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June 4, 1987

Dear Mr.

This is in response to your letter of May 8, 1987, in which you ask that we determine that transfers of real property to charitable institutions in the form of a charitable gift annuity can be excluded from the change in ownership provisions of the Revenue and Taxation Code.

In your letter you state that typically a donor who wishes to make a gift of real property chooses between two charitable gift vehicles--the charitable remainder trust and the charitable gift annuity. You assert that "[f]rom an economic perspective, the choices are virtually identical--in both cases the donor receives a charitable contribution deduction for the value of the property's remainder interest as well as a stream of income from either the annuity or the trust's earnings."

"Donors typically prefer the annuity option since this method avoids the administrative expenses incurred by charitable remainder trusts; trusts are usually chosen only when various noneconomic factors outweigh the benefits of avoiding trust expenses. In any event, the two gift-giving vehicles are used interchangeably in the charitable field, and their economic similarity clearly calls for similar tax treatment."

You argue that although section 62(d) of the Revenue and Taxation Code exempts from the change in ownership provisions gifts of real property to charitable remainder trusts, there is no logical reason why this treatment should not be extended to the gift annuity situation.

ANALYSIS

Section 60 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code) states that:

A "change in ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

Section 62(d) provides that a change in ownership shall not include:

Any transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

A charitable remainder trust is a trust in which the trustor transfers property to an irrevocable trust, the terms of which provide for (i) an income interest (an "annuity" or "unitrust" interest) retained by the trustor or transferred to another non-charitable beneficiary, and (ii) a charitable remainder in the property at the termination of that income interest. Under Section 62(d), a transfer to such a trust would not be a change in ownership if the trustor or the trustor's spouse is the present income beneficiary of the trust.

However, a transfer of real property to a charity in exchange for which the donor receives a charitable contribution deduction for the value of the property's remainder interest as well as a stream of income from an annuity is not a transfer to a trust. Although the economic consequences to the donors of such transfers may be the same as transfers to a charitable remainder trust, Section 62(d) excludes from the change in ownership provisions only transfers to a trust. The exclusions from the change in ownership provisions have been enacted by the Legislature. We are without authority to extend them to transfers which do not fall within the definitions provided by the statute.

Since you believe that the similarity of charitable gift annuities and charitable remainder trusts calls for similar tax treatment, you may wish to ask the Legislature to extend the exclusionary provisions of the Revenue and Taxation code so as

June 4, 1987

to exclude such transfers from the change in ownership provisions.

Very truly yours,

Barbara G. Elbrecht

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Tax Counsel

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