New Rules, New Tools: Charitable Gifts of Closely Held Business Interests

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Brief History of Defined Value Transfers and Formula Clauses

- *Commissioner v. Procter*, 142 F.2d 824 (4th Cir. 1944)
  - Donor transferred property in trust for the benefit of his children
  - The trust document had a clause adjusting the gift:

    [I]t is agreed by all the parties hereto that in that event the excess property hereby transferred which is decreed by such court to be subject to gift tax, shall automatically be deemed not to be included in the conveyance in trust hereunder and shall remain the sole property of [the taxpayer].
  - Fourth Circuit:
  - The gift was a "present gift of a future interest in property" and the formula therefore created a condition subsequent
  - The formula was "contrary to public policy"
    - The clause had a "tendency to discourage the collection of the tax," since efforts to collect would simply undo the gift;
    - The effect of the clause would be to "obstruct the administration of justice by requiring the courts to pass upon a moot case;" and
    - A judicial proclamation on the value of the trust would be a declaratory judgment, because "the condition is not to become operative until there has been a judgment; but after the judgment has been rendered it cannot become operative because the matter involved is concluded by the judgment."

Brief History of Defined Value Transfers and Formula Clauses, cont.

- *King v. United States*, 545 F.2d 700 (10th Cir. 1976)
  - Donor sold stock in a closely held corporation to trusts established for each of the donor's four children
  - The sale agreement had a clause adjusting the purchase price:

    ... However, if the fair market value of [the] stock as of the date of this letter is ever determined by the Internal Revenue Service to be greater or less than the fair market value determined in the same manner described above, the purchase price shall be adjusted to the fair market value determined by the Internal Revenue Service.
  - Tenth Circuit:
  - The "price-adjustment clause" was valid
    - Stock was difficult to value
    - Sale occurred in the ordinary course of business and lacked donative intent

Brief History of Defined Value Transfers and Formula Clauses, cont.

***Knight v. Commissioner*, 115 T.C. 506 (2000)**

Transfer document: the number of limited partnership units which equals $300,000 in value.

- Tax Court refused to recognize language limiting gift to $300,000
- Taxpayers reported on their gift tax returns that they each gave two 22.3-percent interests in the partnership, rather than partnership interests worth $300,000
- Taxpayers offered expert testimony to show that each gift was worth only $263,165 which opened the door to IRS argument that the gifts were worth more than $300,000

***Ward v. Commissioner*, 87 T.C. 78 (1986)**

Gift agreement provided that an adjustment was to be made in the number of shares given to each donee so that the total value of the shares given to each donee by each donor did not exceed $50,000 if it were determined for federal gift tax purposes that the fair market value of each share of the stock were greater or less than $2,000,

- Tax Court refused to honor the adjustment clause
- If the adjustment clause were given effect for gift-tax purposes, there would be no incentive for the IRS to challenge a valuation of transferred property

Brief History of Defined Value Transfers and Formula Clauses, cont.

- *Harwood v. Commissioner*, 82 T.C. 239 (1984); *aff'd*, 786 F.2d 1174 (9th Cir. 1986)
  - Donor gave an interest in partnership to a trust
  - The trust agreement had an adjustment clause:

    In the event that the value of the partnership interest listed in Schedule "A" shall be finally determined to exceed $400,000 for purposes of computing the California or United States Gift Tax, and in the opinion of the Attorney for the trustee a lower value is not reasonably defendable, the trustee shall immediately execute a promissory note to the trustors in the usual form at 6 percent interest in a principal amount equal to the difference between the value of such gift and $400,000. The note shall carry interest and be effective as of the day of the gift.
  - Tax Court: savings clause has no effect on the amount of the gifts
  - "[W]e do not believe the savings clause in issue requires (or entitles) the trustees to issue promissory notes to the trust grantors in the event of a court judgment finding a value above $400,000 for the limited partnership interests given to the trusts."

Brief History of Defined Value Transfers and Formula Clauses, cont.

- Revenue Ruling 86-41, 1986-1 C.B. 300
  - Situation 1 (condition subsequent, like *Procter*):

    [I]f the one-half interest received by B were ever determined by the Internal Revenue Service to have a value for federal gift tax purposes in excess of $10,000, then B's fractional interest would be reduced so that its value equaled $10,000.
  - Situation 2 (price adjustment, like *King*):

    The facts are the same as in Situation 1, except that B was not required to reconvey any property to A. Rather, the transfer contained the condition that if the Internal Revenue Service determined that B received a gift in excess of $10,000, B would transfer to A consideration equal to the amount of the excess.
  - In both Situations 1 and 2, if the donor transfers a specified portion of real property under terms that provide for a recharacterization of the transaction depending on the Service's valuation of the property for federal gift tax purposes, the adjustment clause will be disregarded for federal tax purposes. Consequently, in both cases the value of the gift will be determined without regard to the adjustment clause and the first $10,000 in the value of the gift, as so determined, will qualify for the annual exclusion from gift tax.

Brief History of Defined Value Transfers and Formula Clauses, cont.

- *McCord v. Commissioner*, 120 T.C. 358 (2003), *rev'd sub nom.*, *Succession of McCord v. Commissioner*, 461 F.3d 614 (5th Cir. 2006)
  - Donors gave limited partnership interests
  - The assignment agreement had a formula clause:

    [T]he children and the trusts were to receive portions of the gifted interest having an aggregate fair market value of $6,910,933; if the fair market value of the gifted interest exceeded $6,910,933, then the symphony was to receive a portion of the gifted interest having a fair market value equal to such excess, up to $134,000; and, if any portion of the gifted interest remained after the allocations to the children, trusts, and symphony, then CFT was to receive that portion (i.e., the portion representing any residual value in excess of $7,044,933).
  - The partnership retained the rights to buy out the charitable interests
  - Fifth Circuit: the Tax Court erred in relying on subsequent events

    A later agreement between the children and the charities translated the dollar formula in the transfer documents into percentage interests in the partnership

Brief History of Defined Value Transfers and Formula Clauses, cont.

- *Christiansen v. Commissioner*, 130 T.C. 1 (2008), *aff'd*, 586 F.3d 1061 (8th Cir. 2009)
  - Estate plan: disclaimed property to CLAT and a foundation
  - Beneficiary: formula disclaimer in favor of charity
  - Fractional interest disclaimer of the estate in excess of $6,350,000, based on values as "finally determined for federal estate tax purposes"
  - Parties agreed to increase in value of gross estate before trial
  - IRS disallowed the charitable deduction
    - any increase in the amount passing to the foundation was contingent on a condition subsequent (i.e., IRS's challenge to the reported value of the gross estate), and
    - the adjustment clause was void as contrary to public policy
  - Tax Court:
    - Dispute about the value did not cause the transfer to be contingent; the transfer to the foundation remained 25% of the total estate in excess of $6.35 million
    - Allowing an increase in the charitable deduction to reflect the increase in the value of the estate's property going to the foundation violated no public policy
    - "This case is not Procter."

Petter v. Commissioner, T.C. Memo 2009-280, *aff'd*, 653 F.3d 1012 (9th Cir. 2011)

Facts of *Petter*

- Anne Petter wished to give her estate to her children and grandchildren and she also wished to benefit charity
- Formation of Petter Family LLC
  - Class A Membership Units (veto power) 452,671 (or 452.671)
  - Class D Membership Units 11,090,437 (or 11,090.437)
  - Class T Membership Units 11,090,437 (or 11,090.437)
  - Transfer restrictions
  - Assignees vs. Substituted Members

Petter v. Commissioner, T.C. Memo 2009-280

Facts of *Petter*, cont.

- 2 Intentionally Defective Grantor Trusts
  - Defective under IRC § 677(a)(3)
  - "Donna's Trust" (for Donna and her descendants)
  - "Terry's Trust" (for Terry and his descendants)
- Gift (10% of each trust's assets) on March 22, 2002
  - With respect to Terry's Trust, Gift Assignment of 940 Class T Membership Units, as follows:
    - 1.1.1 assigns to the Trust as a gift the number of Units described in Recital C above that equals one-half the minimum dollar amount that can pass free of federal gift tax by reason of Transferor's applicable exclusion amount allowed by Code Section 2010(c). Transferor currently understands her unused applicable exclusion amount to be $907,820, so that the amount of this gift should be $453,910; and
    - 1.1.2 assigns to The Seattle Foundation as a gift to the A.Y. Petter Family Advised Fund of The Seattle Foundation the difference between the total number of Units described in Recital C above and the number of Units assigned to the Trust in Section 1.1.1.
    - 1.2 The Trust agrees that, if the value of the Units it initially receives is finally determined for federal gift tax purposes to exceed the amount described in Section 1.1.1, Trustee will, on behalf of the Trust and as a condition of the gift to it, transfer the excess Units to The Seattle Foundation as soon as practicable.

Petter v. Commissioner, T.C. Memo 2009-280

Facts of *Petter*, cont.

- Sale (90% of each trust's assets) on March 25, 2002
  - With respect to Terrys' Trust, Sale Agreement for 8,459 Class T Membership Units, as follows:
    - 1.1.1 assigns and sells to the Trust the number of Units described in Recital C above that equals a value of $4,085,190 as finally determined for federal gift tax purposes; and
    - 1.1.2 assigns to The Seattle Foundation as a gift to the A.Y. Petter Family Advised Fund of The Seattle Foundation the difference between the total number of Units described in Recital C above and the number of Units assigned and sold to the Trust in Section 1.1.1.
    - 1.2 The Trust agrees that, if the value of the Units it receives is finally determined to exceed $4,085,190, Trustee will, on behalf of the Trust and as a condition of the sale to it, transfer the excess Units to The Seattle Foundation as soon as practicable.
- For both the gift and sale, the Foundations similarly agreed to return excess units to the trusts if the value was less than the referenced amount
- Terry, as trustee, executed promissory note for $4,085,190

Petter v. Commissioner, T.C. Memo 2009-280

Facts of *Petter*, cont.

- Terry, as trustee, signed a pledge agreement giving Anne a security interest in the PFLLC shares transferred under the sale agreement, also with an adjustment clause
- Donna's transaction was substantially the same except that the Kitsap Community Foundation was named in the Class D gift assignment
- Donna, Terry, and the 2 Foundations were admitted to PFLLC as Substituted Members
- Anne sent letters to the foundations on the date of the gifts and sales to the trusts, describing her gift. In the letters she requested that the foundations establish A.Y. Petter Family Advised Funds and described the gift in accordance with the adjustment clause

Petter v. Commissioner, T.C. Memo 2009-280

Facts of *Petter*, cont.

- The Seattle Community Foundation was represented by outside counsel, who negotiated the following:
  - That the transfer documents make clear that the Foundations would bear no legal costs in connection with the gift
  - That the Foundations would be substituted members in the PFLLC, rather than assignees with no voting rights
  - Changes to the documents recognizing that the Foundations might need distributions from the PFLLC to cover any taxes triggered by the transaction
  - Changes to the documents to monitor the investment mix of the PFLLC to ensure that the Seattle Foundation did not become exposed to unrelated business taxable income
- The Kitsap Community Foundation was smaller and followed the lead of the Seattle Community Foundation

Petter v. Commissioner, T.C. Memo 2009-280

Facts of *Petter*, cont.

- Timely Gift Tax Return Disclosures
  - "[G]ifts worth $453,910 to Donna's and Terry's trusts; gifts worth $50,128, $450,618, and $450,618 to the Seattle Foundation; and a gift worth $50,128 to the Kitsap Community Foundation."
  - Full disclosure of valuation discounts for PFLLC
  - Disclosure statement that included the formula clauses from the transfer documents, a spreadsheet of the PFLLC unit allocation, the organizing documents for the PFLLC, the trust agreements and transfer documents, letters of intent to the Seattle Foundation and the Kitsap Community Foundation, the Moss Adams appraisal report, annual statements of account for her UPS stock, and Forms 8283, Noncash Charitable Contributions, disclosing her gifts to the Seattle Foundation and the Kitsap Community Foundation

Petter v. Commissioner, T.C. Memo 2009-280

Facts of *Petter*, cont.

	# of Units (based on appraised value)	Appraisal Value ($536.20 / unit)	Settlement Value ($744.74 / unit)
D's Trust (gift)	846.531	$453,910	**$630,445**
D's Trust (sale)	7,618.780	$4,085,190	**$5,674,010**
T's Trust (gift)	846.531	$453,910	**$630,445**
T's Trust (sale)	7,618.780	$4,085,190	**$5,674,010**
SCF	1,773.909	$951,170	
KCF	93.469	$50,118	

IRS Position: Formula clause void; increased gift tax liability

Petter v. Commissioner, T.C. Memo 2009-280

Facts of *Petter*, cont.

	# of Units (based on settlement value)	Appraisal Value ($536.20 / unit)	Settlement Value ($744.74 / unit)
D's Trust (gift)	609.488		$453,910
D's Trust (sale)	5,485.391		$4,085,190
T's Trust (gift)	609.488		$453,910
T's Trust (sale)	5,485.391		$4,085,190
SCF	**6,277.730**		$4,675.277
KCF	**330.512**		$246,146

Taxpayer Position: Reallocation of PFLLC Units based on formula clause; donor is entitled to additional charitable income tax deduction

Petter v. Commissioner, T.C. Memo 2009-280

Tax Court Analysis

- A gift is valued as of the time it is completed, and later events are off limits. *Ithaca Trust Co. v. United States*, 279 U.S. 151, 155 (1929).
- Gift tax is computed at the value of what the donor gives, not what the donee receives.
- "The distinction is between a donor who gives away a fixed set of rights with uncertain value--that's Christiansen--and a donor who tries to take property back--that's Procter."
- "[S]avings clauses are void, but formula clauses are fine."

Petter v. Commissioner, T.C. Memo 2009-280

Tax Court Analysis

- Gift Agreement: "the number of Units described in Recital C above that equals one-half the applicable exclusion amount allowed by Code Section 2010(c)."
- Sale Agreement: "the number of Units described in Recital C above that equals a value of $4,085,190."
- The plain language of the documents shows that Anne was giving gifts of an ascertainable dollar value of stock; she did not give a specific number of shares or a specific percentage interest in the PFLLC.

Petter v. Commissioner, T.C. Memo 2009-280

Tax Court Analysis – Public Policy

- Charities participated in negotiations, rather than merely assisting donor with reducing taxes
  - Were successful in insisting on becoming Substituted Members
  - As such, the PFLLC managers owed fiduciary duties to the charities
  - Compare *McCord*, where partnership agreement limited rights of charities
- Other Protections for Charities / Motivation to Enforce Rights
  - Charities had power to protect their interests through suits for breach of the operating agreement or breach of a manager's fiduciary duties, as well as through the right to vote on questions such as amending the operating agreement and adding new members
  - Foundation directors owed fiduciary duties to their organizations regarding appraisal value
  - Charities' actions would be against trusts, not the donor, removing "disincentive"
  - Commissioner could revoke 501(c)(3) status if it thought that charities were assisting donor with tax reduction ploy

Petter v. Commissioner, T.C. Memo 2009-280

Tax Court Analysis – Public Policy

- No moot case or declaratory judgment – Tax Court was confident that a judgment adjusting the value of each unit will actually trigger a reallocation of the number of units between the trusts and the foundation under the formula clause
- Congress and IRS allow other formula clauses:
  - Treas. Regs. § 1.664-2(a)(1)(iii) provides: "The stated dollar amount [of a payment to the recipient of a charitable remainder annuity trust] may be expressed as a fraction or a percentage of the initial net fair market value of the property irrevocably passing in trust as finally determined for Federal tax purposes." See also Rev. Rul. 72-395, sec. 5.01, 1972-2 C.B. 340, 344 (including acceptable sample formula clause).
  - Revenue Procedure 64-19, 1964-1 C.B. (Part 1) 682 use of formula clauses in marital deduction bequests.
  - Treas. Regs. § 26.2632-1(d)(1) executors may "allocate the decedent's GST exemption by use of a formula."
  - Treas. Regs. § 25.2518-3(d), Example (20), include an example of an allowable fractional formula where the numerator is the "smallest amount which will allow A's estate to pass free of Federal estate tax and the denominator is the value of the residuary estate."
  - Treas. Regs. § 25.2702-3(b)(1)(ii)(B) definition of qualified annuity interests says that the "fixed amount" to be given to the beneficiary can include "a fixed fraction or percentage of the initial fair market value of the property transferred to the trust, as finally determined for federal tax purposes."

Petter v. Commissioner, T.C. Memo 2009-280

Tax Court Analysis – Timing of Charitable Deduction

- A gift tax charitable deduction is allowed for the year of the original transfer rather than in a later year when the reallocation was made after the value for federal gift tax purposes was finally determined.
- This result is appropriate because "[r]egardless of what might trigger a reallocation, Anne's transfer could not be undone by any subsequent events."

Wandry v. Commissioner, T.C. Memo 2012-88

- The "formula transfer" clause in *Wandry* called for any valuation adjustment to generate a re-allocation of shares between the transferor and the transferees

  > I hereby assign and transfer as gifts ... a sufficient number of my units as a member of [LLC] ... so that the fair market value of such units for federal gift tax purposes shall be ... $1,099,000[.] If, after the number of gifted units is determined based on such valuation, the IRS challenges such valuation and a final determination of a different value is made by the IRS or a court of law, the number of gifted units shall be adjusted accordingly so that the value of the number of units gifted to each person equals the amount set forth above, in the same manner as a federal estate tax formula marital deduction amount would be adjusted for a valuation redetermination by the IRS and/or a court of law.

- If a subsequent determination revalued the membership units granted, no membership units would be returned to the transferors. Rather, accounting entries to the LLC's capital accounts would reallocate each member's membership units to conform to the actual gifts.
- The value of the units was subsequently adjusted upward in connection with IRS examination

Wandry v. Commissioner, T.C. Memo 2012-88, cont.

- Gift tax return schedules describe the gifts as % interests in the LLC
  - Tax Court: not like Knight because taxpayers did not argue lower value
- Capital accounts
  - Tax Court: The facts and circumstances determine the LLC's capital accounts, not the other way around.
- IRS Position
  - Taxpayers transferred a fixed number of units
  - The adjustment clause was an invalid savings clause because it created a condition subsequent that was void as contrary to public policy
- Taxpayer Position
  - Taxpayers transferred units equal to specific dollar amounts
  - Public policy concerns did not apply

Wandry v. Commissioner, T.C. Memo 2012-88, cont.

Under the terms of the transfer documents, the foundations were always entitled to receive a predefined number of units, which the documents essentially expressed as a mathematical formula. This formula had one unknown: the value of a LLC unit at the time the transfer documents were executed. But though unknown, that value was a constant, which means that both before and after the IRS audit, the foundations were entitled to receive the same number of units. Absent the audit, the foundations may never have received all the units they were entitled to, but that does not mean that part of the Taxpayer's transfer was dependent upon an IRS audit. Rather, the audit merely ensured the foundations would receive those units they were always entitled to receive. *Petter*, 653 F.3d at 1023.

- The donees were always entitled to receive predefined LLC percentage interests, which the gift documents essentially expressed as a mathematical formula
- The formula had one unknown, the value of the LLC's assets on the date of gift
- Before and after the IRS audit the donees were entitled to receive the same LLC percentage interests.
- Absent the audit, the donees might never have received the proper LLC percentage interests they were entitled to, but that does not mean that parts of petitioners' transfers were dependent upon an IRS audit. Rather, the audit merely ensured that petitioners' children and grandchildren would receive the 1.98% and .083% LLC percentage interests they were always entitled to receive, respectively.

Wandry v. Commissioner, T.C. Memo 2012-88, cont.

It is inconsequential that the adjustment clause reallocates membership units among petitioners and the donees rather than a charitable organization because the reallocations do not alter the transfers. On January 1, 2004, each donee was entitled to a predefined LLC percentage interest expressed through a formula. The gift documents do not allow for petitioners to "take property back". Rather, the gift documents correct the allocation of LLC membership units among petitioners and the donees because the valuation report understated the LLC's value. The clauses at issue are valid formula clauses.

Wandry v. Commissioner, T.C. Memo 2012-88, cont.

Public Policy:

- Each member of the LLC has an interest in ensuring that he or she is allocated a fair share of profits and not allocated any excess losses
- A judgment for petitioners would not undo the gift. Petitioners transferred a fixed set of interests to the donees and do not seek to change those interests. The gift documents do not have the power to undo anything. A judgment in these cases will reallocate LLC membership units among petitioners and the donees. Such an adjustment may have significant Federal tax consequences. We are not passing judgment on a moot case or issuing merely a declaratory judgment.
- In *Estate of Petter* Congress' overall policy of encouraging gifts to charitable organizations was cited. This factor contributed to the Tax Court's conclusion, but it was not determinative. The lack of charitable component in *Wandry* does not result in a "severe and immediate" public policy concern.

Procter versus *Wandry*

- *Procter*

  [I]n the event it should be determined by final judgment or order of a competent federal court of last resort that any part of the transfer in trust hereunder is subject to gift tax, it is agreed by all the parties hereto that in that event the excess property hereby transferred which is decreed by such court to be subject to gift tax, shall automatically be deemed not to be included in the conveyance in trust hereunder and shall remain the sole property of [the taxpayer]

- *Wandry*

  I hereby assign and transfer as gifts, effective as of January 1, 2004, a sufficient number of my Units as a Member of Norseman Capital, LLC, a Colorado limited liability company, so that the fair market value of such Units for federal gift tax purposes shall be as follows:…

  Although the number of Units gifted is fixed on the date of the gift, that number is based on the fair market value of the gifted Units, which cannot be known on the date of the gift but must be determined after such date based on all relevant information as of that date. Furthermore, the value determined is subject to challenge by the Internal Revenue Service ("IRS"). I intend to have a good-faith determination of such value made by an independent third-party professional experienced in such matters and appropriately qualified to make such a determination. Nevertheless, if, after the number of gifted Units is determined based on such valuation, the IRS challenges such valuation and a final determination of a different value is made by the IRS or a court of law, the number of gifted Units shall be adjusted accordingly so that the value of the number of Units gifted to each person equals the amount set forth above, in the same manner as a federal estate tax formula marital deduction amount would be adjusted for a valuation redetermination by the IRS and/or a court of law.

General Explanations of the Administration's Fiscal Year 2024 Revenue Proposals

Require that a defined value formula clause be based on a variable that does not require IRS involvement

The proposal would provide that if a gift or bequest uses a defined value formula clause that determines value based on the result of involvement of the IRS, then the value of such gift or bequest will be deemed to be the value as reported on the corresponding gift or estate tax return. However, a defined value formula clause would be effective if (a) the unknown value is determinable by something identifiable (other than activity of the IRS), such as an appraisal that occurs within a reasonably short period of time after the date of the transfer (even if after the due date of the return) or (b) the defined value formula clause is used for the purpose of defining a marital or exemption equivalent bequest at death based on the decedent's remaining transfer tax exclusion amount.

The proposal would apply to transfers by gift or on death occurring after December 31, 2023.

General Explanations of the Administration's Fiscal Year 2024 Revenue Proposals, cont.

Revise the valuation of partial/fractional interests in certain assets transferred intrafamily

The proposal would replace section 2704(b) of the Code, which disregards the effect of liquidation restrictions on FMV, and instead provide that the value of a partial interest in non-publicly traded property (real or personal, tangible or intangible) transferred to or for the benefit of a family member of the transferor would be the interest's pro-rata share of the collective FMV of all interests in that property held by the transferor and the transferor's family members, with that collective FMV being determined as if held by a sole individual. Family members for this purpose would include the transferor, the transferor's ancestors and descendants, and the spouse of each described individual.

In applying this rule to an interest in a trade or business, passive assets would be segregated and valued as separate from the trade or business. Thus, the FMV of the family's collective interest would be the sum of the FMV of the interest allocable to a trade or business (not including its passive assets), and the FMV of the passive assets allocable to the family's collective interest determined as if the passive assets were held directly by a sole individual. Passive assets are assets not actively used in the conduct of the trade or business, and thus would not be discounted as part of the interest in the trade or business.

This valuation rule would apply only to intrafamily transfers of partial interests in property in which the family collectively has an interest of at least 25 percent of the whole.

The proposal would apply to valuations as of a valuation date on or after the date of enactment.

Anne Yvonne Carman Petter

Anne Yvonne Carman PETTER Life-long Seattle resident Anne Petter passed away March 7, 2008. She was born September 7, 1935 to parents Vera and Rufus Carman. Anne grew up in Wallingford; attending Latona Elementary School, Hamilton Jr. High and Lincoln High School, graduating in 1952 at age sixteen. From there she went to the UW and graduated with a business degree in 1957. Anne was a flautist, thanks to lessons provided by her grandmother. She played in the marching band while at Lincoln. Classmates called her "the belle of the band." Anne went on to play in the marching band at the University of Washington. After raising her three children, Anne took up her flute again. In the late 1970's she joined the Community Orchestra at Nathan Hale High School, now named the Rain City Symphony Orchestra. Wednesday nights were Rain City practice nights for Anne. She and the other musicians performed in nursing homes, churches and community concerts throughout the Seattle area. Anne was a lifelong learner, passionately involved in the education of her own children, grandchildren, and the children of her community. During the late 1970's and throughout the 1980's she served as a substitute teacher in the Seattle Public Schools. She enjoyed teaching children ranging in age from Kindergarten through High School from many different ethnic and cultural backgrounds. Anne loved the adventure of travel. In her early forties she began her adventures with trips to Germany and Switzerland, hiking the Alps and staying in the pensions. She took family including her grandchildren on trips throughout North America, Asia, Siberian Russia, Australia and Europe, plus an African safari in Kenya. A high point for her and her family was when she was baptized in the Jordan River in Israel. C.S. Lewis wrote (Letters, 13 June 1951) "Don't bother much about your feelings. . . What matters is your intentions and your behavior." Anne Petter was a woman of clear and purposeful intentions whose behavior reflected her core beliefs. It has been said, Go into all the world and preach the Gospel and, if necessary, use words. That was how Anne expressed her faith in Jesus Christ as her personal friend and Savior. She will be missed, yet remembered in the lives of her family. Anne was preceded in death by her parents Vera and Rufus Carman, her infant granddaughter Katharine Bess Moreland, and her brother Don Carman of Port Angeles. She is survived by her sister Elaine Carman of California; her son David Petter of Seattle; her son Terry Petter and his wife, Jane, of Snohomish and their children: Benjamin Petter, Jessica (Joe) Ritchie, and Kristopher Petter; her daughter, Donna Moreland and her husband, Josh and their children Samuel, Matthew and Luke of Kitsap County; along with the beloved father of her children, fellow grandparent and friend since childhood, Bill Petter of Kirkland. A Memorial and Celebration of her life and legacy will be held at the Woodinville Community United Methodist Church, 170 140th Ave NE, Woodinville, WA, 98072, March 28, 2008, at 2:00 p.m. in the afternoon. Donations can be made to Rain City Symphony Orchestra P.O. Box 15423, Seattle WA 98115-0423 or your favorite Charity.

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Excess Value Alternatives

- Avoidance of Gift Tax
  - Community foundation as a public charity
  - Donor advised fund (component fund)—but consider Proposed Treasury Regulations
  - Other public charity
  - Support organization
  - Not private foundation [excess business holdings, self-dealing issues]
- Reduction of Gift Tax
  - Grantor Retained Annuity Trust (GRAT). Potential challenges.
  - Generally not charitable split interest trusts (CLT or CRT) [self-dealing issues]
- Deferral of Gift/Estate Tax
  - Marital Deduction Trust
  - Incomplete Gifting Trust

Petter Approach - Charitable Organization to Receive any Excess Value

- Arm's length transaction with third-party
  - Make sure charity is guaranteed to receive something (enforceable right)
  - Charity executes transfer document
  - Charity reviews entity's governing documents
  - Charity has independent counsel
  - Charity will want ability to liquidate
  - Charity may require donor to place funds in escrow (or create commitment) to cover property taxes, contingent liabilities, capital calls, or unrelated business income tax (UBIT)
- Income tax deduction
  - Guaranteed gift plus excess value
  - Donor gets appraisal and files Form 8283
  - If sale within 3 years of donation, charity files Form 8282 to report sale
- Philanthropic support and shift of opinion/attitude
  - Donor advised fund
  - Support organization

Related Matters

- Gift tax return
  - Adequate disclosure (3-year statute of limitations)
  - Must rely on "valued as finally determined for federal gift tax purposes"
  - See Treas. Reg. § 301.6501(c)-1(f)(4)(i)
  - Must include an explanation as to why the transfer is not a transfer by gift

- Buy-sell agreement
  - Purchase/sale vs. redemption
  - Sequencing as to creation of put/call rights
  - Exercise of option
    - -- Not until after statute of limitation runs; use a later date
    - -- Fair market value