October thru December 2017 Volume 27, Issue Number 3

Brooks & Brooks, LLP

Estate Planning with Certainty

Leaving Money To a Charity In Your Estate Plan? The Language Better Be Specific!

A 2016 Tax Court case, Hubbell Trust v. Commissioner, T.C. Summ. Op. 2016-67, is another example of how lack of specificity in a Will create problems with the IRS later.

Pursuant to Mr. Hubbell's Will, the residuary of his estate was to pass to a trust. The trustees were to pay small monthly stipends for life to several named individuals and the remainder of the trust would then be paid to charities. In 2009, the trust had income of more than $112,000 and the income payments to the two remaining individuals only amounted to $125 per month, for a total payment of $3,000 for the year. The trustees paid the remaining taxable income to the charities as the residuary beneficiaries of the trust.

~cont pg. 2

New Social Security Disability Regualtions

New regulations regarding Social Security Disability (SSD) applications took effect March 27, 2017. Effectively the new regulations may make it more difficult to file a disability claim. The most significant change is the elimination of the "treating physician rule". Administrative law judges and others making decisions on claims will no longer put significant weight on reports from a claimant's physician. Apparently the administrative law judges will make their decisions based upon several sources of medical information and to not place determinative weight on the claimant's physician's report alone.

Brooks & Brooks, LLP
207 Court Street
Little Valley, NY
14755
Phone: 716-938-9133
Fax: 716-938-6155

www.brookslaw.biz

A Private Client Law Firm

Teddar S. Brooks, Esq.
tsbrooks @brookslaw.biz
Kameron Brooks, Esq.
kbrooks @brookslaw.biz
Jay William Frantz, Esq.
jfrantz@brookslsw.biz

Free Workshops

October 19, 2017
Wellsville Country Club
Wellsville, NY
6:30 to 8:30 p.m.
Co-host Shawn Derrick,
Community Investments

October 24, 2017
Goode's Family Restaurant
Gowanda, New York
6:30 to 8:30 p.m.
Co-host Rick Anderson,
Andersen Cuddihy

Leaving Money...

(continued from page 1)

The trustees claimed a large income tax deduction on the Trust's 2009 income tax return, relying on Internal Revenue Code §642(c). The IRS disallowed the deduction, claiming that Mr. Hubbell's Will did not specifically authorize charitable gifts during the term of the trust, so the payments were not made "pursuant to the terms of the governing instrument."

The trustees claimed there was a latent ambiguity in the Will and tried to include other evidence that Mr. Hubbell intended that the excess income be used for charitable purposes. This might be a logical conclusion of Mr. Hubbell's intent, since he only provided for payments of $125 per month to the stated individuals for their lives. If the income of the trust were more, it would make sense that the excess would go to the charities.

The Tax Court did not buy the trustees' argument. It agreed with the IRS that the governing instrument did **not** authorize charitable gifts during the lifetimes of the income beneficiaries. The Court said the trustees were not asking that a latent ambiguity be resolved, they were asking for the Will to be re-written. Simply stated, because the Will did not specifically permit gifts during the term of the trust, no deduction was allowed.

For income tax purposes, this is not good planning at all. An estate or trust must pay income tax on its taxable income, just like any other taxpayer. However, unlike human taxpayers, an estate or trust pays an effective higher tax rate, because the tax rate brackets are highly compressed for trusts and estates, versus individuals. A loss of the income tax deduction for Mr. Hubbell's trust caused a payment to Uncle Sam of over $25,500, which the trustees had wanted to avoid all together. This is particularly painful since from 2009 (the year in question) to the death of the final remaining income beneficiary (remember – only $125 per month), the trust will have to pay income tax on all its other income not distributed to the beneficiaries.

What should have been done? Some foresight in what the future would bring would have been in order, i.e. the trust may earn a lot more income than what was required to pay to current income beneficiaries. The problem Mr. Hubbell's trust ran in to was totally avoidable with the addition of language in his trust directing the payment of excess taxable income to the charities. We at Brooks & Brooks believe that knowledge of estate and income tax laws are essential to the planning process. This is why we devote time (and travel) to educate ourselves on these important issues.