

# Recent Developments

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**GIFT PLANNING AND LEADERSHIP GIVING**



UNIVERSITY of  
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Office of Gift Planning

## 2016 CHARITABLE PLANNING SUMMIT

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# LINEUP

- ▶ Legislative
- ▶ IRS - Internal
- ▶ CRTs
- ▶ PIFs
- ▶ CGAs
- ▶ Rates, Tables & Statistics
- ▶ Miscellaneous



# LEGISLATIVE LINEUP

- ▶ What Laws Were Passed?
- ▶ What Laws Might Be Passed?
- ▶ What Can We Do?
- ▶ How Do We Plan?

# WHAT LAWS WERE PASSED?

- ▶ **Charitable IRA Rollover** – part of PATH (CPC 12/19 & 21/15)
  - ▶ Permanently extends prior provision – 1 sentence
  - ▶ Age 70 1/2
  - ▶ Exclusion from gross income
  - ▶ “Qualified charitable distributions”



# WHAT LAWS WERE PASSED?

- ▶ **Charitable IRA Rollover** – part of PATH
  - ▶ Only from Individual Retirement Accounts
  - ▶ \$100,000 limitation
  - ▶ Counts for MDR
  - ▶ Directly from IRA Trustee to Charity (no DAFs, SOs, PFs, CRTs, or CGAs)

# WHAT LAWS WERE PASSED?

- ▶ **S Stock Basis Adjustment** – part of PATH
  - ▶ Permanently extends the rules
  - ▶ Shareholder's basis in S stock is reduced by the shareholder's pro rata share of the adjusted basis of property contributed by the S corporation to charity
  - ▶ Effectively allows a deduction of FMV of contributed assets
  - ▶ Caveat: Sec. 337(d) and "substantially all"



# WHAT LAWS WERE PASSED?

- ▶ **Section 512(b)(13)** – part of PATH
  - ▶ Permanently extends the rules
  - ▶ Tax treatment of payments made to a charity
  - ▶ By a controlled entity



## WHAT LAWS WERE PASSED?

- ▶ **CRT Valuations on Termination** – part of PATH
  - ▶ Permanently extends the rules
  - ▶ Valuation of income interest
  - ▶ No longer lower of AFR or Stated Unitrust Amount, but stated amount
  - ▶ Termination of trusts after enactment date





# WHAT LAWS WERE PASSED?

## ▶ **CRT Valuations on Termination** – part of PATH

Questions Remain:

- ▶ Cannot get a PLR
- ▶ State Attorney General may have a different view
- ▶ Request for further guidance in IRS Priority Guidance



# WHAT LAWS WERE PASSED?

- ▶ **Section 501(c)(4)** – part of PATH
  - ▶ Taxpayer Bill of Rights
  - ▶ Personal Emails
  - ▶ Right of Taxpayers to Disclosure of Improper Leaks
  - ▶ Right to Appeal Determination to Appeals



# WHAT LAWS WERE PASSED?

- ▶ **Section 501(c)(4)** – part of PATH
  - ▶ Notification Requirement
  - ▶ Declaratory Judgments
  - ▶ Termination of IRS Employees' Employment
  - ▶ No Gift Tax for (c)(4)s, (c)(5)s and (c)(6)s



# WHAT LAWS WERE PASSED?

- ▶ **Conservation Easements** – part of PATH
  - ▶ Permanently extends enhanced deduction provision
  - ▶ For capital gain real property contributed for conservation purposes
  - ▶ Enhanced deduction for farmers and ranchers
  - ▶ Alaska Native Corporations – special provisions



# WHAT LAWS WERE PASSED?

- ▶ **Food Inventory** – part of PATH
  - ▶ Permanently extends enhanced deduction provision
  - ▶ For charitable contributions of inventory of apparently wholesome food for non-corporate business taxpayers
  - ▶ Increases the limitation on deductible contributions of food inventory from 10% to 15% of AGI
  - ▶ Special rules for valuation of food inventory



# WHAT LAWS WERE PASSED?

- ▶ **Miscellaneous** – part of PATH
  - ▶ Expensing Capital Improvements
  - ▶ Gain on Small Business Stock
  - ▶ Recognition of built-in gains for S Stock

# WHAT LAWS WERE PASSED?

## ▶ **Cut-Back in IRS Budget (CPC 2/1/16)**

- ▶ \$10.9 billion in 2016
- ▶ \$1.7 billion less than Obama requested
- ▶ Additional \$290 million if IRS uses money to make:
  - “measurable improvements in the customer service representatives level of service rate, to improve the identification and prevention of refund fraud and identity theft and to enhance cybersecurity to safeguard taxpayer data.”
- ▶ “Do less with less” - Koskinen

# WHAT LAWS MIGHT BE PASSED?

- ▶ **Charities Helping Americans Regularly Through the Year (“CHARITY”) – Thune (R-SD) & Wyden (D-WA) – SFC members (CPC 4/17/16)**
  - ▶ Value and scope of charitable deduction is not adversely impacted by tax reform – “Sense of the Senate”
  - ▶ IRAs extended to DAFs
  - ▶ Private Foundation excise tax from 2% to 1%



# WHAT LAWS MIGHT BE PASSED?

- ▶ **The Extended IRA (A/K/A “Legacy IRA”)**  
(CPC 5/9/16)
  - ▶ Overlay on existing rules (the permanent extension)
  - ▶ \$400,000 limitation (in the aggregate)
  - ▶ CGAs and CRTs @ age 65 are now possible
  - ▶ Nonassignable

# WHAT LAWS MIGHT BE PASSED?

- ▶ **The Extended IRA (A/K/A “Legacy IRA”)**
  - ▶ Work by Conrad Teitell
  - ▶ Clean up hitters: Lindsay Lapole, John Pierce, and Jim Soft (for decades)
  - ▶ 5/8/2016 Roskam

# WHAT LAWS MIGHT BE PASSED?

- ▶ **Corporate “Integration”** (*CPC* 5/18/16)
  - ▶ Hatch
  - ▶ A SFC Republican staff report prepared in December, 2014
  - ▶ Exempt organizations would pay taxes on interest & dividends
  - ▶ Potential dangers for the charitable community
  - ▶ We need #s from SFC and JCT

# WHAT LAWS MIGHT BE PASSED?

- ▶ **Corporate “Integration”**

- ▶ May 17, 2016 Hearing
- ▶ Michael J. Graetz, former deputy assistant secretary for tax policy at Treasury and now teaches at Columbia Law School;
- ▶ Judy A. Miller, executive director of the American Society of Pension Professionals and Actuaries in Arlington, VA;

# WHAT LAWS MIGHT BE PASSED?

## ▶ Corporate “Integration”

- ▶ Steven M. Rosenthal, a senior fellow at the Urban-Brookings Tax Policy Center and former legislative counsel to the Joint Committee on Taxation; and
- ▶ Bret Wells, a professor at the University of Houston Law Center.

# WHAT LAWS MIGHT BE PASSED?

## ▶ **Camp Proposal** (CPC 1/16/15)

- ▶ Baseline for discussion
- ▶ Not charity friendly in many respects
  - ▶ Imposes a 2% floor on charitable deductions;
  - ▶ Requires mandatory five-year payout of DAFs;
  - ▶ Repeals Type II and Type III supporting organizations;
  - ▶ Requires Form 990 to be filed electronically;

# WHAT LAWS MIGHT BE PASSED?

## ▶ Camp Proposal

- ▶ Not charity friendly in many respects (continued)
  - ▶ Reduces the 50% AGI limitation to 40%, and 30% AGI limitation to private foundations to 25%;
  - ▶ Eliminates lower deduction limits for gifts of appreciated property; however,
  - ▶ Limits deduction to the taxpayer's tax basis in the gifted asset (with only a handful of exceptions).

# WHAT LAWS MIGHT BE PASSED?

## ▶ **Hillary Clinton**

- ▶ No 28% deduction
- ▶ Increased taxes on wealthy
- ▶ The “greater the tax, the greater the gift” – Russell James





# WHAT LAWS MIGHT BE PASSED?

- ▶ **Paul Ryan – Speaker of the House**
  - ▶ No 28% deduction
  - ▶ No mandatory DAF distributions



# WHAT LAWS MIGHT BE PASSED?

- ▶ **Trump** (CPC 5/12/16)
  - ▶ Caps itemized at \$25K (single) or \$50K (joint)
  - ▶ Impact on taxpayers in states with state income tax or high real property taxes



# WHAT LAWS MIGHT BE PASSED?

## ► Attacks

- Hatch on Museums
- Hatch and Grassley on endowments
- Responses by Harvard, Princeton, MIT – CPC 4-8-2016



# WHAT LAWS MIGHT BE PASSED?

- ▶ **Low Hanging Fruit** (CPC 5/5/16)
  - ▶ Carried interests
  - ▶ All Partnerships and LLC where services are rendered for an interest
  - ▶ Hedge funds, venture capital, real estate partnerships

# WHAT LAWS MIGHT BE PASSED?

## ▶ Major Tax Reform?

- ▶ Predictions of the Staffers
- ▶ Inversion regulations (4/15/16)
- ▶ Debt/Equity proposed regulations (4/15/16)
- ▶ The President's Framework for Business Tax Reform: An Update (4/14/16)
  - ▶ 28% versus 39% tax rate, but limit deductions

# WHAT LAWS MIGHT BE PASSED?

## ▶ Major Tax Reform?

- ▶ The President's Framework for Business Tax Reform: An Update
- ▶ A follow-up to "The President's Framework for Business Tax Reform," released in 2012
  - ▶ Massive changes in every significant aspect of corporate tax, especially inversions, bias towards debt versus equity (deductibility of debt and non-deductibility of dividends)



# WHAT CAN WE DO?

## ▶ Government Relations

- ▶ Become involved
- ▶ Encourage your representative organizations to support charitable giving
- ▶ Don't allow charities to be picked off, one by one, as in the past:
  - ▶ Attacks on private foundations, then DAFs & SOs, then hospitals, then endowments, then museums



# WHAT CAN WE DO?

## ▶ Government Relations (continued)

- ▶ Communicate with staffers at:
  - ▶ Senate Finance Committee
  - ▶ House Ways & Means Committee
  - ▶ Joint Committee on Taxation
- ▶ They don't know the practical implications
- ▶ They really want input



# WHAT CAN WE DO?

## ▶ Government Relations (continued)

- ▶ Demand accountability @ IRS
  - ▶ IRS attacked conservative organizations, especially in (c)(4) area
  - ▶ IRS refused to disclose information to Congress, dragging feet on every issue
  - ▶ IRS gave bonuses to employees who had violated ethical rules



# WHAT CAN WE DO?

## ▶ Government Relations (continued)

### ▶ Demand accountability @ IRS

- ▶ IRS gave bonuses to employees who owed income taxes
- ▶ IRS rehired employees fired for incompetence



# WHAT CAN WE DO?

## ▶ Government Relations (continued)

- ▶ Demand accountability @ IRS
  - ▶ IRS destroyed emails
  - ▶ IRS destroyed tape backups
  - ▶ IRS employees used personal emails (illegally) presumably to hide activities



# WHAT CAN WE DO?

## ▶ Government Relations (continued)

- ▶ Demand accountability @ IRS
  - ▶ IRS took money for “taxpayer assistance” and spent it elsewhere
  - ▶ Koskinen – “do less with less”
  - ▶ IRS refused Court orders



# WHAT CAN WE DO?

- ▶ **Government Relations (continued)**
  - ▶ Encourage a strong and vibrant IRS
  - ▶ Until this occurs, be vigilant
  - ▶ Discuss abuses on ACGA Website, Gift-PL, and let ACGA and other know of potential abuses



# HOW DO WE PLAN?

- ▶ **IRA Rollover – when do you use it?**
  - ▶ Donor doesn't itemize
  - ▶ (The Other Extreme) Donor is maxed out on contributions
  - ▶ Donor is bumping into the Pease Limitations



# HOW DO WE PLAN?

## ▶ IRAs in General

- ▶ For very wealthy donors, talk with them about a systematic liquidation of their IRAs, now!
- ▶ For less wealthy donors, talk with them about a testamentary gift of their IRA.
- ▶ For even less wealthy donors, talk with them about a testamentary CRT
- ▶ Support the Extended IRA with donors, peers, and Congress



# HOW DO WE PLAN?

## ▶ S Corporation Assets

- ▶ Now a FMV, regardless of basis
- ▶ Gift S corporation assets to CGAs, CRTs, and PIFs





# HOW DO WE PLAN?

## ▶ S Corporation Reorganizations

- ▶ S Corporations are the bane of the charitable planner's existence
- ▶ Built in gain is 5 years, not 10 years following conversion from C to S status
- ▶ Talk with donors **NOW** about restructuring and moving from C or S status to LLC or Partnerships
- ▶ Consider "personal" good will opportunities – e.g., RIA practice

# HOW DO WE PLAN?

- ▶ **CRTs – Liquidating, Rollovers, and Startups**
  - ▶ Law is clearer, and more definite
  - ▶ Rollover to another CRT
  - ▶ Rollover to CGAs
  - ▶ Rollover to PIFs
  - ▶ Liquidate and gift to charity!
  - ▶ Start new ones because of change in climate (taxes & values)



# HOW DO WE PLAN?

## ▶ Mergers & Aquisitions

- ▶ We are missing huge opportunities
- ▶ Encourage donors to give tax dollars to charity
- ▶ Shelter large OI events by using a PIF
- ▶ Avoid gain using CGAs, CRTs, and PIFs
- ▶ Use SMLLCs for CGAs, PIFs, DAFs, etc.

# IRS – Internal Issues

- ▶ IRS May Drop Substantial Contributor List
  - ▶ Schedule B list of substantial contributors on Form 990
    - ▶ HW&M Bill by Roskam (CPC 4/27/16)
    - ▶ Americans for Prosperity – 9<sup>th</sup> Cir. – enjoined AG (CPC 4/25/16)
- ▶ CWA Alternative Way of Reporting – canned because of SS# reporting! (CPC 1/8/16)



## IRS – Internal Issues

- ▶ Short-form Form 990-EZ – Invites noncompliance re: Taxpayer Advocate Nina Olsen (CPC 1/8/16)
- ▶ Concern about DAFs (CPC 5/10/16)
  - ▶ Drop downs regarding support test
  - ▶ Using DAFs to meet 5% PF payout requirement

# IRS – Internal Issues

## ▶ Reg Projects (CPC 5/11/16)

- ▶ Sec. 2704 Regs – regarding discounts & restrictions on liquidation
- ▶ Sec. 1022 – basis consistency regs to be finalized – extension to 6/30/16 (CPC 3/24/16)
- ▶ Sec. 2503 – estate tax deductions for claims – open issues addressed
- ▶ Sec. 2032 – alternate valuation regs to be finalized



# CRTs

## ▶ Termination of a CRT

- ▶ Statutory change – PATH Act
- ▶ Sale to 3<sup>rd</sup> Party – Regs finalized (CPC 8/1/15)
  - ▶ Can you ever use carryover basis?



# PIFs

- ▶ Total Rate of Return (CPC 11/23/15)
- ▶ 2004 Effective Date of Regulations
  - ▶ Similar to NIMCRUT Regs
  - ▶ Power to Adjust
  - ▶ Favorable State Law



# PIFs

2015-16 PIF Calculations at Deemed Rate of 1.2%			
One Life	Charitable Deduction	Two Lives	Charitable Deduction
Age 50	71%	Age 50	65%
Age 55	74%	Age 55	69%
Age 60	78%	Age 60	73%
Age 65	81%	Age 65	76%
Age 70	85%	Age 70	80%
Age 75	88%	Age 75	84%
Age 80	91%	Age 80	87%



# PIFs

- ▶ Real Estate Pooled Income Fund (CPC 12/15/14)
- ▶ Benefits to Charity
- ▶ Benefits to Donor
- ▶ Benefits to IRS (versus tax-exempts, for example)



## CGAs

- ▶ Rates remain stable (CPC 4/15/16)
- ▶ Managing CGA Risk & “unbundling” – ACGA White Paper (Frank Minton) - (CPC 4/23/15)
  - ▶ Charity loses out re: Canadian experience
  - ▶ Historically, insured CGAs worse than self-insured
  - ▶ SEC issues if charity brings in insurance agent



# Rates, Tables, & Statistics

- ▶ June, 2016 rate (CPC 5/18/16) – **1.8%** - flat again



## Miscellaneous

- ▶ *Woebbling* (CPC 4/4/16) – defined value clause – IRS concedes
- ▶ *WRK Rarities* (CPC 3/3/16) – successor liability
- ▶ IRS Memo (CPC 8/25/15) - Inadequate disclosure keeps gift tax liability open, forever.