

Personal Planning Letter

July 2007

CONNECTICUT'S "ANTI-LAPSE" STATUTE GIVES REASON TO REVIEW BEQUESTS

A recent Connecticut Supreme Court case broadly interpreted Connecticut's "Anti-Lapse" statute providing a reason to review bequests you make in your estate planning documents.

Connecticut's anti-lapse statute provides that if a bequest is made to a beneficiary who is the child, stepchild, grandchild, brother or sister of the testator and the intended beneficiary dies before the testator, and no provision has been made for such contingency in the testator's will, the gift will not lapse, and instead, the issue (children) of the intended beneficiary will take the gift.

In the recent case of *Ruotolo v. Tietjen*, the Connecticut Supreme Court applied the statute liberally to a bequest of one share of the residue of the estate intended to pass to a stepchild of the decedent, with the qualification "if she survives me." The stepchild did not survive the testator, and the court found that the anti-lapse statute applied despite the inclusion of the phrase "if she survives me." As a result, the share passed to the stepchild's issue.

Americans Set Record for Charity in 2006

According to the Giving USA Foundation at Indiana University's Center on Philanthropy, Americans gave nearly \$300 billion to charitable causes last year, setting a new record and besting the 2005 total that had been boosted by a surge in aid to victims of hurricanes Katrina, Rita and Wilma and the Asian tsunami.

IN SUMMARY:

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2007 LAST YEAR FOR
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FROM IRAS

"LEAVE A LEGACY"
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TRUSTS & ESTATES NEWS



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The holding in *Ruotolo v. Tietjen* is limited in application. However, if your estate plan contains bequests to a child, stepchild, grandchild or sibling, and you do **not** want such property to pass to the issue of the intended beneficiary if the intended beneficiary predeceases you, please contact your estate planning attorney to discuss your options. ▲

2007 LAST YEAR FOR GIFTS TO CHARITY FROM IRAS

The Pension Protection Act of 2006 permits certain donors to make gifts to charities directly from IRAs. Under the legislation, these distributions were permitted in 2006 and continue in 2007. Such distributions may provide you with significant income tax benefits because contributions directly from the IRA to the charity are not taxed as income to you. To make such a charitable distribution, the following is required:

- the Donor must be at least 70½ years old at the time of the gift;
- the gift must be made directly to the charity from the IRA without first passing to the Donor; and
- such gifts may not exceed \$100,000 per year.

If you are considering making a gift to charity directly from your IRA, please contact your estate planning attorney or custodian of your IRA immediately as this legislation is only effective for distributions made prior to January 1, 2008. ▲

“LEAVE A LEGACY” ENCOURAGES PLANNED GIVING

Governor Rell proclaimed June to be “Leave A Legacy Month.” Leave A Legacy is a state-wide initiative to encourage people to have a will and to leave a bequest to a charity they care about. Over 750 non-profits across the state together with estate planning professionals collaborated on this public awareness campaign. Shipman & Goodwin’s Lyn Walker serves as the state-wide co-chair with Jennifer King, President of Masonic Charity Foundation. For more information, please visit www.leavealegacyct.org. Although June has passed, it’s never too late to think about planned giving. ▲

PENSION PROTECTION ACT OF 2006 UPDATE:

Section 529 Qualified Tuition Plans

The Pension Protection Act of 2006 eliminated the 2010 sunset provision for distributions from 529 qualified tuition plans, so that even after 2010, distributions from such plans for qualified education expenses will not be included in the gross income of the beneficiary at the time of the distribution. This provision removes the uncertainty that previously surrounded the favored tax status of § 529 accounts.

As always, tuition payments made directly to an educational institution on behalf of a student are not considered gifts for gift tax purposes. A donor who makes direct payments to an educational institution on behalf of a student may still make tax-free gifts to that individual up to the full amount of the annual gift tax exclusion.

Limited Deductions for Donations of Clothing and Household Items

The Pension Protection Act of 2006 allows for income tax deductions for charitable donations of clothing and household items. (Household items include furniture, furnishings, electronics, appliances and linens and do not include food, art, jewelry and collections.) The new law denies any deduction for clothing or household items which are not in good used condition or better or which have minimal monetary value. An exception is provided if the taxpayer is claiming a deduction of \$500 or greater for a single item and the tax return includes a qualified appraisal of that item.

Limited Deductions for Donations of Fractional Interests of Tangible Personal Property

The Pension Protection Act of 2006 denies certain deductions for charitable gifts of fractional interests in tangible personal property. No deduction is permitted for income and gift tax purposes for a gift of an undivided portion of a taxpayer's entire interest in tangible personal property unless, immediately prior to the gift, the entire interest in the property was held by the taxpayer or the taxpayer and the donee. Furthermore, if additional gifts are later made of interest in the property, the additional gifts must be valued based on the lesser of fair market value at the time of the initial fractional contribution or the fair market value at the time of the additional contribution. Any amount claimed as a deduction for a gift of a fractional interest in tangible personal property is subject to later recapture, with a penalty of 10% of the amount recaptured, if the donor does not contribute the entire interest of the tangible personal property to charity by the earlier of 10 years from the initial contribution of the donor's death or if the donee has not had substantial physical possession of the tangible personal property and is using such property in a way related to the organization's charitable purpose or function. ▲

TRUST & ESTATE NEWS

Lyn Walker was recently elected Vice President of the Estate and Business Planning Council of Hartford. Bryon Harmon continues to serve as an Adjunct Professor at Western New England College School of Law. Bryon teaches a course on the generation-skipping transfer tax in the LL.M. Program in Estate Planning and Elder Law.



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