A donor created a charitable lead annuity trust that was to pay his private foundation for 20 years. The trustee proposes to satisfy the annual payment by distributing shares of appreciated securities instead of cash, and asked the IRS whether the transfer would result in gain to the donor or the trust.

In Rev. Proc. 2007-45 (2007-2 C.B. 89), the IRS said that if a trustee distributes appreciated property to satisfy a required annuity payment of a grantor charitable lead trust, the donor will realize capital gain on the asset. In Rev. Rul. 55-410 (1955-1 C.B. 297), the IRS said that the use of appreciated or depreciated property to satisfy a mere pledge to charity does not result in gain or loss. Rev. Rul. 55-410 does not apply in the case of a required payment from a charitable lead trust, said the IRS, noting that the charitable beneficiary has a claim against the trust’s assets which is being satisfied by the transfer of appreciated securities. Therefore, the grantor would recognize gain on the use of the securities.

A bequest of artwork to a museum in a foreign city, along with a cash bequest to the city “to be used for charitable purposes,” qualified for an estate tax charitable deduction. Unlike the income tax rules of Code §170, the estate tax provisions permit a deduction as to foreign entities operated exclusively for charitable purposes [Code §2055(a)(2)]. Under Rev. Rul. 74-523 (1974-2 C.B. 304), a bequest to a foreign government limited to exclusively charitable purposes qualifies for a deduction.

The IRS audited the 2002 income tax return of Gregory and Terri Maddux, who claimed a charitable deduction of $122,214. The couple had proper substantiation for the gifts, but were told they would have to carry over $61,150 to later years. They were not advised by the IRS to amend the return they had already filed for 2003. The Madduxes reported carryover amounts in 2004 and 2005, but the IRS reduced their 2005 carryover from $10,000 to $1,944.

Deductions in excess of a donor’s contribution base (50% of adjusted gross income for gifts of cash, 30% for gifts of appreciated property) may be carried over for up to five succeeding years [Code §170(d)(1)]. The carryover rules apply even if the

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taxpayer elects the standard deduction in a given year, noted the Tax Court, which said that some portion of the deduction expires each year, whether used or not. The IRS was not obligated to tell the couple to amend their 2003 return, and the court does not have the power to suspend the running of the limitations period to allow them to amend the return, the court held.

Focus on Revised Mortality Tables

The income tax deductions for charitable remainder trusts, charitable gift annuities and remainder interests in home and farms have declined slightly with the release by the IRS of revised mortality tables. Table 2000CM reflects longer life expectancies based on 2000 census figures. Changes were also made to Tables S and R(2) (single life and last-to-die factors for annuities, life estates and remainders) and Tables U(1) and U(2) (single life and last-to-die unitrust factors). The new factors are effective for gifts or bequests made after April 30, 2009.

The chart in the previous column shows the difference in charitable deductions for a 75-year-old donor who contributes $100,000 cash to various gift vehicles. The deductions assume quarterly payments and the use of a 3% §7520 rate. For both the charitable remainder unitrust and annuity trust, a 5% payout rate is assumed. For the charitable gift annuity, the recommended rate of 6.3% is used.

Although the deduction for the charitable gift annuity is slightly lower, the tax-free income portion of the $6,300 annuity increases from $4,517 to $4,561 annually for the donor’s life expectancy.

<table>
<thead>
<tr>
<th></th>
<th>Pre-May 2009 Factors</th>
<th>Post-April 2009 Factors</th>
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<tbody>
<tr>
<td>Charitable lead unitrust</td>
<td>$39,018</td>
<td>$39,403</td>
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<tr>
<td>Charitable remainder annuity trust</td>
<td>43,954</td>
<td>44,405</td>
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</table>

The revised rates mean slightly higher charitable deductions for charitable lead annuity and unitrusts measured by the donor’s life. The chart above shows the deductions for $100,000 trusts for the life of a 75-year-old donor, assuming annual payouts at the end of the period and a 3% §7520 rate.

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