

Crediting Interest

Another favorable change in the final regs allows plans to receive an interest credit when they make quarterly installments before their due dates. “If you made a contribution in a plan year before the quarterly contribution due date, the proposed regulations wouldn’t have allowed you to credit some interest on that contribution and take credit for that,” Keener explained. “These final regulations do include an interest component to the calculation.”

Keener said given that the final regulations contain several favorable changes from the proposed regulations, plan sponsors may decide to apply them to plan years beginning before 2016. He said most of the changes don’t require plan amendments. ■

Earmarking of Charitable Giving Questioned

By Fred Stokeld — fred.stokeld@taxanalysts.org

Attempts by Congress to help individual victims of crime and natural disasters through favorable charitable tax treatment are raising questions among some tax law practitioners who wonder whether the efforts, though laudable, are contrary to the principle that charities’ services should be provided broadly rather than to specific persons.

The issue surfaced recently following the December 21, 2014, slayings in New York of police detectives Wenjian Liu and Rafael Ramos. Liu left behind his wife of one month and his parents, while Ramos is survived by his wife and two sons.

A few months later, the House and Senate easily approved the Slain Officer Family Support Act of 2015 (P.L. 114-7), designed to encourage donations to the families of Liu and Ramos. President Obama signed it April 1. (Prior coverage: *Tax Notes*, Apr. 6, 2015, p. 43.)

As Gordon Clay of the Joint Committee on Taxation staff explained earlier this year, the new law provided an accelerated tax break for donations to the officers’ families made in the first part of 2015. “So if a contribution was made between January 1, 2015, and April 15, 2015, it can be treated as a deduction in 2014 as long as the contribution was for the relief of the family members of the slain officers and it was made in cash,” he told the May 8 meeting of the American Bar Association Section of Taxation’s Exempt Organizations Committee.

The law provided that distributions from the charity that receives the donations on the families’ behalf will be treated as related to the charity’s tax-exempt purpose and will not adversely affect the organization’s exemption, Clay said, adding that this provision applies to distributions made between December 20, 2014, and October 15, 2015.

How do charitable activities on behalf of particular taxpayers square with the requirement that a charity serve a broad and indeterminate charitable class?

Although few would take issue with helping the families of slain police officers, questions have been raised regarding how charitable activities on behalf of particular taxpayers square with the requirement that a charity serve a broad and indeterminate charitable class — a principle reflected, for example,

in LTR 201519035, in which the IRS denied exempt status to an organization formed by a couple to help their autistic child.

At the ABA meeting, Alexander L. Reid of Morgan, Lewis & Bockius LLP said it can be hard to argue that earmarking aid to particular taxpayers serves a public purpose and that because gifts to individuals are not deductible, gifts to charities that are earmarked to individuals may fail to qualify.

"There's too much individuation in the recipient," Reid said. Although one could argue that tragedies like the New York police killings could be considered qualified disasters under section 139, that would be "a bit of a stretch" because that code section, which excludes qualified disaster relief payments from gross income, is intended to cover large numbers of people affected by the same disaster, such as the Ebola outbreak, he said later in an interview with Tax Analysts. Because section 139 requires an official declaration of a qualified disaster, it would be difficult — but perhaps not impossible — to have an attack like the one on the two officers declared a qualified disaster, Reid said.

Reid said that it is difficult to ensure that individual recipients use the funds for their intended purposes. "We know that when you give to a purpose-limited organization, it will determine as a factual matter that the funds will be used for

charitable purposes, whereas when you give to a person, there's no way to verify factually what that person will do with the money," Reid said. "This is why we don't get a charitable deduction when we give to the homeless person on the corner, even though [that is] almost certainly doing charity. It's just too hard as a tax administration point to police that because there would just be no way to know" how that person uses the money.

Reid wondered whether laws like the Slain Officer Family Support Act suggest that someone would need congressional approval to be considered a charitable class. "The more times Congress passes a statute like this, the more the weight of the authority suggests that you have to have a statute in order to do it, that Congress has to make the factual determination that these families are in need in order for you to give to them," he said.

At the ABA meeting, Victoria B. Bjorklund, a retired partner at Simpson Thacher & Bartlett LLP in New York, said New York residents have supported families of slain police officers generously, such as after the 9/11 attacks, but that "people have struggled with the charitable class problem here," and that it's hard for practitioners "to know exactly what to make of it when these individualized bills arise." Practitioners have had to tell clients their private gifts to particular disaster victims are not

\$100 MILLION CHECKS SHOULDN'T BE IN THE MAIL, IRS SAYS

Beginning in 2016 the IRS will reject any check in the amount of \$100 million or more, requiring those large tax payments to be split into two or more checks or electronically wired to Federal Reserve banks.

Fourteen checks equal to or greater than \$100 million were deposited by the IRS during the most recent tax season, according to a June 9 memo published in the September 7 Internal Revenue Bulletin.

"Each of these checks had to be processed manually," wrote Paul Mamo, director (submission processing), IRS Wage and Investment Division. The memo, Announcement 2015-23, 2015-36 IRB 311, was directed to the division's customer assistance, relationships, and education director in a plea to get the word out "in as many media forms as possible."

Attached to the correspondence was a May 4 memo from Treasury's Bureau of the Fiscal Service detailing the risks of manual processing. "Fraudulent activity, processing errors, and uncollectible funds are more likely when checks over these amounts are accepted by [Treasury General Accounts] depositories," wrote David M. Metler, director (over-the-counter division), Treasury Bureau of the Fiscal Service. "No check processing equipment can handle amounts over a million dollars."

The Federal Reserve referred Tax Analysts to its Operating Circular No. 3 (<https://goo.gl/Njb5Hf>), "Collection of Cash Items and Returned Checks," effective July 23, which provides that the bank doesn't handle any check made out in the amount of \$100 million or more and that it reserves the right "to return items in amounts of less than \$100,000,000 that in our judgment are intended to avoid the \$100,000,000 limit."

Internal Revenue Manual section 4.4.24.8, revised July 31, 2014, provides that employees who receive a remittance of \$100,000 or more should notify their immediate manager to ensure timely processing. IRM section 4.4.24.8.1 states that although not required, it would be beneficial to annotate the envelope containing a payment of \$100,000 or more with the word "large."

IRM section 3.8.45.1.10 provides that any single remittance of \$100 million or more can't be processed through the IRS's legacy Integrated Submission and Remittance Processing system. IRM 3.8.45.1.9.3 states that checks of \$100 million or more must be deposited "on the same day of extraction when received before depository's cutoff time." ■

— Amy S. Elliott

deductible, have seen donors make charitable gifts and allow the charities to decide whether to pass the money along to needier families, and have seen families threaten to sue charities in order to get money they think belongs to them rather than the charity, she said.

'The more times Congress passes a statute like this, the more the weight of the authority suggests that you have to have a statute in order to do it,' said Reid.

Bjorklund told Tax Analysts she suspects legislation to help particular victims is sought unevenly across the country, with the states and localities most successful at getting such bills through Congress seeking them more often. There have been allegations that payments have gone to the wrong survivor, such as when a decedent's family demands money that the decedent wanted to go to his domestic partner, she explained.

Bjorklund pointed out that IRS Publication 3833, *Disaster Relief: Providing Assistance Through Charitable Organizations*, says an individual who qualifies for assistance after experiencing a disaster or emergency hardship does not have an automatic right to a charity's funds and that the charity does not have to "make the individual whole." This issue is particularly relevant when a charity receives more donations than it needs in response to a disaster, according to the publication.

"A charitable organization is responsible for taking into account the charitable purposes for which it was formed, the public benefit of its activities, and the specific needs and resources of each victim when using its discretion to distribute its funds," Publication 3833 says.

Wholesale Relief Preferred?

Reid criticized the piecemeal approach to passing relief legislation, saying that "it is unfortunate that Congress does these relief bills one at a time, so that Congress has to decide each time which tragedy or victim is worthy of special treatment."

Bjorklund, at the ABA meeting, wondered whether it might be time for Congress to clarify the situation instead of passing legislation every time a police shooting or disaster occurs.

A possible solution, Bjorklund later told Tax Analysts, would be for Congress to allow deductible contributions to a government agency, such as the New York Police Department, to support the agency's public purpose of helping survivors.

Reid recommended expanding section 139 to allow public charities to designate other events as

qualified disasters as well, such as death in the line of duty, mass shootings. To prevent abuse, there could be a public notice requirement and a time limit constraining the duration of fundraising for the disaster, he said. ■