%	0.00	70.61	69.60%	0.00	71.39	71.64%	0.00
87	69.23	65.89%	0.00	69.92	67.74%	0.00	70.66	69.68%	0.00	71.45	71.72%	0.00
88	69.26	65.94%	0.00	69.96	67.79%	0.00	70.71	69.74%	0.00	71.51	71.79%	0.00
89	69.30	65.97%	0.00	70.00	67.83%	0.00	70.75	69.79%	0.00	71.56	71.85%	0.00
90	69.32	66.01%	0.00	70.03	67.87%	0.00	70.79	69.83%	0.00	71.60	71.91%	0.00
91	69.35	66.04%	0.00	70.06	67.90%	0.00	70.83	69.86%	0.00	71.64	71.95%	0.00
92	69.38	66.05%	0.00	70.09	67.93%	0.00	70.86	69.89%	0.00	71.68	71.98%	0.00
93	69.40	66.07%	0.00	70.12	67.94%	0.00	70.89	69.91%	0.00	71.72	72.00%	0.00
94	69.42	66.08%	0.00	70.14	67.96%	0.00	70.91	69.94%	0.00	71.75	72.01%	0.00
95	69.44	66.09%	0.00	70.16	67.97%	0.00	70.94	69.94%	0.00	71.77	72.03%	0.00
96	69.45	66.10%	0.00	70.18	67.97%	0.00	70.96	69.95%	0.00	71.80	72.04%	0.00
97	69.47	66.10%	0.00	70.20	67.97%	0.00	70.98	69.95%	0.00	71.82	72.05%	0.00
98	69.48	66.11%	0.00	70.21	67.98%	0.00	71.00	69.96%	0.00	71.84	72.05%	0.00
99	69.49	66.11%	0.00	70.23	67.98%	0.00	71.01	69.96%	0.00	71.86	72.05%	0.00
100	69.50	66.11%	0.00	70.24	67.98%	0.00	71.03	69.96%	0.00	71.88	72.05%	0.00

JOINT AND SURVIVORSHIP ANNUITY RATES CALCULATED
Gam1983 mortality sex distinct, set back 2 years

Interest rate	**6.00%**
Maximum payment per $1,000	**100**
Front end load	**0%**

	Female Age ==>											
	<===	67	====	<===	68	====	<===	69	====	<===	70	====
Male Age	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt
55	65.55	55.25%	0.00	65.73	55.66%	0.00	65.91	56.03%	0.00	66.09	56.37%	0.00
56	65.83	56.24%	0.00	66.03	56.68%	0.00	66.23	57.09%	0.00	66.42	57.48%	0.00
57	66.12	57.22%	0.00	66.34	57.71%	0.00	66.55	58.17%	0.00	66.77	58.58%	0.00
58	66.41	58.19%	0.00	66.65	58.73%	0.00	66.88	59.24%	0.00	67.12	59.70%	0.00
59	66.70	59.16%	0.00	66.96	59.76%	0.00	67.22	60.31%	0.00	67.47	60.83%	0.00
60	66.99	60.13%	0.00	67.28	60.77%	0.00	67.56	61.38%	0.00	67.84	61.95%	0.00
61	67.29	61.07%	0.00	67.60	61.77%	0.00	67.90	62.45%	0.00	68.20	63.08%	0.00
62	67.58	62.00%	0.00	67.92	62.76%	0.00	68.25	63.50%	0.00	68.58	64.19%	0.00
63	67.88	62.90%	0.00	68.23	63.75%	0.00	68.59	64.55%	0.00	68.95	65.31%	0.00
64	68.17	63.78%	0.00	68.55	64.70%	0.00	68.93	65.58%	0.00	69.32	66.41%	0.00
65	68.45	64.64%	0.00	68.86	65.63%	0.00	69.28	66.58%	0.00	69.69	67.49%	0.00
66	68.73	65.47%	0.00	69.17	66.53%	0.00	69.61	67.57%	0.00	70.06	68.56%	0.00
67	69.00	66.26%	0.00	69.47	67.41%	0.00	69.94	68.52%	0.00	70.42	69.60%	0.00
68	69.27	67.01%	0.00	69.76	68.24%	0.00	70.27	69.44%	0.00	70.78	70.60%	0.00
69	69.52	67.73%	0.00	70.05	69.03%	0.00	70.58	70.33%	0.00	71.13	71.58%	0.00
70	69.77	68.40%	0.00	70.32	69.79%	0.00	70.88	71.17%	0.00	71.46	72.52%	0.00
71	70.00	69.03%	0.00	70.58	70.50%	0.00	71.18	71.96%	0.00	71.79	73.41%	0.00
72	70.23	69.61%	0.00	70.83	71.17%	0.00	71.46	72.72%	0.00	72.11	74.25%	0.00
73	70.44	70.15%	0.00	71.07	71.79%	0.00	71.73	73.42%	0.00	72.41	75.04%	0.00
74	70.64	70.65%	0.00	71.30	72.35%	0.00	71.99	74.07%	0.00	72.70	75.78%	0.00
75	70.83	71.10%	0.00	71.52	72.87%	0.00	72.23	74.67%	0.00	72.98	76.47%	0.00
76	71.01	71.51%	0.00	71.73	73.34%	0.00	72.47	75.21%	0.00	73.24	77.11%	0.00
77	71.18	71.88%	0.00	71.92	73.77%	0.00	72.69	75.71%	0.00	73.49	77.68%	0.00
78	71.34	72.20%	0.00	72.10	74.16%	0.00	72.90	76.16%	0.00	73.73	78.20%	0.00
79	71.49	72.49%	0.00	72.27	74.50%	0.00	73.09	76.56%	0.00	73.95	78.68%	0.00
80	71.63	72.75%	0.00	72.42	74.81%	0.00	73.27	76.92%	0.00	74.16	79.10%	0.00
81	71.75	72.98%	0.00	72.57	75.08%	0.00	73.43	77.25%	0.00	74.35	79.48%	0.00
82	71.86	73.19%	0.00	72.70	75.32%	0.00	73.59	77.53%	0.00	74.52	79.82%	0.00
83	71.97	73.36%	0.00	72.82	75.53%	0.00	73.73	77.78%	0.00	74.69	80.12%	0.00
84	72.06	73.52%	0.00	72.93	75.71%	0.00	73.85	78.01%	0.00	74.83	80.39%	0.00
85	72.15	73.65%	0.00	73.03	75.88%	0.00	73.97	78.20%	0.00	74.97	80.62%	0.00
86	72.23	73.77%	0.00	73.12	76.02%	0.00	74.07	78.37%	0.00	75.09	80.82%	0.00
87	72.30	73.87%	0.00	73.20	76.14%	0.00	74.17	78.51%	0.00	75.20	81.00%	0.00
88	72.36	73.96%	0.00	73.28	76.24%	0.00	74.26	78.63%	0.00	75.31	81.14%	0.00
89	72.42	74.03%	0.00	73.35	76.32%	0.00	74.34	78.73%	0.00	75.40	81.27%	0.00
90	72.47	74.09%	0.00	73.41	76.39%	0.00	74.41	78.82%	0.00	75.48	81.38%	0.00
91	72.52	74.14%	0.00	73.46	76.46%	0.00	74.48	78.88%	0.00	75.56	81.45%	0.00
92	72.57	74.17%	0.00	73.52	76.49%	0.00	74.54	78.94%	0.00	75.63	81.52%	0.00
93	72.61	74.20%	0.00	73.56	76.53%	0.00	74.59	78.98%	0.00	75.70	81.56%	0.00
94	72.64	74.22%	0.00	73.60	76.56%	0.00	74.64	79.01%	0.00	75.75	81.61%	0.00
95	72.67	74.24%	0.00	73.64	76.57%	0.00	74.68	79.04%	0.00	75.81	81.63%	0.00
96	72.70	74.25%	0.00	73.68	76.58%	0.00	74.72	79.05%	0.00	75.86	81.64%	0.00
97	72.73	74.25%	0.00	73.71	76.59%	0.00	74.76	79.06%	0.00	75.90	81.65%	0.00
98	72.75	74.26%	0.00	73.73	76.60%	0.00	74.79	79.07%	0.00	75.94	81.66%	0.00
99	72.77	74.26%	0.00	73.76	76.60%	0.00	74.82	79.07%	0.00	75.97	81.67%	0.00
100	72.79	74.26%	0.00	73.78	76.60%	0.00	74.85	79.06%	0.00	76.01	81.66%	0.00

JOINT AND SURVIVORSHIP ANNUITY RATES CALCULATED
Gam1983 mortality sex distinct, set back 2 years

Interest rate	**6.00%**
Maximum payment per $1,000	**100**
Front end load	**0%**

Female Age ==>

	<===	71	====	<===	72	====	<===	73	====	<===	74	====
Male Age	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt
55	66.26	56.69%	0.00	66.42	56.98%	0.00	66.58	57.24%	0.00	66.73	57.48%	0.00
56	66.61	57.83%	0.00	66.79	58.15%	0.00	66.97	58.44%	0.00	67.13	58.71%	0.00
57	66.97	58.98%	0.00	67.17	59.34%	0.00	67.37	59.66%	0.00	67.55	59.96%	0.00
58	67.34	60.14%	0.00	67.56	60.54%	0.00	67.78	60.90%	0.00	67.98	61.23%	0.00
59	67.72	61.31%	0.00	67.97	61.75%	0.00	68.20	62.15%	0.00	68.43	62.52%	0.00
60	68.11	62.48%	0.00	68.38	62.97%	0.00	68.63	63.43%	0.00	68.89	63.83%	0.00
61	68.50	63.67%	0.00	68.79	64.21%	0.00	69.08	64.71%	0.00	69.36	65.16%	0.00
62	68.90	64.84%	0.00	69.22	65.45%	0.00	69.53	66.00%	0.00	69.84	66.51%	0.00
63	69.30	66.02%	0.00	69.65	66.69%	0.00	69.99	67.31%	0.00	70.33	67.87%	0.00
64	69.71	67.19%	0.00	70.09	67.92%	0.00	70.46	68.61%	0.00	70.83	69.24%	0.00
65	70.11	68.35%	0.00	70.52	69.16%	0.00	70.93	69.92%	0.00	71.33	70.62%	0.00
66	70.51	69.50%	0.00	70.96	70.39%	0.00	71.40	71.22%	0.00	71.84	72.00%	0.00
67	70.91	70.62%	0.00	71.39	71.60%	0.00	71.87	72.52%	0.00	72.35	73.37%	0.00
68	71.30	71.72%	0.00	71.82	72.79%	0.00	72.34	73.80%	0.00	72.86	74.74%	0.00
69	71.68	72.79%	0.00	72.24	73.95%	0.00	72.80	75.06%	0.00	73.36	76.10%	0.00
70	72.05	73.83%	0.00	72.65	75.09%	0.00	73.25	76.30%	0.00	73.86	77.43%	0.00
71	72.42	74.81%	0.00	73.05	76.18%	0.00	73.70	77.49%	0.00	74.35	78.74%	0.00
72	72.77	75.76%	0.00	73.44	77.23%	0.00	74.13	78.65%	0.00	74.82	80.02%	0.00
73	73.11	76.65%	0.00	73.82	78.23%	0.00	74.55	79.77%	0.00	75.29	81.25%	0.00
74	73.43	77.50%	0.00	74.19	79.17%	0.00	74.96	80.83%	0.00	75.75	82.42%	0.00
75	73.75	78.27%	0.00	74.54	80.07%	0.00	75.36	81.82%	0.00	76.19	83.55%	0.00
76	74.05	79.00%	0.00	74.88	80.89%	0.00	75.74	82.77%	0.00	76.62	84.61%	0.00
77	74.33	79.67%	0.00	75.20	81.67%	0.00	76.10	83.65%	0.00	77.03	85.61%	0.00
78	74.60	80.28%	0.00	75.51	82.37%	0.00	76.45	84.46%	0.00	77.42	86.55%	0.00
79	74.86	80.83%	0.00	75.80	83.01%	0.00	76.78	85.21%	0.00	77.80	87.41%	0.00
80	75.09	81.33%	0.00	76.07	83.60%	0.00	77.09	85.89%	0.00	78.15	88.20%	0.00
81	75.31	81.78%	0.00	76.32	84.13%	0.00	77.38	86.52%	0.00	78.48	88.93%	0.00
82	75.52	82.17%	0.00	76.56	84.60%	0.00	77.65	87.08%	0.00	78.79	89.59%	0.00
83	75.70	82.54%	0.00	76.77	85.03%	0.00	77.90	87.58%	0.00	79.07	90.20%	0.00
84	75.87	82.86%	0.00	76.97	85.41%	0.00	78.13	88.03%	0.00	79.34	90.74%	0.00
85	76.03	83.13%	0.00	77.15	85.75%	0.00	78.34	88.44%	0.00	79.58	91.23%	0.00
86	76.17	83.38%	0.00	77.32	86.04%	0.00	78.53	88.80%	0.00	79.81	91.65%	0.00
87	76.31	83.58%	0.00	77.47	86.30%	0.00	78.71	89.11%	0.00	80.02	92.02%	0.00
88	76.42	83.78%	0.00	77.61	86.52%	0.00	78.88	89.37%	0.00	80.21	92.35%	0.00
89	76.53	83.93%	0.00	77.74	86.70%	0.00	79.03	89.59%	0.00	80.39	92.62%	0.00
90	76.63	84.05%	0.00	77.86	86.85%	0.00	79.17	89.78%	0.00	80.55	92.85%	0.00
91	76.73	84.14%	0.00	77.97	86.97%	0.00	79.29	89.93%	0.00	80.70	93.03%	0.00
92	76.81	84.22%	0.00	78.07	87.06%	0.00	79.41	90.05%	0.00	80.83	93.19%	0.00
93	76.88	84.29%	0.00	78.16	87.14%	0.00	79.51	90.15%	0.00	80.96	93.29%	0.00
94	76.95	84.33%	0.00	78.24	87.19%	0.00	79.61	90.21%	0.00	81.07	93.38%	0.00
95	77.02	84.36%	0.00	78.31	87.24%	0.00	79.70	90.26%	0.00	81.18	93.44%	0.00
96	77.07	84.38%	0.00	78.38	87.26%	0.00	79.78	90.29%	0.00	81.27	93.49%	0.00
97	77.12	84.40%	0.00	78.44	87.28%	0.00	79.85	90.31%	0.00	81.36	93.51%	0.00
98	77.17	84.40%	0.00	78.49	87.29%	0.00	79.92	90.32%	0.00	81.44	93.52%	0.00
99	77.21	84.41%	0.00	78.55	87.28%	0.00	79.98	90.33%	0.00	81.51	93.53%	0.00
100	77.25	84.40%	0.00	78.59	87.29%	0.00	80.03	90.33%	0.00	81.58	93.52%	0.00

JOINT AND SURVIVORSHIP ANNUITY RATES CALCULATED
Gam1983 mortality sex distinct, set back 2 years

Interest rate	**6.00%**
Maximum payment per $1,000	**100**
Front end load	**0%**

Female Age ==>

	<===	75	====	<===	76	====	<===	77	====	<===	78	====
Male Age	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt
55	66.87	57.70%	0.00	67.01	57.88%	0.00	67.14	58.05%	0.00	67.26	58.20%	0.00
56	67.29	58.95%	0.00	67.44	59.16%	0.00	67.59	59.34%	0.00	67.72	59.52%	0.00
57	67.73	60.22%	0.00	67.89	60.47%	0.00	68.05	60.68%	0.00	68.20	60.87%	0.00
58	68.18	61.52%	0.00	68.36	61.80%	0.00	68.54	62.03%	0.00	68.71	62.24%	0.00
59	68.64	62.86%	0.00	68.85	63.15%	0.00	69.05	63.42%	0.00	69.24	63.65%	0.00
60	69.13	64.20%	0.00	69.36	64.53%	0.00	69.58	64.83%	0.00	69.79	65.10%	0.00
61	69.62	65.58%	0.00	69.88	65.95%	0.00	70.12	66.29%	0.00	70.36	66.58%	0.00
62	70.13	66.97%	0.00	70.42	67.39%	0.00	70.69	67.76%	0.00	70.95	68.10%	0.00
63	70.66	68.38%	0.00	70.97	68.85%	0.00	71.27	69.27%	0.00	71.56	69.65%	0.00
64	71.19	69.81%	0.00	71.54	70.33%	0.00	71.87	70.81%	0.00	72.20	71.22%	0.00
65	71.73	71.25%	0.00	72.11	71.84%	0.00	72.48	72.37%	0.00	72.84	72.84%	0.00
66	72.27	72.71%	0.00	72.70	73.36%	0.00	73.11	73.95%	0.00	73.50	74.49%	0.00
67	72.82	74.17%	0.00	73.29	74.89%	0.00	73.74	75.56%	0.00	74.18	76.15%	0.00
68	73.37	75.63%	0.00	73.88	76.44%	0.00	74.37	77.18%	0.00	74.86	77.85%	0.00
69	73.92	77.07%	0.00	74.47	77.98%	0.00	75.01	78.81%	0.00	75.54	79.57%	0.00
70	74.46	78.51%	0.00	75.06	79.52%	0.00	75.65	80.44%	0.00	76.23	81.29%	0.00
71	74.99	79.93%	0.00	75.64	81.04%	0.00	76.28	82.08%	0.00	76.91	83.03%	0.00
72	75.52	81.32%	0.00	76.22	82.54%	0.00	76.91	83.69%	0.00	77.59	84.76%	0.00
73	76.04	82.66%	0.00	76.78	84.02%	0.00	77.53	85.29%	0.00	78.27	86.47%	0.00
74	76.54	83.98%	0.00	77.34	85.45%	0.00	78.14	86.85%	0.00	78.94	88.17%	0.00
75	77.03	85.23%	0.00	77.89	86.83%	0.00	78.75	88.37%	0.00	79.61	89.82%	0.00
76	77.51	86.42%	0.00	78.42	88.17%	0.00	79.34	89.84%	0.00	80.26	91.44%	0.00
77	77.97	87.55%	0.00	78.94	89.43%	0.00	79.91	91.26%	0.00	80.90	93.00%	0.00
78	78.42	88.61%	0.00	79.44	90.63%	0.00	80.47	92.61%	0.00	81.52	94.51%	0.00
79	78.84	89.60%	0.00	79.91	91.77%	0.00	81.00	93.90%	0.00	82.12	95.95%	0.00
80	79.24	90.52%	0.00	80.36	92.83%	0.00	81.51	95.10%	0.00	82.69	97.32%	0.00
81	79.62	91.37%	0.00	80.79	93.81%	0.00	82.00	96.23%	0.00	83.23	98.62%	0.00
82	79.97	92.15%	0.00	81.19	94.72%	0.00	82.45	97.29%	0.00	83.75	99.83%	0.00
83	80.30	92.86%	0.00	81.57	95.55%	0.00	82.88	98.26%	0.00	84.23	100.00%	0.00
84	80.60	93.50%	0.00	81.92	96.31%	0.00	83.28	99.16%	0.00	84.69	100.00%	0.00
85	80.88	94.09%	0.00	82.24	97.01%	0.00	83.65	99.99%	0.00	85.11	100.00%	0.00
86	81.15	94.59%	0.00	82.54	97.63%	0.00	84.00	100.00%	0.00	85.51	100.00%	0.00
87	81.39	95.05%	0.00	82.82	98.18%	0.00	84.32	100.00%	0.00	85.88	100.00%	0.00
88	81.61	95.44%	0.00	83.08	98.65%	0.00	84.62	100.00%	0.00	86.23	100.00%	0.00
89	81.82	95.77%	0.00	83.32	99.06%	0.00	84.90	100.00%	0.00	86.55	100.00%	0.00
90	82.01	96.05%	0.00	83.54	99.41%	0.00	85.16	100.00%	0.00	86.84	100.00%	0.00
91	82.18	96.29%	0.00	83.75	99.68%	0.00	85.39	100.00%	0.00	87.12	100.00%	0.00
92	82.34	96.47%	0.00	83.94	99.91%	0.00	85.61	100.00%	0.00	87.38	100.00%	0.00
93	82.49	96.61%	0.00	84.11	100.00%	0.00	85.82	100.00%	0.00	87.61	100.00%	0.00
94	82.62	96.72%	0.00	84.27	100.00%	0.00	86.00	100.00%	0.00	87.83	100.00%	0.00
95	82.75	96.79%	0.00	84.41	100.00%	0.00	86.18	100.00%	0.00	88.04	100.00%	0.00
96	82.86	96.85%	0.00	84.55	100.00%	0.00	86.33	100.00%	0.00	88.22	100.00%	0.00
97	82.97	96.88%	0.00	84.67	100.00%	0.00	86.48	100.00%	0.00	88.39	100.00%	0.00
98	83.06	96.90%	0.00	84.78	100.00%	0.00	86.61	100.00%	0.00	88.55	100.00%	0.00
99	83.14	96.91%	0.00	84.88	100.00%	0.00	86.73	100.00%	0.00	88.69	100.00%	0.00
100	83.22	96.91%	0.00	84.98	100.00%	0.00	86.85	100.00%	0.00	88.83	100.00%	0.00

JOINT AND SURVIVORSHIP ANNUITY RATES CALCULATED
Gam1983 mortality sex distinct, set back 2 years

Interest rate	**6.00%**
Maximum payment per $1,000	**100**
Front end load	**0%**

Female Age ==>

	<===	79	====	<===	80	====	<===	81	====	<===	82	====
Male Age	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt
55	67.37	58.34%	0.00	67.47	58.46%	0.00	67.57	58.55%	0.00	67.66	58.64%	0.00
56	67.85	59.66%	0.00	67.96	59.80%	0.00	68.07	59.91%	0.00	68.18	60.00%	0.00
57	68.34	61.03%	0.00	68.48	61.17%	0.00	68.60	61.30%	0.00	68.71	61.41%	0.00
58	68.87	62.42%	0.00	69.01	62.59%	0.00	69.15	62.73%	0.00	69.28	62.85%	0.00
59	69.41	63.87%	0.00	69.58	64.04%	0.00	69.73	64.21%	0.00	69.88	64.34%	0.00
60	69.98	65.34%	0.00	70.17	65.54%	0.00	70.35	65.71%	0.00	70.51	65.87%	0.00
61	70.58	66.84%	0.00	70.79	67.07%	0.00	70.99	67.26%	0.00	71.17	67.44%	0.00
62	71.20	68.39%	0.00	71.43	68.65%	0.00	71.66	68.86%	0.00	71.86	69.06%	0.00
63	71.84	69.97%	0.00	72.10	70.27%	0.00	72.35	70.52%	0.00	72.59	70.73%	0.00
64	72.50	71.60%	0.00	72.80	71.92%	0.00	73.08	72.20%	0.00	73.34	72.45%	0.00
65	73.19	73.26%	0.00	73.52	73.62%	0.00	73.83	73.95%	0.00	74.13	74.22%	0.00
66	73.89	74.96%	0.00	74.25	75.38%	0.00	74.61	75.73%	0.00	74.94	76.05%	0.00
67	74.60	76.69%	0.00	75.01	77.16%	0.00	75.40	77.58%	0.00	75.78	77.92%	0.00
68	75.33	78.45%	0.00	75.78	78.99%	0.00	76.22	79.45%	0.00	76.64	79.85%	0.00
69	76.06	80.25%	0.00	76.56	80.85%	0.00	77.04	81.39%	0.00	77.51	81.84%	0.00
70	76.79	82.07%	0.00	77.35	82.74%	0.00	77.88	83.35%	0.00	78.40	83.88%	0.00
71	77.53	83.89%	0.00	78.14	84.67%	0.00	78.73	85.35%	0.00	79.30	85.96%	0.00
72	78.27	85.73%	0.00	78.93	86.61%	0.00	79.58	87.39%	0.00	80.22	88.06%	0.00
73	79.01	87.55%	0.00	79.73	88.55%	0.00	80.44	89.43%	0.00	81.14	90.21%	0.00
74	79.74	89.38%	0.00	80.53	90.49%	0.00	81.30	91.49%	0.00	82.06	92.38%	0.00
75	80.47	91.17%	0.00	81.32	92.42%	0.00	82.16	93.55%	0.00	83.00	94.55%	0.00
76	81.18	92.94%	0.00	82.11	94.32%	0.00	83.02	95.60%	0.00	83.93	96.73%	0.00
77	81.89	94.65%	0.00	82.88	96.20%	0.00	83.87	97.62%	0.00	84.86	98.90%	0.00
78	82.58	96.32%	0.00	83.64	98.03%	0.00	84.71	99.61%	0.00	85.77	100.00%	0.00
79	83.24	97.93%	0.00	84.38	99.81%	0.00	85.52	100.00%	0.00	86.67	100.00%	0.00
80	83.88	99.48%	0.00	85.09	100.00%	0.00	86.31	100.00%	0.00	87.54	100.00%	0.00
81	84.49	100.00%	0.00	85.77	100.00%	0.00	87.07	100.00%	0.00	88.39	100.00%	0.00
82	85.07	100.00%	0.00	86.42	100.00%	0.00	87.80	100.00%	0.00	89.20	100.00%	0.00
83	85.62	100.00%	0.00	87.04	100.00%	0.00	88.49	100.00%	0.00	89.97	100.00%	0.00
84	86.13	100.00%	0.00	87.62	100.00%	0.00	89.15	100.00%	0.00	90.71	100.00%	0.00
85	86.62	100.00%	0.00	88.17	100.00%	0.00	89.77	100.00%	0.00	91.41	100.00%	0.00
86	87.07	100.00%	0.00	88.69	100.00%	0.00	90.35	100.00%	0.00	92.07	100.00%	0.00
87	87.50	100.00%	0.00	89.17	100.00%	0.00	90.91	100.00%	0.00	92.69	100.00%	0.00
88	87.89	100.00%	0.00	89.63	100.00%	0.00	91.42	100.00%	0.00	93.28	100.00%	0.00
89	88.27	100.00%	0.00	90.05	100.00%	0.00	91.91	100.00%	0.00	93.84	100.00%	4.72
90	88.61	100.00%	0.00	90.45	100.00%	0.00	92.37	100.00%	0.00	94.36	100.00%	11.31
91	88.93	100.00%	0.00	90.82	100.00%	0.00	92.79	100.00%	0.00	94.85	100.00%	17.25
92	89.23	100.00%	0.00	91.17	100.00%	0.00	93.19	100.00%	0.00	95.31	100.00%	22.63
93	89.50	100.00%	0.00	91.49	100.00%	0.00	93.56	100.00%	0.55	95.74	100.00%	27.50
94	89.76	100.00%	0.00	91.78	100.00%	0.00	93.91	100.00%	4.42	96.14	100.00%	31.91
95	90.00	100.00%	0.00	92.06	100.00%	0.00	94.23	100.00%	7.97	96.51	100.00%	35.92
96	90.22	100.00%	0.00	92.32	100.00%	0.00	94.53	100.00%	11.09	96.86	100.00%	39.46
97	90.42	100.00%	0.00	92.55	100.00%	0.00	94.80	100.00%	13.99	97.18	100.00%	42.71
98	90.60	100.00%	0.00	92.76	100.00%	0.00	95.05	100.00%	16.57	97.47	100.00%	45.68
99	90.77	100.00%	0.00	92.96	100.00%	0.00	95.29	100.00%	18.78	97.75	100.00%	48.24
100	90.93	100.00%	0.00	93.15	100.00%	0.00	95.51	100.00%	20.74	98.01	100.00%	50.49

JOINT AND SURVIVORSHIP ANNUITY RATES CALCULATED
Gam1983 mortality sex distinct, set back 2 years

Interest rate	**6.00%**
Maximum payment per $1,000	**100**
Front end load	**0%**

Female Age ==>

	<===	83	====	<===	84	====	<===	85	====	<===	86	====
Male Age	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt
55	67.75	58.71%	0.00	67.83	58.77%	0.00	67.90	58.82%	0.00	67.97	58.86%	0.00
56	68.27	60.09%	0.00	68.36	60.15%	0.00	68.44	60.21%	0.00	68.52	60.25%	0.00
57	68.82	61.50%	0.00	68.92	61.58%	0.00	69.01	61.64%	0.00	69.10	61.69%	0.00
58	69.40	62.96%	0.00	69.51	63.04%	0.00	69.62	63.11%	0.00	69.71	63.17%	0.00
59	70.02	64.45%	0.00	70.14	64.55%	0.00	70.26	64.63%	0.00	70.37	64.69%	0.00
60	70.66	66.00%	0.00	70.81	66.10%	0.00	70.94	66.19%	0.00	71.06	66.26%	0.00
61	71.34	67.59%	0.00	71.51	67.70%	0.00	71.66	67.79%	0.00	71.80	67.87%	0.00
62	72.06	69.22%	0.00	72.24	69.35%	0.00	72.41	69.46%	0.00	72.57	69.55%	0.00
63	72.81	70.91%	0.00	73.02	71.06%	0.00	73.21	71.18%	0.00	73.39	71.28%	0.00
64	73.59	72.66%	0.00	73.83	72.82%	0.00	74.05	72.96%	0.00	74.26	73.06%	0.00
65	74.41	74.45%	0.00	74.68	74.64%	0.00	74.93	74.79%	0.00	75.17	74.91%	0.00
66	75.26	76.31%	0.00	75.56	76.52%	0.00	75.85	76.69%	0.00	76.11	76.84%	0.00
67	76.14	78.22%	0.00	76.48	78.46%	0.00	76.80	78.66%	0.00	77.10	78.82%	0.00
68	77.04	80.19%	0.00	77.42	80.48%	0.00	77.78	80.71%	0.00	78.13	80.88%	0.00
69	77.96	82.23%	0.00	78.39	82.55%	0.00	78.80	82.81%	0.00	79.19	83.01%	0.00
70	78.90	84.32%	0.00	79.38	84.69%	0.00	79.84	84.99%	0.00	80.28	85.23%	0.00
71	79.86	86.46%	0.00	80.39	86.90%	0.00	80.91	87.24%	0.00	81.40	87.52%	0.00
72	80.83	88.66%	0.00	81.43	89.15%	0.00	82.00	89.55%	0.00	82.55	89.88%	0.00
73	81.81	90.89%	0.00	82.47	91.46%	0.00	83.11	91.93%	0.00	83.73	92.30%	0.00
74	82.81	93.15%	0.00	83.54	93.81%	0.00	84.25	94.36%	0.00	84.94	94.79%	0.00
75	83.82	95.44%	0.00	84.62	96.20%	0.00	85.40	96.83%	0.00	86.17	97.34%	0.00
76	84.83	97.74%	0.00	85.71	98.61%	0.00	86.58	99.33%	0.00	87.42	99.93%	0.00
77	85.83	100.00%	0.00	86.80	100.00%	0.00	87.75	100.00%	0.00	88.69	100.00%	0.00
78	86.83	100.00%	0.00	87.89	100.00%	0.00	88.93	100.00%	0.00	89.96	100.00%	0.00
79	87.82	100.00%	0.00	88.96	100.00%	0.00	90.10	100.00%	0.00	91.23	100.00%	0.00
80	88.78	100.00%	0.00	90.02	100.00%	0.00	91.26	100.00%	0.00	92.49	100.00%	0.00
81	89.71	100.00%	0.00	91.04	100.00%	0.00	92.38	100.00%	0.00	93.72	100.00%	0.00
82	90.61	100.00%	0.00	92.04	100.00%	0.00	93.48	100.00%	0.00	94.93	100.00%	0.00
83	91.47	100.00%	0.00	93.00	100.00%	0.00	94.54	100.00%	0.00	96.10	100.00%	11.71
84	92.30	100.00%	0.00	93.92	100.00%	0.00	95.56	100.00%	12.91	97.23	100.00%	26.64
85	93.08	100.00%	0.00	94.79	100.00%	9.57	96.54	100.00%	25.98	98.32	100.00%	40.45
86	93.83	100.00%	1.66	95.63	100.00%	20.80	97.48	100.00%	37.96	99.37	100.00%	53.15
87	94.53	100.00%	11.25	96.43	100.00%	31.03	98.37	100.00%	49.02	100.00	100.00%	68.35
88	95.20	100.00%	19.93	97.19	100.00%	40.39	99.23	100.00%	59.06	100.00	100.00%	87.84
89	95.84	100.00%	27.75	97.90	100.00%	49.06	100.00	100.00%	68.73	100.00	100.00%	105.76
90	96.43	100.00%	35.02	98.58	100.00%	56.91	100.00	100.00%	84.32	100.00	100.00%	122.26
91	96.99	100.00%	41.59	99.22	100.00%	64.12	100.00	100.00%	98.63	100.00	100.00%	137.44
92	97.52	100.00%	47.53	99.83	100.00%	70.64	100.00	100.00%	111.77	100.00	100.00%	151.41
93	98.01	100.00%	53.01	100.00	100.00%	80.32	100.00	100.00%	123.83	100.00	100.00%	164.26
94	98.47	100.00%	57.96	100.00	100.00%	90.60	100.00	100.00%	134.87	100.00	100.00%	176.07
95	98.91	100.00%	62.35	100.00	100.00%	100.01	100.00	100.00%	145.00	100.00	100.00%	186.92
96	99.31	100.00%	66.42	100.00	100.00%	108.59	100.00	100.00%	154.25	100.00	100.00%	196.87
97	99.68	100.00%	70.12	100.00	100.00%	116.42	100.00	100.00%	162.73	100.00	100.00%	206.00
98	100.00	100.00%	73.68	100.00	100.00%	123.55	100.00	100.00%	170.48	100.00	100.00%	214.37
99	100.00	100.00%	79.62	100.00	100.00%	130.05	100.00	100.00%	177.54	100.00	100.00%	222.04
100	100.00	100.00%	84.99	100.00	100.00%	135.92	100.00	100.00%	183.96	100.00	100.00%	229.01

JOINT AND SURVIVORSHIP ANNUITY RATES CALCULATED
Gam1983 mortality sex distinct, set back 2 years

Interest rate	**6.00%**
Maximum payment per $1,000	**100**
Front end load	**0%**

Female Age ==>

	<===	87	====	<===	88	====	<===	89	====	<===	90	====
Male Age	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt
55	68.03	58.90%	0.00	68.09	58.92%	0.00	68.14	58.94%	0.00	68.19	58.95%	0.00
56	68.59	60.29%	0.00	68.65	60.32%	0.00	68.71	60.34%	0.00	68.76	60.36%	0.00
57	69.18	61.73%	0.00	69.25	61.76%	0.00	69.32	61.78%	0.00	69.38	61.79%	0.00
58	69.80	63.22%	0.00	69.89	63.24%	0.00	69.96	63.27%	0.00	70.03	63.28%	0.00
59	70.47	64.74%	0.00	70.56	64.78%	0.00	70.65	64.80%	0.00	70.73	64.81%	0.00
60	71.18	66.31%	0.00	71.28	66.35%	0.00	71.38	66.38%	0.00	71.47	66.40%	0.00
61	71.93	67.93%	0.00	72.05	67.98%	0.00	72.16	68.01%	0.00	72.26	68.03%	0.00
62	72.72	69.61%	0.00	72.86	69.66%	0.00	72.99	69.69%	0.00	73.11	69.71%	0.00
63	73.56	71.35%	0.00	73.72	71.40%	0.00	73.87	71.43%	0.00	74.00	71.45%	0.00
64	74.45	73.14%	0.00	74.63	73.20%	0.00	74.80	73.24%	0.00	74.96	73.25%	0.00
65	75.39	75.00%	0.00	75.59	75.07%	0.00	75.79	75.10%	0.00	75.96	75.13%	0.00
66	76.37	76.93%	0.00	76.60	77.00%	0.00	76.82	77.05%	0.00	77.03	77.06%	0.00
67	77.39	78.93%	0.00	77.66	79.01%	0.00	77.91	79.06%	0.00	78.15	79.08%	0.00
68	78.45	81.02%	0.00	78.76	81.10%	0.00	79.05	81.15%	0.00	79.32	81.18%	0.00
69	79.56	83.16%	0.00	79.91	83.27%	0.00	80.24	83.32%	0.00	80.54	83.36%	0.00
70	80.70	85.40%	0.00	81.09	85.53%	0.00	81.47	85.59%	0.00	81.82	85.62%	0.00
71	81.87	87.72%	0.00	82.32	87.86%	0.00	82.74	87.95%	0.00	83.15	87.97%	0.00
72	83.08	90.11%	0.00	83.59	90.27%	0.00	84.07	90.37%	0.00	84.52	90.42%	0.00
73	84.32	92.59%	0.00	84.89	92.78%	0.00	85.44	92.89%	0.00	85.95	92.95%	0.00
74	85.60	95.12%	0.00	86.24	95.35%	0.00	86.86	95.49%	0.00	87.44	95.56%	0.00
75	86.91	97.73%	0.00	87.63	98.00%	0.00	88.32	98.17%	0.00	88.98	98.26%	0.00
76	88.25	100.00%	0.00	89.05	100.00%	0.00	89.83	100.00%	0.00	90.58	100.00%	0.00
77	89.61	100.00%	0.00	90.51	100.00%	0.00	91.38	100.00%	0.00	92.22	100.00%	0.00
78	90.98	100.00%	0.00	91.98	100.00%	0.00	92.95	100.00%	0.00	93.90	100.00%	0.00
79	92.35	100.00%	0.00	93.46	100.00%	0.00	94.54	100.00%	0.00	95.60	100.00%	0.00
80	93.72	100.00%	0.00	94.93	100.00%	0.00	96.13	100.00%	0.00	97.31	100.00%	0.00
81	95.06	100.00%	0.00	96.40	100.00%	0.00	97.72	100.00%	2.64	99.02	100.00%	7.68
82	96.38	100.00%	6.09	97.84	100.00%	14.70	99.29	100.00%	21.67	100.00	100.00%	34.11
83	97.67	100.00%	22.84	99.25	100.00%	32.10	100.00	100.00%	47.53	100.00	100.00%	67.91
84	98.92	100.00%	38.46	100.00	100.00%	54.28	100.00	100.00%	78.00	100.00	100.00%	99.30
85	100.00	100.00%	54.17	100.00	100.00%	81.51	100.00	100.00%	106.20	100.00	100.00%	128.39
86	100.00	100.00%	78.31	100.00	100.00%	106.63	100.00	100.00%	132.25	100.00	100.00%	155.31
87	100.00	100.00%	100.51	100.00	100.00%	129.78	100.00	100.00%	156.29	100.00	100.00%	180.20
88	100.00	100.00%	120.95	100.00	100.00%	151.14	100.00	100.00%	178.53	100.00	100.00%	203.25
89	100.00	100.00%	139.79	100.00	100.00%	170.87	100.00	100.00%	199.09	100.00	100.00%	224.61
90	100.00	100.00%	157.17	100.00	100.00%	189.10	100.00	100.00%	218.14	100.00	100.00%	244.44
91	100.00	100.00%	173.20	100.00	100.00%	205.96	100.00	100.00%	235.80	100.00	100.00%	262.84
92	100.00	100.00%	187.99	100.00	100.00%	221.55	100.00	100.00%	252.15	100.00	100.00%	279.92
93	100.00	100.00%	201.64	100.00	100.00%	235.96	100.00	100.00%	267.30	100.00	100.00%	295.79
94	100.00	100.00%	214.20	100.00	100.00%	249.26	100.00	100.00%	281.32	100.00	100.00%	310.49
95	100.00	100.00%	225.77	100.00	100.00%	261.55	100.00	100.00%	294.30	100.00	100.00%	324.14
96	100.00	100.00%	236.41	100.00	100.00%	272.88	100.00	100.00%	306.30	100.00	100.00%	336.78
97	100.00	100.00%	246.21	100.00	100.00%	283.33	100.00	100.00%	317.40	100.00	100.00%	348.50
98	100.00	100.00%	255.22	100.00	100.00%	292.97	100.00	100.00%	327.65	100.00	100.00%	359.37
99	100.00	100.00%	263.48	100.00	100.00%	301.84	100.00	100.00%	337.12	100.00	100.00%	369.42
100	100.00	100.00%	271.03	100.00	100.00%	309.96	100.00	100.00%	345.82	100.00	100.00%	378.69

JOINT AND SURVIVORSHIP ANNUITY RATES CALCULATED
Gam1983 mortality sex distinct, set back 2 years

Interest rate	**6.00%**
Maximum payment per $1,000	**100**
Front end load	**0%**

Female Age ==>

	<===	91	====	<===	92	====	<===	93	====	<===	94	====
Male Age	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt
55	68.23	58.96%	0.00	68.27	58.96%	0.00	68.31	58.96%	0.00	68.34	58.97%	0.00
56	68.81	60.36%	0.00	68.86	60.37%	0.00	68.90	60.37%	0.00	68.94	60.37%	0.00
57	69.43	61.81%	0.00	69.48	61.81%	0.00	69.53	61.81%	0.00	69.57	61.82%	0.00
58	70.09	63.30%	0.00	70.15	63.30%	0.00	70.20	63.30%	0.00	70.25	63.30%	0.00
59	70.80	64.83%	0.00	70.86	64.84%	0.00	70.92	64.84%	0.00	70.98	64.83%	0.00
60	71.55	66.41%	0.00	71.63	66.41%	0.00	71.69	66.42%	0.00	71.75	66.42%	0.00
61	72.36	68.03%	0.00	72.44	68.04%	0.00	72.52	68.04%	0.00	72.59	68.04%	0.00
62	73.21	69.72%	0.00	73.31	69.72%	0.00	73.40	69.72%	0.00	73.48	69.72%	0.00
63	74.13	71.46%	0.00	74.24	71.46%	0.00	74.34	71.46%	0.00	74.43	71.45%	0.00
64	75.10	73.26%	0.00	75.23	73.26%	0.00	75.35	73.25%	0.00	75.45	73.25%	0.00
65	76.13	75.13%	0.00	76.28	75.12%	0.00	76.42	75.11%	0.00	76.54	75.10%	0.00
66	77.22	77.07%	0.00	77.39	77.06%	0.00	77.55	77.04%	0.00	77.69	77.03%	0.00
67	78.37	79.08%	0.00	78.57	79.06%	0.00	78.75	79.05%	0.00	78.92	79.02%	0.00
68	79.57	81.18%	0.00	79.80	81.16%	0.00	80.01	81.14%	0.00	80.21	81.10%	0.00
69	80.83	83.35%	0.00	81.10	83.33%	0.00	81.34	83.30%	0.00	81.57	83.26%	0.00
70	82.15	85.62%	0.00	82.45	85.60%	0.00	82.74	85.55%	0.00	82.99	85.52%	0.00
71	83.52	87.97%	0.00	83.87	87.95%	0.00	84.20	87.90%	0.00	84.49	87.85%	0.00
72	84.95	90.42%	0.00	85.35	90.39%	0.00	85.72	90.34%	0.00	86.07	90.27%	0.00
73	86.44	92.95%	0.00	86.90	92.91%	0.00	87.33	92.85%	0.00	87.72	92.79%	0.00
74	88.00	95.56%	0.00	88.52	95.53%	0.00	89.01	95.46%	0.00	89.46	95.38%	0.00
75	89.62	98.26%	0.00	90.21	98.22%	0.00	90.77	98.15%	0.00	91.29	98.06%	0.00
76	91.30	100.00%	0.00	91.97	100.00%	0.00	92.61	100.00%	0.00	93.20	100.00%	0.00
77	93.03	100.00%	0.00	93.80	100.00%	0.00	94.53	100.00%	0.00	95.21	100.00%	0.00
78	94.81	100.00%	0.00	95.68	100.00%	0.00	96.51	100.00%	0.00	97.29	100.00%	0.00
79	96.63	100.00%	0.00	97.61	100.00%	0.00	98.55	100.00%	0.00	99.44	100.00%	0.00
80	98.46	100.00%	0.00	99.57	100.00%	0.00	100.00	100.00%	0.95	100.00	100.00%	12.00
81	100.00	100.00%	14.34	100.00	100.00%	29.02	100.00	100.00%	42.11	100.00	100.00%	53.83
82	100.00	100.00%	51.47	100.00	100.00%	66.95	100.00	100.00%	80.78	100.00	100.00%	93.19
83	100.00	100.00%	86.13	100.00	100.00%	102.41	100.00	100.00%	116.98	100.00	100.00%	130.06
84	100.00	100.00%	118.37	100.00	100.00%	135.44	100.00	100.00%	150.73	100.00	100.00%	164.49
85	100.00	100.00%	148.29	100.00	100.00%	166.13	100.00	100.00%	182.13	100.00	100.00%	196.55
86	100.00	100.00%	176.02	100.00	100.00%	194.61	100.00	100.00%	211.32	100.00	100.00%	226.38
87	100.00	100.00%	201.70	100.00	100.00%	221.02	100.00	100.00%	238.40	100.00	100.00%	254.10
88	100.00	100.00%	225.52	100.00	100.00%	245.55	100.00	100.00%	263.60	100.00	100.00%	279.91
89	100.00	100.00%	247.62	100.00	100.00%	268.35	100.00	100.00%	287.05	100.00	100.00%	303.97
90	100.00	100.00%	268.17	100.00	100.00%	289.58	100.00	100.00%	308.91	100.00	100.00%	326.43
91	100.00	100.00%	287.28	100.00	100.00%	309.36	100.00	100.00%	329.31	100.00	100.00%	347.41
92	100.00	100.00%	305.06	100.00	100.00%	327.78	100.00	100.00%	348.34	100.00	100.00%	367.02
93	100.00	100.00%	321.59	100.00	100.00%	344.95	100.00	100.00%	366.11	100.00	100.00%	385.34
94	100.00	100.00%	336.95	100.00	100.00%	360.92	100.00	100.00%	382.67	100.00	100.00%	402.45
95	100.00	100.00%	351.23	100.00	100.00%	375.81	100.00	100.00%	398.12	100.00	100.00%	418.45
96	100.00	100.00%	364.49	100.00	100.00%	389.65	100.00	100.00%	412.52	100.00	100.00%	433.38
97	100.00	100.00%	376.81	100.00	100.00%	402.55	100.00	100.00%	425.96	100.00	100.00%	447.33
98	100.00	100.00%	388.26	100.00	100.00%	414.56	100.00	100.00%	438.50	100.00	100.00%	460.38
99	100.00	100.00%	398.88	100.00	100.00%	425.72	100.00	100.00%	450.19	100.00	100.00%	472.56
100	100.00	100.00%	408.70	100.00	100.00%	436.06	100.00	100.00%	461.04	100.00	100.00%	483.90

JOINT AND SURVIVORSHIP ANNUITY RATES CALCULATED
Gam1983 mortality sex distinct, set back 2 years
Interest rate 6.00%
Maximum payment per $1,000 100
Front end load 0%

Female Age ==>

	<===	95	====	<===	96	====	<===	97	====	<===	98	====
Male Age	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt
55	68.37	58.97%	0.00	68.40	58.97%	0.00	68.42	58.97%	0.00	68.44	58.97%	0.00
56	68.97	60.37%	0.00	69.00	60.37%	0.00	69.03	60.37%	0.00	69.05	60.38%	0.00
57	69.61	61.81%	0.00	69.64	61.82%	0.00	69.67	61.82%	0.00	69.70	61.82%	0.00
58	70.29	63.30%	0.00	70.33	63.30%	0.00	70.36	63.31%	0.00	70.39	63.31%	0.00
59	71.02	64.84%	0.00	71.07	64.83%	0.00	71.10	64.84%	0.00	71.14	64.84%	0.00
60	71.81	66.41%	0.00	71.86	66.41%	0.00	71.90	66.41%	0.00	71.94	66.42%	0.00
61	72.65	68.04%	0.00	72.71	68.03%	0.00	72.75	68.04%	0.00	72.80	68.04%	0.00
62	73.55	69.71%	0.00	73.62	69.71%	0.00	73.67	69.71%	0.00	73.72	69.72%	0.00
63	74.52	71.44%	0.00	74.59	71.44%	0.00	74.66	71.44%	0.00	74.72	71.44%	0.00
64	75.55	73.23%	0.00	75.64	73.22%	0.00	75.71	73.23%	0.00	75.78	73.22%	0.00
65	76.65	75.09%	0.00	76.75	75.08%	0.00	76.84	75.07%	0.00	76.92	75.07%	0.00
66	77.82	77.01%	0.00	77.94	77.00%	0.00	78.05	76.98%	0.00	78.14	76.98%	0.00
67	79.07	79.00%	0.00	79.20	78.99%	0.00	79.33	78.97%	0.00	79.44	78.96%	0.00
68	80.38	81.08%	0.00	80.54	81.05%	0.00	80.69	81.03%	0.00	80.81	81.02%	0.00
69	81.77	83.23%	0.00	81.96	83.19%	0.00	82.12	83.18%	0.00	82.27	83.16%	0.00
70	83.23	85.47%	0.00	83.44	85.44%	0.00	83.64	85.40%	0.00	83.81	85.39%	0.00
71	84.76	87.80%	0.00	85.01	87.76%	0.00	85.24	87.72%	0.00	85.44	87.70%	0.00
72	86.38	90.22%	0.00	86.67	90.16%	0.00	86.92	90.13%	0.00	87.16	90.10%	0.00
73	88.08	92.72%	0.00	88.41	92.66%	0.00	88.71	92.61%	0.00	88.98	92.58%	0.00
74	89.87	95.31%	0.00	90.25	95.24%	0.00	90.60	95.18%	0.00	90.91	95.15%	0.00
75	91.76	97.98%	0.00	92.21	97.89%	0.00	92.61	97.82%	0.00	92.97	97.79%	0.00
76	93.76	100.00%	0.00	94.27	100.00%	0.00	94.73	100.00%	0.00	95.15	100.00%	0.00
77	95.84	100.00%	0.00	96.43	100.00%	0.00	96.97	100.00%	0.00	97.47	100.00%	0.00
78	98.02	100.00%	0.00	98.70	100.00%	0.00	99.33	100.00%	0.00	99.90	100.00%	0.00
79	100.00	100.00%	0.00	100.00	100.00%	0.00	100.00	100.00%	0.00	100.00	100.00%	0.14
80	100.00	100.00%	21.92	100.00	100.00%	30.91	100.00	100.00%	39.12	100.00	100.00%	46.71
81	100.00	100.00%	64.38	100.00	100.00%	73.95	100.00	100.00%	82.71	100.00	100.00%	90.82
82	100.00	100.00%	104.36	100.00	100.00%	114.52	100.00	100.00%	123.84	100.00	100.00%	132.48
83	100.00	100.00%	141.87	100.00	100.00%	152.62	100.00	100.00%	162.50	100.00	100.00%	171.67
84	100.00	100.00%	176.91	100.00	100.00%	188.25	100.00	100.00%	198.68	100.00	100.00%	208.40
85	100.00	100.00%	209.59	100.00	100.00%	221.51	100.00	100.00%	232.49	100.00	100.00%	242.74
86	100.00	100.00%	240.03	100.00	100.00%	252.51	100.00	100.00%	264.04	100.00	100.00%	274.81
87	100.00	100.00%	268.34	100.00	100.00%	281.38	100.00	100.00%	293.45	100.00	100.00%	304.74
88	100.00	100.00%	294.73	100.00	100.00%	308.33	100.00	100.00%	320.92	100.00	100.00%	332.72
89	100.00	100.00%	319.36	100.00	100.00%	333.50	100.00	100.00%	346.61	100.00	100.00%	358.92
90	100.00	100.00%	342.38	100.00	100.00%	357.05	100.00	100.00%	370.67	100.00	100.00%	383.49
91	100.00	100.00%	363.92	100.00	100.00%	379.11	100.00	100.00%	393.24	100.00	100.00%	406.55
92	100.00	100.00%	384.06	100.00	100.00%	399.77	100.00	100.00%	414.40	100.00	100.00%	428.21
93	100.00	100.00%	402.92	100.00	100.00%	419.14	100.00	100.00%	434.27	100.00	100.00%	448.57
94	100.00	100.00%	420.55	100.00	100.00%	437.27	100.00	100.00%	452.89	100.00	100.00%	467.67
95	100.00	100.00%	437.06	100.00	100.00%	454.28	100.00	100.00%	470.37	100.00	100.00%	485.64
96	100.00	100.00%	452.49	100.00	100.00%	470.19	100.00	100.00%	486.76	100.00	100.00%	502.50
97	100.00	100.00%	466.94	100.00	100.00%	485.12	100.00	100.00%	502.15	100.00	100.00%	518.36
98	100.00	100.00%	480.48	100.00	100.00%	499.12	100.00	100.00%	516.62	100.00	100.00%	533.29
99	100.00	100.00%	493.14	100.00	100.00%	512.24	100.00	100.00%	530.19	100.00	100.00%	547.33
100	100.00	100.00%	504.93	100.00	100.00%	524.49	100.00	100.00%	542.89	100.00	100.00%	560.48

JOINT AND SURVIVORSHIP ANNUITY RATES CALCULATED
Gam1983 mortality sex distinct, set back 2 years

Interest rate	**6.00%**
Maximum payment per $1,000	**100**
Front end load	**0%**

	Female Age ==>					
	<===	99	====	<===	100	====
Male Age	Annual Annuity	Tax Free Portion %	Tax Receipt	Annual Annuity	Tax Free Portion %	Tax Receipt per $1000 Gift
55	68.46	58.98%	0.00	68.48	58.98%	0.00
56	69.07	60.38%	0.00	69.09	60.38%	0.00
57	69.72	61.83%	0.00	69.74	61.83%	0.00
58	70.42	63.31%	0.00	70.44	63.32%	0.00
59	71.17	64.84%	0.00	71.19	64.86%	0.00
60	71.97	66.42%	0.00	72.00	66.43%	0.00
61	72.84	68.04%	0.00	72.87	68.05%	0.00
62	73.77	69.72%	0.00	73.81	69.72%	0.00
63	74.77	71.44%	0.00	74.81	71.46%	0.00
64	75.84	73.23%	0.00	75.89	73.24%	0.00
65	76.99	75.07%	0.00	77.05	75.08%	0.00
66	78.22	76.98%	0.00	78.29	76.99%	0.00
67	79.53	78.97%	0.00	79.62	78.97%	0.00
68	80.93	81.01%	0.00	81.02	81.03%	0.00
69	82.40	83.16%	0.00	82.52	83.16%	0.00
70	83.96	85.38%	0.00	84.10	85.38%	0.00
71	85.61	87.69%	0.00	85.77	87.70%	0.00
72	87.36	90.09%	0.00	87.55	90.09%	0.00
73	89.22	92.57%	0.00	89.43	92.58%	0.00
74	91.19	95.13%	0.00	91.44	95.14%	0.00
75	93.30	97.76%	0.00	93.59	97.76%	0.00
76	95.53	100.00%	0.00	95.88	100.00%	0.00
77	97.91	100.00%	0.00	98.31	100.00%	0.00
78	100.00	100.00%	0.00	100.00	100.00%	0.00
79	100.00	100.00%	6.70	100.00	100.00%	12.78
80	100.00	100.00%	53.75	100.00	100.00%	60.30
81	100.00	100.00%	98.37	100.00	100.00%	105.40
82	100.00	100.00%	140.54	100.00	100.00%	148.07
83	100.00	100.00%	180.25	100.00	100.00%	188.28
84	100.00	100.00%	217.50	100.00	100.00%	226.03
85	100.00	100.00%	252.36	100.00	100.00%	261.40
86	100.00	100.00%	284.94	100.00	100.00%	294.49
87	100.00	100.00%	315.38	100.00	100.00%	325.42
88	100.00	100.00%	343.87	100.00	100.00%	354.41
89	100.00	100.00%	370.56	100.00	100.00%	381.60
90	100.00	100.00%	395.63	100.00	100.00%	407.16
91	100.00	100.00%	419.19	100.00	100.00%	431.21
92	100.00	100.00%	441.34	100.00	100.00%	453.86
93	100.00	100.00%	462.19	100.00	100.00%	475.20
94	100.00	100.00%	481.78	100.00	100.00%	495.28
95	100.00	100.00%	500.23	100.00	100.00%	514.22
96	100.00	100.00%	517.57	100.00	100.00%	532.05
97	100.00	100.00%	533.91	100.00	100.00%	548.88
98	100.00	100.00%	549.32	100.00	100.00%	564.77
99	100.00	100.00%	563.83	100.00	100.00%	579.77
100	100.00	100.00%	577.44	100.00	100.00%	593.88

GIFT/ PLUS ANNUITY RATES

Recommended by the Canadian Association on Charitable Gift Annuities

January, 2000

AGE	RATE	GUARANTEED PERIOD (YEARS) FOR BENEFIT OF CHARITY
60	5.7	10
61	5.8	10
62	5.9	10
63	6.0	10
64	6.1	10
65	6.3	10
66	6.4	10
67	6.5	10
68	6.6	10
69	6.7	10
70	6.9	10
71	7.0	10
72	7.1	10
73	7.2	10
74	7.4	10
75	7.5	10
76	7.6	10
77	7.7	10
78	7.8	10
79	8.0	10
80	8.3	9
81	8.7	8
82	9.3	7
83	9.9	6
84	10.6	5
85	10.9	5
86	11.1	5
87	11.5	5
88	11.5	5
89	11.5	5
90+	11.5	5

GIFT/ PLUS ANNUITY RATES – JOINT LIVES

Recommended by the Canadian Association on Charitable Gift Annuities
January, 2000

YOUNGER AGE	OLDER AGE	RATE	GUARANTEED PERIOD
64	64	5.7	10
64	65-68	5.8	10
64	69-73	5.9	10
64	74+	6.0	10
65	65	5.8	10
65	66-69	5.9	10
65	70-74	6.0	10
65	75+	6.1	10
66	66	5.9	10
66	67-70	6.0	10
66	71-75	6.1	10
66	76+	6.2	10
67	67	6.0	10
67	68-71	6.1	10
67	72-76	6.2	10
67	77+	6.3	10
68	68	6.1	10
68	69-72	6.2	10
68	73-77	6.3	10
68	78+	6.4	10
69	69	6.2	10
69	70-73	6.3	10
69	74-78	6.4	10
69	79+	6.5	10
70	70	6.3	10
70	71-74	6.4	10
70	75-79	6.5	10
70	80+	6.7	9
71	71	6.4	10
71	72-75	6.5	10
71	76-80	6.7	9
71	81+	6.9	8
72	72	6.5	10
72	73-76	6.6	10
72	77-81	6.9	8
72	82+	7.0	7
73	73	6.7	10
73	74-77	6.8	10
73	78-82	7.0	7
73	83+	7.2	6
74	74	6.9	10
74	75-78	7.0	10
74	79-83	7.2	6
74	84+	7.4	5
75	75	7.0	10
75	76-79	7.1	10
75	80-84	7.4	5
75	85+	7.6	5
76	76	7.2	10

76	77-79	7.3	10
76	80-85	7.6	5
76	86+	7.8	5
77	77	7.4	10
77	78-81	7.6	5
77	82-86	7.8	5
77	87+	8.0	5
78	78	7.6	7
78	79-82	7.8	5
78	83-87	8.0	5
78	88+	8.2	5
79	79	7.7	10
79	80-83	8.0	5
79	84-88	8.3	5
79	89+	8.4	5
80	80	7.9	9
80	81-84	8.3	5
80	85-89	8.5	5
80	90+	8.6	5
81	81	8.1	8
81	82-85	8.5	5
81	86-90	8.6	5
81	91+	8.6	5
82	82	8.5	7
82	83-86	8.8	5
82	87-91	8.8	5
82	92+	8.8	5
83	83	8.8	6
83	84-87	9.0	5
83	88-92	9.0	5
83	93+	9.0	5
84	84	9.2	5
84	85-88	9.3	5
84	89-93	9.3	5
84	94+	9.3	5
85	85	9.5	5
85	86-89	9.5	5
85	90-94	9.5	5
85	95+	9.5	5
86+	86+	9.6	5

SCHEDULE VIII
Universities Outside Canada

1. The universities situated in the United States that are prescribed by section 3503 are the following:

Abilene Christian University, Abilene, Texas
Adams State College, Alamosa, Colorado
Alfred University, Alfred, New York
Ambassador University, Big Sandy, Texas
American College, The, Bryn Mawr, Pennsylvania
American Film Institute Center for Advanced Film and Television Studies, Los Angeles, California
American Graduate School of International Management, Glendale, Arizona
American International College, Springfield, Massachusetts
American University, The, Washington, District of Columbia
American University in Cairo, The, New York, New York
Amherst College, Amherst, Massachusetts
Anderson College, Anderson, South Carolina
Andover Newton Theological School, Newton Centre, Massachusetts
Andrews University, Berrien Springs, Michigan
Anna Maria College (formerly Anna Maria College for Women), Paxton, Massachusetts
Arizona State University, Tempe, Arizona
Asbury Theological Seminary, Wilmore, Kentucky
Associated Mennonite Biblical Seminary, Elkhart, Indiana
Atlantic Union College, South Lancaster, Massachusetts
Augsburg College, Minneapolis, Minnesota
Azusa Pacific College, Azusa, California
Babson College, Babson Park, Massachusetts
Baldwin-Wallace College, Berea, Ohio
Bard College, Annandale-On-Hudson, New York
Barnard College, New York, New York
Bastyr University, Seattle, Washington
Bates College, Lewiston, Maine
Beloit College, Beloit, Wisconsin
Bennington College, Bennington, Vermont
Bentley College, Waltham, Massachusetts
Beth Medrash Gevoha, Lakewood, New Jersey
Bethel College, Mishawaka, Indiana
Bethel College, North Newton, Kansas
Bethel College and Seminary, St. Paul, Minnesota
Biola University, La Mirada, California
Bluffton College, Bluffton, Ohio
Bob Jones University, Greenville, South Carolina
Boston College, Chestnut Hill, Massachusetts
Boston University, Boston, Massachusetts
Bowdoin College, Brunswick, Maine
Bowling Green State University, Bowling Green, Ohio
Brandeis University, Waltham, Massachusetts
Brigham Young University — Hawaii Campus, Laie, Hawaii
Brigham Young University, Provo, Utah
Brown University, Providence, Rhode Island
Bryn Mawr College, Bryn Mawr, Pennsylvania
Bucknell University, Lewisburg, Pennsylvania
California Institute of Technology, Pasadena, California
Calvin College, Grand Rapids, Michigan
Calvin Theological Seminary, Grand Rapids, Michigan
Canisius College, Buffalo, New York
Carleton College, Northfield, Minnesota
Carnegie-Mellon University, Pittsburgh, Pennsylvania
Carroll College, Waukesha, Wisconsin
Case Western Reserve University, Cleveland, Ohio
Catholic University of America, The, Washington, District of Columbia
Cedarville College, Cedarville, Ohio
Central Michigan University, Mount Pleasant, Michigan
Central Yeshiva Tomchei Tmimim-Lubavitch, Brooklyn, New York
City University, Bellevue, Washington
Claremont McKenna College, Claremont, California
Clark University, Worcester, Massachusetts
Clarkson University, Potsdam, New York
Colby College, Waterville, Maine
Colby-Sawyer College, New London, New Hampshire
Colgate University, Hamilton, New York
College of New Rochelle, New Rochelle, New York
College of William and Mary, Williamsburg, Virginia
College of Wooster, The, Wooster, Ohio
Colorado College, The, Colorado Springs, Colorado
Colorado School of Mines, Golden, Colorado
Colorado State University, Fort Collins, Colorado
Columbia International University, Columbia, South Carolina
Columbia Pacific University, San Rafael, California
Columbia Union College, Takoma Park, Maryland
Columbia University in the City of New York, New York, New York
Concordia College, Moorhead, Minnesota
Connecticut College, New London, Connecticut
Cornell University, Ithaca, New York
Covenant College, Lookout Mountain, Tennessee
Creighton University, Omaha, Nebraska
Curtis Institute of Music, The, Philadelphia, Pennsylvania
Dallas Theological Seminary, Dallas, Texas
Dana College, Blair, Nebraska

Dartmouth College, Hanover, New Hampshire
Denison University, Granville, Ohio
De Paul University, Chicago, Illinois
De Pauw University, Greencastle, Indiana
Detroit College of Law, Detroit, Michigan
Divinity School, The, Rochester, New York
Dordt College, Sioux Center, Iowa
Drake University, Des Moines, Iowa
Drew University, Madison, New Jersey
Drury College, Springfield, Missouri
Duke University, Durham, North Carolina
Earlham College, Richmond, Indiana
Eastern Baptist Theological Seminary, The, Philadelphia, Pennsylvania
Eastern Mennonite College, Harrisonburg, Virginia
Eastern Washington University, Cheney, Washington
Eckerd College, St. Petersburg, Florida
Ecumenical Theological Center, Detroit, Michigan
Elmira College, Elmira, New York
Emerson College, Boston, Massachusetts
Emmanuel School of Religion, Johnson City, Tennessee
Emmaus Bible College, Dubuque, Iowa
Emory University, Atlanta, Georgia
Ferris State University, Big Rapids, Michigan
Florida Atlantic University, Boca Raton, Florida
Florida State University, Tallahassee, Florida
Fordham University, New York, New York
Franciscan University of Steubenville, Steubenville, Ohio
Fresno Pacific College, Fresno, California
Fuller Theological Seminary, Pasadena, California
Gallaudet College, Washington, District of Columbia
Geneva College, Beaver Falls, Pennsylvania
Georgetown University, Washington, District of Columbia
George Washington University, The, Washington, District of Columbia
Georgia Institute of Technology, Atlanta, Georgia
GMI Engineering & Management Institute, Flint, Michigan
Goddard College, Plainfield, Vermont
God's Bible School and College, Cincinnati, Ohio
Gonzaga University, Spokane, Washington
Gordon College, Wenham, Massachusetts
Gordon-Conwell Theological Seminary, South Hamilton, Massachusetts
Goshen College, Goshen, Indiana
Grace University, Omaha, Nebraska
Graceland College, Lamoni, Iowa
Greenville College, Greenville, Illinois
Grinnell College, Grinnell, Iowa
Gustavus Adolphus College, St. Peter, Minnesota
Hamilton College, Clinton, New York
Hampshire College, Amherst, Massachusetts
Harvard University, Cambridge, Massachusetts
Hebrew Union College — Jewish Institute of Religion, Cincinnati, Ohio
Hebrew Union College — Jewish Institute of Religion, Los Angeles, California
Hebrew Union College — Jewish Institute of Religion, New York, New York
Hillsdale College, Hillsdale, Michigan
Hobe Sound Bible College, Hobe Sound, Florida
Hollins College, Hollins College, Virginia
Holy Trinity Orthodox Seminary, The Jordanville, New York
Hood College, Frederick, Maryland
Hope College, Holland, Michigan
Houghton College, Houghton, New York
Huntington College, Huntington, Indiana
Illinois Institute of Technology, Chicago, Illinois
Indiana University, Bloomington, Indiana
Iowa State University of Science and Technology, Ames, Iowa
Ithaca College, Ithaca, New York
Jamestown College, Jamestown, North Dakota
Jewish Theological Seminary of America, The, New York, New York
Johns Hopkins University, The, Baltimore, Maryland
Kansas State University, Manhattan, Kansas
Lafayette College, Easton, Pennsylvania
Lake Superior State University, Sault Ste. Marie, Michigan
Lawrence Technological University, Southfield, Michigan
Lehigh University, Bethlehem, Pennsylvania
Leland Stanford Junior University (Stanford University), Stanford, California
LeMoyne College, Syracuse, New York
LeTourneau College, Longview, Texas
Liberty Baptist College, Lynchburg, Virginia
Life Chiropractic College, Marietta, Georgia
Life Chiropractic College-West, San Lorenzo, California
Logan College of Chiropractic, St. Louis, Missouri
Loma Linda University, Loma Linda, California
Louisiana State University, Baton Rouge, Louisiana
Loyola University, Chicago, Illinois
Lutheran Bible Institute of Seattle, Issaquah, Washington
Macalester College, St. Paul, Minnesota
Maharishi University of Management, Fairfield, Iowa
Manhattanville College, Purchase, New York
Mankato State University, Mankato, Minnesota
Marquette University, Milwaukee, Wisconsin
Marymount College, Tarrytown, New York
Massachusetts Institute of Technology, Cambridge, Massachusetts
Mayo Foundation, Rochester, Minnesota
Mayo Graduate School of Medicine, Rochester, Minnesota
Meadville-Lombard Theological School, Chicago, Illinois
Medical College of Pennsylvania and Hahnemann University, The, Philadelphia, Pennsylvania
Mercyhurst College, Erie, Pennsylvania
Mesivta Yshiva Rabbi Chaim Berlin, Brooklyn, New York
Messiah College, Grantham, Pennsylvania
Miami University, Oxford, Ohio
Michigan State University, East Lansing, Michigan
Michigan Technological University, Houghton, Michigan
Middlebury College, Middlebury, Vermont

Mills College, Oakland, California
Minot State University, Minot, North Dakota
Mirrer Yeshiva Central Institute, Brooklyn, New York
Montana State University, Bozeman, Montana
Moody Bible Institute, Chicago, Illinois
Montana Tech of the University of Montana, Butte, Montana
Moravian College, Bethlehem, Pennsylvania
Mount Holyoke College, South Hadley, Massachusetts
Mount Ida College, Newton Centre, Massachusetts
Mount Vernon College, Washington, District of Columbia
Multnomah Bible College, Portland, Oregon
Nasson College, Springvale, Maine
National College of Chiropractic, The, Lombard, Illinois
Nazarene Bible College, Colorado Springs, Colorado
Nazarene Theological Seminary, Kansas City, Missouri
Nebraska Wesleyan University, Lincoln, Nebraska
Ner Israel Rabbinical College, Baltimore, Maryland
New England College, Henniker, New Hampshire
New York University, New York, New York
Niagara University, Niagara University, New York
North American Baptist Seminary, Sioux Falls, South Dakota
North Carolina State University at Raleigh, Raleigh, North Carolina
North Central College, Naperville, Illinois
North Dakota State University of Agriculture and Applied Science, Fargo, North Dakota
Northeastern University, Boston, Massachusetts
Northrop Institute of Technology, Inglewood, California
Northwest College, Kirkland, Washington
Northwestern College, Orange City, Iowa
Northwestern College, St. Paul, Minnesota
Northwestern University, Evanston, Illinois
Northwood Institute, Midland, Michigan
Nyack College, Nyack, New York
Oakland University, Rochester, Michigan
Oakwood College, Huntsville, Alabama
Oberlin College, Oberlin, Ohio
Ohio College of Podiatric Medicine, Cleveland, Ohio
Ohio State University, The, Columbus, Ohio
Ohio University, Athens, Ohio
Old Dominion University, Norfolk, Virginia
Oral Roberts University, Tulsa, Oklahoma
Oregon State University, Corvallis, Oregon
Ottawa University, Ottawa, Kansas
Pace University, New York, New York
Pacific Graduate School of Psychology, Menlo Park, California
Pacific Lutheran University, Tacoma, Washington
Pacific Union College, Angwin, California
Pacific University, Forest Grove, Oregon
Palm Beach Atlantic College, West Palm Beach, Florida
Palmer College of Chiropractic, Davenport, Iowa
Palmer College of Chiropractic-West, Sunnyvale, California
Park College, Kansas City, Missouri
Parsons School of Design, New York, New York
Pennsylvania College of Podiatric Medicine, Philadelphia, Pennsylvania
Pennsylvania State University, The, University Park, Pennsylvania
Philadelphia College of Bible, Langhorne, Pennsylvania
Philadelphia College of Textiles and Science, Philadelphia, Pennsylvania
Pine Manor College, Chestnut Hill, Massachusetts
Pomona College, Claremont, California
Princeton Theological Seminary, Princeton, New Jersey
Princeton University, Princeton, New Jersey
Principia College, The, Elsah, Illinois
Providence College, Providence, Rhode Island
Puget Sound Christian College ... A college of the Bible, Edmonds, Washington
Purdue University, Lafayette, Indiana
Rabbinical College of America, Morristown, New Jersey
Rabbinical College of Long Island, Long Beach, New York
Rabbinical Seminary of America, Forest Hills, New York
Radcliffe College, Cambridge, Massachusetts
Reconstructionist Rabbinical College, Wyncote, Pennsylvania
Reed College, Portland, Oregon
Reformed Bible College, Grand Rapids, Michigan
Reformed Theological Seminary, Jackson, Mississippi
Rensselaer Polytechnic Institute, Troy, New York
Rice University, Houston, Texas
Ripon College, Ripon, Wisconsin
Roberts Wesleyan College, North Chili, New York
Rochester Institute of Technology, Rochester, New York
Rockefeller University, New York, New York
Rush University, Chicago, Illinois
Rutgers — The State University, New Brunswick, New Jersey
St. John's College, Annapolis, Maryland
St. John's College, Santa Fe, New Mexico
St. John's University, Jamaica, New York
St. Lawrence University, Canton, New York
Saint Louis University, St. Louis, Missouri
Saint Mary-of-the-Woods College, Saint Mary-of-the-Woods, Indiana
Saint Mary's College, Notre Dame, Indiana
St. Mary's University of San Antonio, San Antonio, Texas
Saint Olaf College, Northfield, Minnesota
St. Vladimir's Orthodox Theological Seminary, Crestwood, New York
San Francisco State College, San Francisco, California
San Jose State College, San Jose, California
Sarah Lawrence College, Bronxville, New York
Scripps College, Claremont, California
Scripps Research Institute, The, La Jolla, California
Seattle Pacific University, Seattle, Washington
Seattle University, Seattle, Washington
Sherman College of Straight Chiropractic, Spartanburg, South Carolina
Simmons College, Boston, Massachusetts
Simpson College, Indianola, Iowa

Simpson College, Redding, California
Skidmore College, Saratoga Springs, New York
Smith College, The, Northampton, Massachusetts
South Dakota School of Mines and Technology, Rapid City, South Dakota
Southern College of Seventh-Day Adventists, Collegedale, Tennessee
Southern Illinois University of Carbondale, Carbondale, Illinois
Southern Methodist University, Dallas, Texas
Southwestern Adventist College, Keene, Texas
Spring Arbor College, Spring Arbor, Michigan
Springfield College, Springfield, Massachusetts
State University College at Potsdam, Potsdam, New York
State University College at Oswego, Oswego, New York
State University of New York at Binghamton, Binghamton, New York
State University of New York at Buffalo, Buffalo, New York
State University of New York College of Arts and Science at Plattsburgh, Plattsburgh, New York
Stephens College, Columbia, Missouri
Stevens Institute of Technology, Hoboken, New Jersey
Sunbridge College, Chestnut Ridge, New York
Swarthmore College, Swarthmore, Pennsylvania
Syracuse University, Syracuse, New York
Tabor College, Hillsboro, Kansas
Talmudical Yeshiva of Philadelphia, Philadelphia
Taylor University, Upland, Indiana
Teachers College, Columbia University, New York, New York
Telshe Yeshiva Rabbinical College of Telshe, Inc., Wickcliffe, Ohio
Telshe Yeshiva-Chicago, Rabbinical College of Telshe-Chicago, Inc., Chicago, Illinois
Temple Buell College, Denver, Colorado
Temple University, Philadelphia, Pennsylvania
Texas Chiropractic College, Pasadena, Texas
The Herman M. Finch University of Health Sciences/The Chicago Medical School, North Chicago, Illinois
Thomas Aquinas College, Santa Paula, California
Touro College, New York, New York
Trinity Bible College, Ellendale, North Dakota
Trinity Christian College, Palos Heights, Illinois
Trinity College, Dunedin, Florida
Trinity College, Hartford, Connecticut
Trinity Episcopal School for Ministry, Ambridge, Pennsylvania
Trinity Evangelical Divinity School, Deerfield, Illinois
Trinity University, San Antonio, Texas
Tufts University, Medford, Massachusetts
Tulane University, New Orleans, Louisiana
Union College, Lincoln, Nebraska
Union College, Schenectady, New York
Union Institute, The, Cincinnati, Ohio
Union Theological Seminary, New York, New York
University of Alabama at Birmingham, The, Birmingham, Alabama
University of Arizona, The, Tucson, Arizona
University of Arkansas at Little Rock, Little Rock, Arkansas
University of California, Berkeley, California
University of California, Davis, California
University of California, Irvine, California
University of California, Los Angeles, California
University of California, Riverside, California
University of California, San Diego, California
University of California, San Francisco, California
University of California, Santa Barbara, California
University of California, Santa Cruz, California
University of Central Florida, Orlando, Florida
University of Chicago, The, Chicago, Illinois
University of Cincinnati, Cincinnati, Ohio
University of Colorado, Boulder, Colorado
University of Delaware, Newark, Delaware
University of Denver, Denver, Colorado
University of Detroit, Detroit, Michigan
University of Dubuque, Dubuque, Iowa
University of Florida, Gainesville, Florida
University of Georgia, The, Athens, Georgia
University of Hawaii, Honolulu, Hawaii
University of Houston, Houston, Texas
University of Idaho, Moscow, Idaho
University of Illinois, Urbana, Illinois
University of Iowa, Iowa City, Iowa
University of Judaism, Los Angeles, California
University of Kansas, Lawrence, Kansas
University of Kentucky, Lexington, Kentucky
University of Maine, Orono, Maine
University of Maryland, College Park, Maryland
University of Massachusetts at Amherst, Amherst, Massachusetts
University of Miami, Coral Gables, Florida
University of Michigan, The, Ann Arbor, Michigan
University of Minnesota, Minneapolis, Minnesota
University of Missouri, Columbia, Missouri
University of Nebraska, The, Lincoln, Nebraska
University of Montana-Missoula, The, Missoula, Montana
University of Nevada-Reno, Reno, Nevada
University of North Carolina at Chapel Hill, Chapel Hill, North Carolina
University of North Dakota, Grand Forks, North Dakota
University of North Texas, Denton, Texas
University of Notre Dame du Lac, Notre Dame, Indiana
University of Oklahoma, Norman, Oklahoma
University of Oregon, Eugene, Oregon
University of Pennsylvania, Philadelphia, Pennsylvania
University of Pittsburgh, Pittsburgh, Pennsylvania
University of Portland, Portland, Oregon
University of Rhode Island, Kingston, Rhode Island
University of Rochester, Rochester, New York
University of San Diego, San Diego, California
University of Santa Clara, Santa Clara, California

University of Southern California, Los Angeles, California
University of Texas, Austin, Texas
University of the Ozarks, Clarksville, Arkansas
University of the Pacific, Stockton, California
University of the South, The, Sewanee, Tennessee
University of Tulsa, Tulsa, Oklahoma
University of Utah, Salt Lake City, Utah
University of Vermont and State Agricultural College, Burlington, Vermont
University of Virginia, Charlottesville, Virginia
University of Washington, Seattle, Washington
University of Wisconsin, Madison, Wisconsin
Utah State University of Agriculture and Applied Science, Logan, Utah
Valparaiso University, Valparaiso, Indiana
Vanderbilt University, Nashville, Tennessee
Vassar College, Poughkeepsie, New York
Villanova University, Villanova, Pennsylvania
Wagner College, Staten Island, New York
Wake Forest University, Winston-Salem, North Carolina
Walla Walla College, College Place, Washington
Washington and Lee University, Lexington, Virginia
Washington Bible College, Lanham, Maryland
Washington State University, Pullman, Washington
Washington University, St. Louis, Missouri
Wayne State University, Detroit, Michigan
Wellesley College, Wellesley, Massachusetts
Wesleyan University, Middletown, Connecticut
Western Baptist College, Salem, Oregon
Western Conservative Baptist Seminary, Portland, Oregon
Western Michigan University, Kalamazoo, Michigan
Western States Chiropractic College, Portland, Oregon
Western Washington University, Bellingham, Washington
Westminster Theological Seminary in California, Escondido, California
Westminster Theological Seminary, Philadelphia, Pennsylvania
Wheaton College, Norton, Massachusetts
Wheaton College, Wheaton, Illinois
Whitman College, Walla Walla, Washington
Whittier College, Whittier, California
Whitworth College, Spokane, Washington
William Tyndale College, Farmington Hills, Michigan
Williams College, Williamstown, Massachusetts
Wittenberg University, Springfield, Ohio
Yale University, New Haven, Connecticut
Yeshiva Ohr Elchonon Chabad West Coast Talmudic Seminary, Los Angeles, California
Yeshiva University of Los Angeles, Los Angeles, California
Yeshiva University, New York, New York