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Assistant Issue Editors:
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By James A. Doering
Note From The Editor

This month, we decided to expand our coverage of charitable giving by devoting our entire October issue to this topic. Our Valuations Committee graciously agreed to focus their Committee Report on valuations regarding charitable gifts, specifically, how to value contributions of complex assets and intra-family notes. In addition, for the first time, we recognize six estate-planning practitioners who’ve taken that extra step by becoming personally involved in worthy charitable causes. As you can see in “Practitioners With Heart Awards,” by Dawn S. Markowitz, p. 47, our winners this year are truly heroes. They’ve gone beyond simply writing a check or serving on a board and have exhibited a passion for the causes they serve. Their endeavors range from stopping child abuse to teaching financial literacy and business skills to Ethiopian women. We plan to make this an annual feature, so start thinking about who you want to nominate for next year’s awards.

We also explore charitable giving from various perspectives. For example, in “My Client, a Donor?,” p. 19, Alexandra P. Brovey explains what motivates donors to make charitable gifts. And, “The Qualified Appraisal Rules,” by Jonathan G. Tidd, p. 14, gives us the lowdown on what documentation the Internal Revenue Service looks for in enforcing these rules and how practitioners can prevent their clients from losing out on a charitable deduction. In his article “Planning in an Estate-Tax-Free Environment,” p. 24, Robert F. Sharpe, Jr. advises practitioners on how to implement their clients’ charitable goals using newly available funds from their transfer tax savings.

—Susan R. Lipp
Editor in Chief
On the Cover

Our cover this month, “Le Promenier” (18.1 in. by 15 in.) by Jean Gabriel Domergue, sold for $21,250 at Fine Art Auctions Miami’s recent Important Paintings and Sculptures sale on April 27, 2013. Domergue was a precocious painter from Bordeaux who first had his work exhibited at the Salon Des Artistes Français at the tender age of 17. He initially won acclaim for his depictions of landscapes, though his career would become defined by a later significant shift in subject matter.

In the 1920s, Domergue became fascinated with painting portraits of women. He developed a particular style, depicting his subjects as thin, airy and elegant, with swanlike necks and wide, seductive eyes. His paintings were immensely popular, and he became famous as the unofficial painter of “the Parisian lady.” He claimed to be the creator of the pin-up, and though the veracity of this boast is questionable, the similarities between his “Parisian ladies” and Esquire’s “Vargas Girls,” the images that popularized the pin-up in the 1930s, are undeniable.

—David H. Lenok, Associate Legal Editor

Some of our other favorites from this auction include:

- p. 28, “Thistles” by Marsen Hartley, which sold for $46,875.
- p. 66, “Atelier de Francis Bacon” by Horacio de Sosa Cordero, which sold for $170,500.
- p. 68, “Composition in Red” by Mubin Orhon, which sold for $212,500.
- p. 69, “Levant 5” by Carmelo Arden Quin, which sold for $17,500.
- p. 70, “Composition, 1916” by Diego Rivera, which sold for $16,250.

BRIEFING

10/ Tax Law Update

David A. Handler, partner in the Chicago office

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None of the content contained herein constitutes legal, accounting or other professional advice. Although it is intended to be accurate, neither the authors nor any other party assumes liability for loss or damage due to reliance on this material.

Circular 230 Notice

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of Kirkland & Ellis LLP, and Alison E. Lothes, associate in the Boston office of Sullivan & Worcester LLP, report on:

- **Revenue Ruling 2013-17**—Same-sex couples will be considered "married" for federal tax purposes, if they're lawfully married under state law, based on the state of the "celebration" of their marriage;
- **Rev. Rul. 2013-30**—Consolidation of provisions in previous revenue procedures regarding relief requests for late S corporation, electing small business trust, qualified subchapter S trust, qualified subchapter S subsidiary election and corporate classification elections;
- **U.S. v. Johnson et al.**—District court holds trustees liable for unpaid estate tax;
- **Minnesota Life Insurance Company v. Kagan**—Decedent's failure to submit beneficiary form prevented beneficiary designation; and
- **Private Letter Ruling 20132001**—Purchase of insurance policy by grantor trust excluded by exception to transfer-for-value rule.

**COMMITTEE REPORT**

**Charitable Giving**

**14/ The Qualified Appraisal Rules**
By Jonathan G. Tidd

Advisors must ensure that their clients comply as closely as possible with the qualified appraisal (QA) rules set forth in Internal Revenue Code Section 170(f)(13). Charitable gifts subject to the QA rules are those assets, other than cash and marketable securities, for which the donor claims a value of more than $5,000 ($10,000 for non-publicly traded stock). The rules, however, are counter-intuitive because the value of an asset subject to the rules may be perfectly clear, yet a QA may still be required. Better safe than sorry.

Jonathan G. Tidd is an attorney in Connecticut, who represents many charitable organizations.

**19/ My Client, a Donor?**
By Alexandra P. Brovey

"Why did you make this gift?" is the key question this author has asked more than 1,000 donors. Being aware of donors' key motivations can assist in understanding why clients may choose to make gifts to charities in lieu of making gifts to family members. Donors give because they're asked to support the mission of a particular organization. But, they're also influenced by a complex array of emotions.

Alexandra P. Brovey is senior director, gift planning at North Shore-Long Island Jewish Health System Foundation in Great Neck, N.Y.

**24/ Planning in an Estate-Tax-Free Environment**
By Robert F. Sharpe, Jr.

The reduction of the estate and gift taxes opens up new opportunities for creative charitable giving. Through careful planning, individuals may now make significant charitable gifts using funds that might have otherwise been absorbed by taxes, while also meeting a number of other estate and financial goals.

Robert F. Sharpe, Jr. is president of The Sharpe Group in Memphis, Tenn.

**30/ Pandora's Gift Box**
By Linda L. Dietrick

Do you have a client who wants to make a charitable contribution of a conservation easement for tax purposes? Take note: The Internal Revenue Service is on the prowl for taxpayers who transfer easements and improperly claim deductions under IRC Section 170. Advise your client that he bears the burden of proving and substantiating that he's entitled to any claimed deduction.

Linda L. Dietrick is principal and managing partner at Dietrick Group LLC in Allentown, Pa.

**34/ Six Lessons From 100 Years of Philanthropy**
By Chris Page

As an estate-planning practitioner, you may have clients who donate significant sums to philanthropy, but have little experience beyond writing checks. Fortunately, for at least a century, American philanthropists have built a vast store of experiential knowledge that you can pass along to your clients. Here are six key lessons learned from the past century of giving and real-life examples of how those lessons have been put to use.

Chris Page is a senior vice president at Rockefeller Philanthropy Advisors in New York.
42/ Evaluating the Risks
By Roger D. Silk
Interest rates in the United States are at or near their lowest levels in decades. These low interest rates create both challenges and opportunities for endowed organizations. While no one can confidently predict when, whether or by how much interest rates will rise in the future, the math shows there’s probably much more downside risk than upside potential for bonds and interest rate-sensitive assets. Portfolio decisionmakers should be familiar with key measures of interest rate risk.

Roger D. Silk is chief executive officer of Sterling Foundation Management in Herndon, Va.

SPECIAL REPORT
47/ Practitioners With Heart Awards
By Dawn S. Markowitz
We know you’ll enjoy reading the profiles of six superstar estate-planning professionals. Meet Kimberly A. Fiske (Alexandria, Va.), Michelle Hong (Philadelphia), West Hunsaker (Phoenix), Jami Sanders Peebles (Springfield, Mo.), Mitchell Pindus (Los Angeles) and Brian Travers (Hauppauge, N.Y.). These outstanding individuals share with us their passion for making a difference—and demonstrate why they’re the winners of our first annual Practitioners With Heart Awards.

Dawn S. Markowitz is a legal editor at Trusts & Estates magazine in New York.

COMMITTEE REPORT
Valuations
62/ Charitable Contributions of Complex Assets
By Timothy J. Meinhart & Fady F. Bebawy
In performing a valuation of complex assets for charitable contribution purposes, it may be appropriate to apply value adjustments. This article focuses on the discount for lack of marketability and how the specific features of a complex asset influence the valuation of that asset.

Timothy J. Meinhart is managing director of Willamette Management Associates in Chicago.
Fady F. Bebawy is a manager of Willamette Management Associates in Chicago.

72/ Charitable Contribution of Intra-Family Notes
By Christine L. Baker & Radd L. Riebe
Intra-family notes with low applicable federal rates (AFRs) have caused the IRS some consternation. The IRS has taken the position that the differential between commercial market interest rates and AFRs shouldn’t be considered for the transfer of such notes. This position may provide an attractive opportunity for taxpayers wishing to make a charitable contribution of an intra-family promissory note with a low AFR.

Christine L. Baker is a managing director in the New York City office of Meyers, Harrison & Pia, LLC in its Business Valuation and Litigation Assistance Group.
Radd L. Riebe is a managing director in the Cleveland office of Stout Risius Ross, Inc., in its Valuation and Financial Operations Group.
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In This Issue...

Barring Recourse Through Mandatory Arbitration Agreements ........................................... 3
by James C. Sturdevant, Esq.
In two decisions this summer, the United States Supreme Court ruled that clauses added to pre-dispute mandatory arbitration agreements barring class actions and other mechanisms to provide recourse to the aggrieved parties are enforceable, thereby allowing corporations to insulate themselves, even against violations of federal statutes such as anti-trust.

Storm-Related Insurance Claims .................................. 13
by James M. Haddad, Esq.
Superstorm Sandy wrought billions of dollars worth of damage over a three-state area in one of the largest-scale disasters in U.S. history. As part of their disaster relief legal assistance efforts, New York State Coalition of Concerned Legal Professionals hosted insurance attorney James Haddad in a presentation on pursuing claims with insurance companies and FEMA.

Water as Life: The Indigenous Human Right and Action to Secure it .................................. 19
by Shirley Hill Witt, Ph.D. and James W. Zion, Esq.
In 2010, the United Nations General Assembly recognized access to water as a human right. However, 884 million people lack access to safe drinking water and more than 2.6 billion lack access to basic sanitation. In the United States, 13% of all Native Americans lack access to clean water and wastewater disposal, causing early deaths. The authors discuss the legal origins of the recognition of indigenous peoples’ right to water and what it will take to make that right a reality.

Will Charter Cities Force a Third Middle Passage for the Garifuna People? .................. 33
by César Róchez-Reyes, Esq.
The author details the struggle of the Garifuna peoples in Honduras to preserve their homeland and culture. Public-private collusion has led to supplantation of representative government and forceable uprooting of Garifuna from their coastal homelands. Investor-controlled “Charter Cities” now pave the way for multinational corporate resort development schemes...at what cost to principles of governance and indigenous rights?

Cover Illustration: Verdict's cover illustration is produced by Matthew Snow. Mr. Snow studied at the Chicago Art Institute for three years and then went to Washington University in St. Louis, where he earned a degree in art history. In 1976, he studied in Paris with Elaine de Kooning and Leland Bell; he later studied in Madrid at the Prado. Mr. Snow's work has been shown in group and solo shows in Manhattan, Provincetown, Boston and Maryland.
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Law Review

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