



Asking for Money Back – Awkward!

PG Calc Featured Article, February 2017

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One of the most awkward tasks faced in the Gift Planning office is having to ask for the return of a payment – or payments – made under a gift annuity arrangement with your organization. Generally, this occurs where payments have been made after the death of the last surviving income beneficiary. This situation is of particular importance at year end.

Let's review the clause governing payments customarily contained in a gift annuity agreement:

Charity's obligation under this Agreement shall terminate with the regular payment preceding the Donor's (Annuitant's) death.

At times, charities are not informed when an annuitant dies. The heirs of the annuitant may not have been aware of the life income gift arrangement and therefore saw no reason to notify your organization of the death of their loved one. It is not unusual to find that your charity has directly deposited payments into the bank account of a deceased income beneficiary, a transaction that may have escaped the attention of the heirs. If a check was issued, heirs may have assumed the decedent was entitled to those funds and deposited the check into the estate account.

Why is the issue of improper payments important at year end? Tax reporting. If the payment was made in the tax year currently being reported and the payment has not been returned, your program administrator should report that payment on the 1099-R. If the payment is subsequently returned, a corrected 1099-R can be issued. It is then up to the executor of the estate to correctly report the payments received on the annuitant's final tax return.

Beyond the tax reporting issue, the legal and donor relations issues can be at odds and challenge the judgment of the savviest of gift planners. The wording in the gift annuity agreement is clear – if the last surviving annuitant predeceases the payment then the

annuitant is not entitled to the payment. What if the death occurred a day or two before the payment was made? Do you treat that differently than if the death occurred a month before the payment was made? Does the amount of the payment affect your decision whether to request the return of the payment? Perhaps the family has a long history of generous philanthropy to your institution – and you hope for more.

Your organization should have a policy for how to handle this situation. First, consult the life income gift agreement. Assuming that the annuitant was not entitled to payments after death, best practice dictates that you should seek the return of the payment, awkward though that may be. Provide a copy of the gift agreement to the attorney or executor for the estate, highlighting the relevant text. If you cannot locate an attorney or executor, then you should attempt to contact a surviving spouse, children, or other close family member to ascertain who is handling the final affairs of the deceased annuitant. Sensitivity and tact, essential traits for gift planners, will be especially crucial in this situation.

Fortunately, most gift annuity agreements end in a relatively routine manner. Be prepared for the few that have the potential to cause donor relation issues.

Note: if the last surviving annuitant passed away before her life expectancy, the annuitant is entitled to an income tax charitable deduction for the amount of the unreturned investment in the contract (i.e. any unreturned tax-free principal). This deduction should be taken on the deceased annuitant's final income tax return. The executor of the estate will be appreciative if you inform him of this deduction along with the amount.