

INCOME TAX DEDUCTIONS FOR CHARITABLE BEQUESTS OF IRD

*Will an estate or trust get a charitable income tax deduction
when income in respect of a decedent is donated to a charity?*

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I. Overview

A. Worst case scenarios

There is an increasing amount of income in respect of a decedent (“IRD”) assets (principally in the form of IRAs and other retirement plan assets) in the estates of decedents. These assets trigger taxable income to the beneficiaries when they receive a payment. If an individual with a sizeable amount of IRD assets intends to make a charitable bequest, estate planners recognize that the IRD assets can be the most attractive property to fund the charitable bequest. If all goes well, the entire pre-tax amount of IRD can be transferred tax-free to a tax-exempt charity, and the gift will make a larger impact than if it had been reduced by income taxes.

But sometimes things don’t go well. The worst-case scenario is that an estate or trust might have to recognize taxable IRD but will not be able to claim an offsetting charitable income tax deduction, despite the transfer to a charity. This can happen when IRD is payable to an estate or a trust whose governing instrument doesn’t contain instructions that assure the offsetting charitable income tax deduction.¹ And, according to Private Letter Ruling 201438014 (May 5, 2014), it can also occur when IRA assets are used to satisfy a testamentary trust’s *pecuniary* charitable bequest, even when payments are made from the IRA directly to the charity rather than to the trust. In that ruling, the Service also stated that it would not respect a probate court’s reformation of the trust instrument. The Service concluded that it would look to the original governing instrument, rather than the reformed one, since the purpose of the reformation was to obtain favorable tax benefits for the charitable bequest rather than to resolve a conflict.

B. Best way to structure: pay IRD to charity, with charitable deduction as backup

What is the best way to structure a charitable bequest of IRD assets? And what mechanisms are available after a decedent’s death either (a) to prevent an estate or trust from recognizing IRD or (b) to obtain an offsetting charitable income tax deduction when it has IRD?

Two steps should take place in the planning stage. First, the best results usually occur when IRD can be transferred to a charity or to a tax-exempt charitable remainder trust (“CRT”) in such a way that the income is never recognized by the estate or trust. IRD is taxed to the person who is legally entitled to receive it. If a charity or CRT is entitled to receive the IRD, then it, rather than an estate or trust, should report the income. Estate planners should take steps to accomplish this. With retirement plan accounts, this is usually best achieved by naming the charity or the CRT as the beneficiary on the retirement plan beneficiary designation form. With IRD assets owned by an estate or trust, such as savings bonds or installment sale notes, the estate or trust can avoid recognizing income (a) if the governing instrument contains instructions to distribute these assets in-kind to a charity or to a CRT or (b) if the governing instrument, or state

law, grants the trustee or the personal representative the power to distribute assets in a non-pro rata fashion among the multiple beneficiaries.

Second, every will and trust instrument should contain instructions that if the estate or trust will make a charitable bequest, then the estate or trust will make that payment first with IRD so that the estate or trust is entitled to a charitable income tax deduction. This will usually be a fallback strategy. It could prove helpful if a forgotten retirement account is payable to the estate, or if the individuals who were named as beneficiaries of a retirement account have died and the estate became the default beneficiary.

Every case or ruling that denied a charitable income tax deduction involved an estate or trust that was missing such instructions. Since IRD can be taxed twice to an estate (once on the estate's federal estate tax return and again on the estate's income tax return), an estate or trust should be entitled to claim two charitable tax deductions (both estate tax and income tax) when IRD is transferred to a charity.

C. The economic effect regulation

A 2012 tax regulation provides that when a governing instrument identifies a specific source of income to be used for a charitable distribution, the provision will control only if it has an "economic effect independent of income tax consequences."² The regulation has raised questions about using a clause that provides, oversimplified, "if there are any charitable bequests, pay them first out of IRD, if any." That clause does not have an economic effect since the charity will receive the full bequest amount regardless of how much or how little IRD is in an estate.

As will be explained below, the "economic effect" regulation merely regulates the tax characteristics of the income transferred to a charity (interest income, dividend income, etc.). It does not prevent an estate or trust from claiming a charitable income tax deduction. But it can cause the amount of the charitable income tax deduction to be less than the amount of the IRD that was transferred to the charity.

D. Strategies when the governing instrument has no provision for IRD

What options are available if a retirement account is payable to an estate or trust whose governing instrument doesn't contain provisions that would produce an offsetting charitable income tax deduction? There are ways to avoid an income tax burden, particularly when charities are the beneficiaries of the *residue* of the estate. First, if the governing instrument permits non-pro rata distributions of assets, there are several private letter rulings that permit an estate or trust to "distribute" the retirement account to a charity and thereby avoid recognizing income. However, PLR 201438014 suggests that this might not work if a charity will receive a fixed dollar amount. Second, it may be possible for an estate to obtain an offsetting charitable income tax deduction by delaying receipt of retirement distributions until the charitable beneficiaries are the sole remaining beneficiaries of the estate.

II. Charitable Income Tax Deduction More Challenging for Trusts & Estates

A. Can the trust or estate claim a charitable income tax deduction ?

Whereas an individual can easily claim an income tax deduction for virtually any charitable contribution of cash or property,³ the rules are more restrictive for an estate or trust. In order for an estate or trust to claim a charitable income tax deduction, Section 642(c) requires that the payment of income to the charity should be made pursuant to the terms of the governing instrument.⁴

The payment to the charity must be traced to income.⁵ An estate or trust is normally not entitled to claim a charitable *income* tax deduction for the payment of a charitable bequest.⁶ A typical charitable bequest is a charitable disposition of property that the decedent owned on the date of death. By comparison, an estate's income is usually earned after the decedent's death. Thus a charitable bequest is usually deducted only on an estate's federal estate tax return and not on the estate's federal income tax return. On the other hand, IRD (which is income earned before the decedent's death) can be reported on *both* the estate tax return and the estate's income tax return. Consequently, a charitable bequest of IRD is the unique charitable bequest that could produce a charitable tax deduction on *both* the estate tax return and the estate's income tax return.

Only a charitable income tax deduction can generate the income tax deduction that can offset the IRD that might be reported on an estate's or trust's income tax return. Whereas an estate or trust can usually claim an income tax deduction for a distribution of income ("distributable net income, or "DNI") to a beneficiary, there is no DNI deduction when that beneficiary is a charity.⁷ It has to be a charitable deduction.

The possibility of a harsh outcome is illustrated in a 2008 IRS Chief Counsel Memorandum.⁸ A trust was denied a charitable income tax deduction after it received taxable IRA distributions and then distributed the amounts to charities. The IRS Chief Counsel's office concluded that the trust had taxable income from the IRA distribution but was not entitled to claim an offsetting charitable income tax deduction since the trust instrument contained no instructions to distribute income to a charity.

On the other hand, when a governing instrument contains instructions to distribute income to a charity, then it is possible for an estate or trust to claim a charitable income tax deduction on both the estate tax and the income tax return when income attributable to the IRD is distributed to a charity.⁹ Estate planners should consider including a provision in every will and trust instrument that if an estate or trust will make a charitable bequest, then that payment will be made first with IRD.

B. Does there have to be an economic effect ?

1. Overview

A 2012 regulation provides that when a governing instrument identifies a specific source of income to be used for a charitable distribution, the provision will control only if it has an “economic effect independent of income tax consequences.”¹⁰ That regulation governs the *character* of the income distributed to a charity from a trust’s or estate’s charitable income tax deduction, not whether an estate or trust is eligible to claim a deduction at all.¹¹ But the regulation can cause the amount of the deduction to be less than the amount of IRD transferred to the charity.

2. Example with tax-exempt interest

For example, assume that a trust instrument provides for a bequest to a charity of \$100,000. The trust’s governing instrument states, oversimplified, “pay my charitable bequests first from IRD, if any.” Assume that the trust collected \$20,000 from an IRA distribution (which is IRD) and that the trustee even went the extra step of depositing the amount into a separate checking account. The trustee distributes the \$20,000 to a charity and pays the remaining \$80,000 to the charity from the main checking account. The only other income that the trust received was \$20,000 of qualified dividend income (eligible for a low 15%/20% tax rate) and \$10,000 of tax-exempt interest. The trust then distributes \$30,000 to the only non-charitable beneficiary of the trust, the decedent’s daughter.

The language “pay my charitable bequests first from IRD, if any” does not have an economic effect since the charity was entitled to receive \$100,000 regardless of the amount of IRD that the trust collected. This does not prevent an estate or trust from claiming a charitable income tax deduction. Instead, the consequence of an absence of an economic effect is that the *character* of the income distributed to the charity and to the beneficiary “is deemed to consist of the same proportion of each class of the items of income of the estate or trust as the total of each class bears to the total of all classes.”¹² Thus, the charity’s \$20,000 and the daughter’s \$30,000 are each deemed to be 40% IRA income (taxed at ordinary rates, but exempt from the 3.8% net investment income surtax¹³), 40% dividends and 20% tax-exempt interest. The trust can claim a \$16,000 charitable income tax deduction¹⁴ (there is no deduction for the tax-exempt interest)¹⁵ and a \$24,000 DNI deduction to offset the \$40,000 of taxable income. Thus, even though the \$20,000 of IRD was physically delivered to the charity, the offsetting charitable income tax deduction is only \$16,000.

3. Example with taxable interest

Assume that in the preceding example the \$10,000 of interest had been taxable interest rather than tax-exempt interest. The trust would have received \$50,000 of taxable income rather

than just \$40,000. In that case, the trust could claim a \$20,000 charitable income tax deduction and a \$30,000 DNI deduction to offset the \$50,000 of taxable income.

The \$20,000 of IRD that was physically delivered to the charity generates a \$20,000 offsetting charitable income tax deduction. But because the instructions did not have an economic effect, the *character* of the \$20,000 of income paid to the charity will not consist solely of IRD. Instead, the charity's \$20,000 and the beneficiary's \$30,000 are each deemed to be 40% IRA income, 40% dividends and 20% taxable interest.

4. Example with an economic effect

If there had been an economic effect to the instructions, then the IRD payment to the charity would retain its character as IRD. For example, assume that there is no charitable bequest except that the trust instrument states "pay all of the IRD that is ever collected to Charity XYZ." The clause has an economic effect because the amount that the charity receives from the trust will vary depending on how much IRD the trust collects.

In that case, the character of the charity's income is 100% IRD and none of the other income of the trust will be deemed to be distributed to the charity.¹⁶ This arrangement can affect the amount and the character of the income that is paid to the non-charitable beneficiary or is retained by the trust.¹⁷ In the above example, if 100% of the IRD is paid to the charity, then the beneficiary's \$30,000 of income would consist of \$20,000 of dividends and \$10,000 of interest.

And, of course, if the charity had simply been named as the beneficiary of the IRA, then the trust would have had no IRA income. All of the IRA income would instead be reported by the charity, since it had the legal right to receive the income from the IRA. In that case, if the trust only received \$20,000 of dividend income and \$10,000 of tax-exempt interest that it distributed to the daughter, she would have only been taxed on the \$20,000 of dividend income instead of \$24,000 of both dividend and IRA income. If there had been \$10,000 of taxable interest instead of tax-exempt interest, the beneficiary would report \$20,000 of dividend income and \$10,000 of taxable interest.

III. Pecuniary Amounts to Charities Can Trigger Income Tax Problems

The tax problems can be compounded if a trust instrument or a will contains a fixed-dollar ("pecuniary") charitable bequest. This was the case in PLR 201438014, when the trust instrument provided that two charities would each receive a pecuniary amount. The tax regulations provide that when an estate or trust distributes appreciated property to satisfy a pecuniary obligation, the estate or trust has a taxable gain as if it had sold the property.¹⁸ For example, if a nephew is entitled to a \$100,000 inheritance and the estate satisfies this obligation by distributing to the nephew publicly-traded stock worth \$100,000 but with a tax basis of just \$80,000, the estate has a taxable gain of \$20,000. The same taxable gain can apply when a charitable lead trust distributes appreciated stock to a charity to satisfy its distribution

requirement, but in that case the trust can claim a charitable income tax deduction to offset the taxable gain.¹⁹

In PLR 201438014 the Service concluded that if IRA assets were used to satisfy pecuniary obligations to two charities, the trust would be required to treat the payments as sales or exchanges, thereby triggering taxable income. And since the trust instrument did not “direct or require the trustee pay the *pecuniary* legacies from [the] Trust's gross income,” the trust would not be entitled to claim a charitable income tax deduction to offset the taxable income. The Service had reached a similar conclusion in a 2006 Chief Counsel Memorandum.²⁰

The ruling illustrates how useful it can be to insert a provision in the governing instrument to pay charitable bequests from IRD, even for pecuniary legacies. Even if the charitable income tax deduction is less than the amount of the IRD, it is better than nothing.

Can a trust instrument or a will without such language be reformed? In PLR 201438014, the Service rejected a probate court’s reformation of the trust instrument to try to obtain the charitable tax deduction since the purpose of the reformation was to obtain favorable tax benefits rather than to resolve a conflict. Consequently, the impact of good planning and drafting at the outset is very important.

IV. Planning

A. Two Ways To Structure Bequests of IRD

How should testamentary transfers of IRD to charities be structured? There are basically two ways to structure a charitable bequest of IRD. The first is to have the IRD paid directly to a charity so that the charity, rather than an estate, trust or a beneficiary, recognizes all of the IRD. If the estate or trust never recognizes any IRD, there is no need for it to claim an offsetting charitable income tax deduction.

The second way is to have an estate or trust receive the taxable IRD and then claim an offsetting charitable income tax deduction when the IRD is distributed from the estate or trust to the charity. Estate planners should include a provision in every will and trust instrument that if the estate or trust will make a charitable bequest, then that payment will be made with IRD.

The first method is usually superior. The administration of the trust or estate is simpler if the income from the IRD is never recognized on the trust’s or estate’s income tax return. As PLR 201438014 illustrates, this second strategy should only be undertaken if the estate planner is confident that such an offsetting deduction will be assured.

B. Avoid Recognition of IRD

How can IRD not be reported on an estate's or trust's income tax return? The answer depends on the nature and source of the IRD. For IRD assets that would normally go through probate, the governing instrument can instruct or permit the assets to be donated to charity. For retirement accounts, the beneficiary designation form used by the retirement plan is more important than a will or trust.

1. Probate Assets -- In-Kind Distributions and Non-Pro Rata Distributions

If the IRD is generated by the type of asset that normally goes through probate -- such as savings bonds,²¹ an employee stock option,²² or an installment sale note, then the solution can be an in-kind distribution of those assets to a charity. The governing instrument can specify that those assets should be donated to a charity. The same favorable outcome can occur when the governing instrument, or state law, grants the trustee or the personal representative the power to distribute assets in a non-pro rata fashion among the multiple beneficiaries.²³ This permits the transfer of pre-tax IRD assets to tax-exempt charities, and the transfer of step-up basis stock and other property to tax-paying beneficiaries. When the charity or CRT collects the savings bond interest or receives taxable payments on the installment sale note, then it, rather than the estate or trust, has the taxable income.

2. Retirement Accounts

The largest amounts of IRD are held in retirement accounts, which are trusts or custodial accounts that usually have their own beneficiary designations. Distributions from retirement accounts to beneficiaries pass outside of probate. Usually the estate recognizes no income from such distributions, unless the estate was designated as the beneficiary of the account and actually received the distributions.

Consequently, the best way to transfer the IRD in a retirement plan account to a charity is for the plan participant or the IRA owner to have named the charity as the beneficiary of some or all of the retirement account on the beneficiary designation form provided by the plan administrator.²⁴ In that case, the retirement account will make a payment directly to the charity and will inform the charity that it has received taxable income. The tax-exempt charity, of course, does not pay income tax upon the receipt of the distribution. This is the case even for a private foundation that must normally pay a 1% or 2% excise tax on its investment income.²⁵

Under this arrangement, the estate or trust will not report any income when the retirement account makes a payment to the charity.²⁶ Since the estate or trust never recognizes any income, there is no need for an offsetting charitable income tax deduction. This strategy also works with other forms of IRD where a person has the ability to designate a beneficiary, such as a bequest of an interest in a nonqualified deferred compensation plan²⁷ or of a taxable death benefit under an annuity contract.

C. Draft the governing instrument to require IRD to be used for charitable bequests

As was demonstrated above, every case or ruling that denied a charitable income tax deduction to an estate or trust when IRD was in fact distributed to a charity involved an estate or trust whose governing instrument made no mention of distributing income to a charity. Unless there are post-mortem strategies that can salvage income tax savings (a few are described below), an estate or trust can pay income tax on charitable bequests that were funded with IRD.

Consequently, there is no harm inserting instructions in every will and trust instrument that if the estate or trust will make a charitable bequest, then that bequest will be made by the estate or trust with IRD in a manner that entitles the estate or trust to a charitable income tax deduction. Even wills and trusts that make no charitable bequests can contain such language, since a charitable bequest might later be added by a codicil.

If the governing instrument provides that income (including IRD²⁸) will be distributed to charity, then the estate or trust is entitled to a charitable income tax deduction for the income that it distributes to the charity.²⁹ Even in PLR 201438014, the Service concluded that if the governing instrument had instructed the *pecuniary* bequests to be paid with IRD, it could have been eligible for a charitable income tax deduction.³⁰

But the Service also concluded that it would not respect a probate court's reformation of a trust instrument where the sole purpose was to obtain favorable income tax benefits. It is best to get things right while the individual is still alive. When it is too late, there may still be some tax-saving options.

V. When it is too late to plan

After an individual dies, it is too late to prepare a new governing instrument. If an estate or trust will receive IRD, what techniques are available for the estate or trust to avoid paying income tax when the IRD will be paid to a charity and there are no instructions in the governing instrument to distribute income to a charity? There are private letter rulings that offer relief, particularly when charities are the residual beneficiaries of an estate.

A. Distribute IRD assets from the estate to charities

Under some circumstances, there is a way for the taxable income from a retirement account to be diverted from an estate to a charity, even when the estate was named as the beneficiary of the account. There are many IRS rulings that permit an estate or a trust to "distribute" such a retirement account to a charity, just as it might make a distribution of a particular stock or a parcel of land to a beneficiary. In most of the rulings, the charity was the residual beneficiary of the estate or trust and the governing instrument (or the law of the state) permitted non-pro rata distributions of assets among multiple beneficiaries. Neither the estate

nor any other beneficiary would have to report any taxable income when the distributions were made to the charities.³¹

B. Pay the charities last – get an income tax deduction

Another strategy is to pay the charities last. This works best when the residue of the estate will be paid to charities following specific bequests to individuals. Assume, for example, that an individual named his estate as the beneficiary of his IRA. In Year 1, the executor could pay most administrative expenses and all of the specific bequests to the individuals, leaving the charity as the only remaining beneficiary at the end of Year 1. Then in Year 2 the estate could receive the entire IRA and distribute those proceeds and all of the estate's remaining assets to the charities. Under these facts, the IRS concluded that an estate was entitled to a charitable set-aside income tax deduction that would offset the taxable income from the IRA.³²

VI. Conclusion

The best way to structure charitable bequests of IRD is to shift the income to the tax-exempt charity and away from the taxable estate or trust. That way there is no need for an estate or trust to claim a charitable income tax deduction. Shifting the income is best accomplished by naming charities as beneficiaries of retirement plan accounts and by authorizing a trustee or personal representative to make non-pro rata distributions among the beneficiaries.

As a back-up plan in case an estate or trust will have IRD, a trust instrument or a will should contain directions that any charitable bequests will be paid, to the extent possible, with IRD. The harsh outcomes that occurred when estates and trusts received taxable IRD payments that they distributed to charities, but were denied an offsetting charitable income tax deduction, all took place in situations where the governing instruments did not contain such directions.

ENDNOTES

- 1 IRS Chief Counsel Memorandum ILM 200848020 (July 28, 2008).
- 2 Treasury Regulations Section 1.642(c)(3)(b)(2) (2012).
- 3 Internal Revenue Code Section 170.

- 4 IRC Section 642(c)(1); Treas. Regs. Section 1.642(c)(1)(a)(1); Rev. Rul. 83-75, 1983-1 C.B. 114 (a charitable lead trust); and Private Letter Ruling 9044047 (Aug. 4, 1990).
- 5 The Tax Court explained the reasons for the tracing requirement in *Van Buren v. Commissioner*, 89 T.C. 1101, at 1108-09 (1987) .
- 6 See Rev. Rul. 2003-123, 2003-2 C.B. 1200 for the general proposition that a trust cannot claim a charitable income tax deduction for a charitable donation of trust principal as opposed to trust income.
- 7 IRC Sections 651(a) and 663(a); Rev. Rul. 2003-123, 2003-2 C.B. 1200.
- 8 IRS Chief Counsel Memorandum ILM 200848020 (July 28, 2008).
- 9 Treas. Regs. Section 1.642(c)(3)(a), which provides that IRD is income eligible for a charitable income tax deduction.
- 10 Treas. Regs. Section 1.642(c)(3)(b)(2) (2012).
- 11 Treas. Regs. Section 1.642(c)(3)(b)(2) - *Determination of the character of an amount deductible under section 642(c)*. (emphasis added). It was drafted primarily to counter tax instructions that were being used in some charitable lead trust documents. See Example One in Treas. Regs. Section 1.642(c)(3)(b)(2), where a charitable lead trust instructed ordinary income to be first distributed to the tax-exempt charity, thereby leaving greater amounts of tax-exempt interest for the trust. Since the clause had no economic effect, the charity and the trust were deemed to receive the same pro-rata share of ordinary income and tax-exempt interest.
- 12 Treas. Regs. Section 1.642(c)(3)(b)(2) (2012). See also the preamble to the 2012 final regulations which explained the purpose of the proposal: “If such provision does not have economic effect independent of income tax consequences, income distributed for a purpose specified in section 642(c) will consist of the same proportion of each class of the items of income as the total of each class bears to the total of all classes.” *Background and Explanation of Provisions*, T.D. 9582, 2012-18 IRB 868, 77 F.R. 22483-22485.
- 13 IRC Section 1411(c)(5); Treas. Regs. Section 1.1411-8.
- 14 The instructions in the governing instrument, coupled with the physical separation of the IRD assets from other assets, should satisfy the Tax Court’s standards for tracing the transfer to the charity as coming from the trust’s income. See *Van Buren v. Commissioner*, 89 T.C. 1101, at 1108-09 (1987).
- 15 Treas. Regs. Section 1.642(c)(3)(b)(1) (2012).

- 16 See Treas. Regs. Section 1.642(c)(3)(b)(2), Example 2.
- 17 In the example in the text, the beneficiary who received the \$30,000 distribution would only report \$20,000 of taxable dividend income if all of the IRD had been attributed to the charity. By comparison, in the example where there was no economic effect, the beneficiary had \$24,000 of taxable income: \$12,000 of IRA income and only \$12,000 of dividend income.
- 18 Treas. Regs. Section 1.661(a)-2(f)(1); *Kenan v. Commissioner*, 114 F.2d 217 (2d Cir. 1940). See also Gen. Couns. Mem. 39,388 (May 25, 1984) concluding that a trust must recognize gain when distributing appreciated stock in satisfaction of a direction in the trust instrument to pay net income to the beneficiary.
- 19 Rev. Rul. 83-75, 1983-1 C.B. 114, in which a charitable lead trust's distribution of appreciated securities to a charity triggered income but the trust was entitled to claim a fully offsetting charitable income tax deduction since the governing instrument required the distribution of income to charity. See also Private Letter Ruling 9044047 (Aug. 4, 1990).
- 20 ILM 200644020 (Dec. 15, 2005). A trust's use of an IRA to satisfy a fixed dollar charitable bequest was deemed to trigger taxable income to the trust but the trust could not claim an offsetting charitable income tax deduction since there were no instructions in the governing instrument to leave income to charity.
- 21 Charitable bequests of savings bonds were analyzed in Rev. Rul. 80-118, 1980-1 C.B. 254 and Private Letter Ruling 9845026 (August 11, 1998). See also Treas. Regs. Section 1.691(a)-2(b), Ex. (3).
- 22 Private Letter Rulings 200002011 (Sept. 30, 1999) and 200012076 (Dec. 29, 1999) (employee stock options bequeathed to a charity by a will) .
- 23 See the IRS private letter rulings described at *infra* n. 31.
- 24 If the retirement plan is an IRC Section 401(a) qualified retirement plan, married participants will need a waiver from the spouse for the payments to be made to any beneficiary other than a surviving spouse. IRC Sections 401(a)(11)(B)(iii) and 417(a)(2)(A). IRAs usually do not require such a waiver.
- 25 Private Letter Rulings 200425027 (Feb 27, 2004) and 9826040 (March 30, 1998). By comparison, if the IRD consists of interest from savings bonds or an annuity contract the tax does apply. Rev. Rul. 80-118, 1980-1 C.B. 254 (savings bonds) and Private Letter Ruling 200425027 (Feb 27, 2004) (annuity contract).
- 26 Neither the donor's estate nor heirs will recognize taxable income if retirement plan / IRA proceeds are paid directly to a charity or to a charitable remainder trust. Private Letter

- Rulings 200826028 (Mar. 27, 2008), 200652028 (Sep 13, 2006), 200633009 (May 16, 2006), 200618023 (Jan 18, 2006), 9723038 (March 11, 1997) (public charity); Private Letter Rulings 9838028 and 9818009 (private foundation); Private Letter Rulings 9901023 (Oct. 8, 1998) and 9634019 (May 24, 1996) (charitable remainder trust).
- 27 Private Letter Rulings 200002011 (Sept. 30, 1999) and 200012076 (Dec. 29, 1999).
- 28 IRD is included in an estate's or trust's income and is eligible for an offsetting charitable income tax deduction. Treas. Regs. Section 1.642(c)(3)(a).
- 29 IRC Section 642(c); Treas. Regs. Section 1.642(c)(1).
- 30 This was the conclusion in PLR 201438014: “the terms of Trust do not direct or require that the trustee pay the pecuniary legacies from Trust's gross income. Accordingly, the transfer of a portion of the IRA in satisfaction of the pecuniary legacies does not entitle Trust to a deduction under section 642(c)(1).”
- 31 Private Letter Rulings 201444024 (March 24, 2014) (An **IRA** payable to a trust where *residue* was payable to a charity, could be retitled and then only charity would have income); 201330011 (March 5, 2013) (**IRA** payable to estate with pour-over into a trust; two charities would each receive a fraction of *residue* of a trust; trustee had power to allocate trust property disproportionately); 201013033 (Nov 18, 2009) (**IRA** payable to estate could be “transferred” to a trust, which could in turn transfer the IRA to various *residual* charities; trustee had power to allocate trust property disproportionately); 200633009 (May 16, 2006) (**IRAs** where *residue* of estate to go to charity; executor had power to “make distributions ...either pro-rata or otherwise”); 200850004 (Sep. 8, 2008) (probate court specifies that **IRAs** payable to the estate should be the source of payment for the share of the estate allocable to charities); 200845029 (July 10, 2008) (**defined benefit plan** payable to estate where *residue* of estate is payable to charities); 200826028 (Mar. 27, 2008)(*residue* of trust payable to charities and trust instrument permits in-kind distributions); 200652028 (Sep 13, 2006) (**IRAs** where *residue* of estate was left to a charity); 200618023 (Jan 18, 2006) (**annuity contracts** assigned to charitable residuary beneficiaries when *state law*, rather than the will, permitted non-pro rata distributions), 200617020 (Dec 8, 2005) (**IRA** where *residue* of estate was left to a charity), 200511174 (Feb 8, 2005) (**IRAs & 401(k) plan** where *residue* of estate was left to charity); PLR 200526010 (Mar. 22, 2005) (**IRAs** payable to **trust** with charitable residue); 200452004 (Aug. 10, 2004) (**IRAs** and **deferred annuity contracts** to charitable *residuary*) and 200234019 (May 13, 2002) (**IRAs** and **403(b) accounts** where *portion* of the estate went to charity).
- 32 PLRs 200221011 (Feb. 12, 2002) and 200336030 (June 3, 2003) (**IRAs** and **savings bonds**); PLR 200526010 (Mar. 22, 2005) (IRAs and **savings bonds**); PLR 200537019 (May 25, 2005) (**annuity contracts**).