

The IRS has issued unpublished rulings that support this outcome.<sup>25</sup> For example, the IRS issued a private letter ruling regarding an annuity on which payment had not yet been made that was transferred to a charity upon death of the owner of the annuity. The IRS ruled that only the charity would include income from the annuity.<sup>26</sup> A trust was the beneficiary of the deferred annuity and under the terms of the trust distributed the annuity to a tax-exempt charity upon death of the owner of the annuity. The IRS ruled that the assignment to the charity was not a transfer triggering IRD to the estate and that only the charity would include distributions on the annuity in gross income as IRD when the distributions are made.<sup>27</sup> A similar conclusion was reached by the IRS in a private letter ruling when the annuitant had not assigned a beneficiary to the deferred payment annuity and upon the death of the annuitant the estate was considered the beneficiary under state law. The estate assigned the annuity to tax-exempt charities in partial satisfaction of the charities' share of the residue of the estate. The IRS issued a private letter ruling stating that the assignment did not trigger IRD to the estate and that only the charities would include payments on the annuity in gross income as IRD.<sup>28</sup>

Some additional support is also provided by private letter rulings issued by the IRS with respect to the transfer of IRAs to tax-exempt charities or foundations. Under these rulings, the transfer of a decedent's IRA by the estate to a tax-exempt charity or foundation resulting in no IRD to the estate or other beneficiaries.<sup>29</sup> A similar conclusion has also been reached with respect to the transfer to a charity or foundation of certain pension or retirement rights held by the estate of a decedent.<sup>30</sup>

#### ***a. IRD May Be Triggered if Transfer Is Made as Part of Pecuniary Bequest***

IRD may thus be avoided if a tax-exempt charity or foundation is made a beneficiary upon death under the terms of the PPVA. Alternatively, the estate of the owner may be the beneficiary and the owner's will may bequeath the PPVA to the tax-exempt charity or foundation.

If the latter strategy is chosen, however, the form in which the bequest is made may be important. A transfer in lieu of a pecuniary bequest should be avoided.

### **3. Inclusion of Annuity in Estate for Federal Estate Tax Purposes**

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<sup>25</sup> Private letter rulings are not binding precedent on the IRS or a court. However, they indicate the views of the IRS and can be cited as substantial authority for penalty purposes.

<sup>26</sup> Although the ruling did not explicitly state this, if the charity meets the requirements of a tax-exempt entity such income should not be taxable to the charity.

<sup>27</sup> P.L.R. 200803002 (Jan. 18, 2008).

<sup>28</sup> P.L.R. 200618023 (May 5, 2006).

<sup>29</sup> See, e.g., P.L.R. 200826028 (June 27, 2008); P.L.R. 200633009 (Aug. 18, 2006); P.L.R. 20052004 (May 20, 2005) (401(k) account as well as IRA); P.L.R. 199939039 (Oct. 4, 1999); P.L.R. 9818009 (May 1, 1998) (qualified retirement plan as well as IRA); P.L.R. 9723038 (June 6, 1997); P.L.R. 9341008 (July 14, 1993).

<sup>30</sup> See, e.g., P.L.R. 2008450209 (Nov. 7, 2008) (estate that was beneficiary of defined benefit pension plan assigned interest to charity in partial satisfaction of charity's share of residue of estate; estate has no IRD from plan); P.L.R. 200002011 (Jan. 18, 2000) (charity designated as beneficiary of deferred compensation after death and nonstatutory options bequeathed to charity; no IRD to estate); P.L.R. 9633006 (Aug. 16, 1996) (tax-exempt foundation designated as beneficiary upon death of owner of Keogh qualified employer plan for self-employed; no IRD to estate). Cf. P.L.R. 9845026 (Nov. 6, 1998) (distribution of bonds to tax-exempt charity by estate did not result in IRD to estate and accrued income will be included charity's income, which is exempt from tax).