SB
342

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 1/13/92 FURTHER:

Date of 5-Day Notice: ____________
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: ____________

L&C Committee considered SENATE BILL NO. 342

"An Act relating to life or disability insurance obtained by charities."

and recommends:

[ ] replace with ________ CS ____________________(_____)

[ ] attaches amendment(s)

[ ] same title
[ ] **new** title
[ ] technical title change (HB only)

[ ] adopts ________________________Letter of Intent

[ ] further referral to the ____________________

[ ] do pass

[ ] do not pass

[ ] no recommendation

[✓] individual recommendations

NEW FISCAL NOTES: Dept/Date

[✓] **zero** fiscal notes ______________

[ ] fiscal notes ______________

[ ] **appropriation**--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

[ ] **Governor's bill** with fiscal notes:
zero fiscal notes ______________
fiscal notes ______________

DO PASS:

Shirley Croft
[illegible signature]
Rick Halford

OTHER RECOMMENDATIONS:

True Pearce - 10 Pass
Chair: Signature and Recommendation

Alaska State Legislature

STEVE FRANK

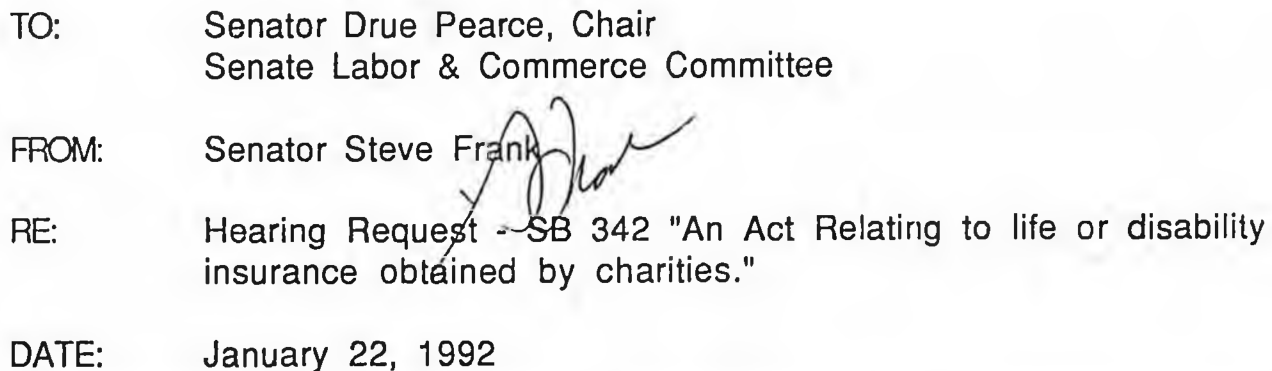
119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701
(907) 452-3421

JA.. 2 2 '92

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709
Capitol Rm. 417

Senate

MEMORANDUM



TO: Senator Drue Pearce, Chair
Senate Labor & Commerce Committee

FROM: Senator Steve Frank

RE: Hearing Request -- SB 342 "An Act Relating to life or disability insurance obtained by charities."

DATE: January 22, 1992

I am writing to request that you schedule SB 342 for a hearing at your earliest convenience.

This bill will clarify that a charity may be the beneficiary of a life or disability insurance policy donated to them.

A recent IRS ruling has questioned whether a charitable organization could be named as a beneficiary unless specifically authorized by state statute. Additionally, the ability of the donor to include the amount of the insurance premiums paid as a tax deductible contribution has been questioned as well.

Many states either provide for this in statute now, (23 as of August 1991) or are in the process of modifying their laws to accommodate this change in Tax Policy.

Passage of SB 342 would allow for charities to continue to receive the benefits from life and disability policies and for the premiums paid to be tax deductible by the donors.

Thank you for consideration.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 342

Revision Date: 1/13/92
Title: Life or Disability Insurance for Charities
Sponsor: Senator Frank
Requestor:

Department Affected: Commerce & Economic Dev.
BRU: Insurance
Component: Operations
COMPONENT SERIAL NO. 0 3 5 4

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact on the division.

Prepared By: David J. Walsh, Director
Phone: 465-2515
Division: Insurance
Date: 1/22/92

Approved by Commissioner: Glenn A. Olds, Commissioner
Agency: Commerce & Economic Development
Date: 1.22.92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

Section Keeps Subscribers Posted on Insurable Interest Issue

The issue of insurable interest related to charitable giving has been an ongoing topic of discussion for subscribers to the Society's Section Subscription Service since July 1990, when the Estate Planning Section published its first issue of *News and Views*.

In that issue, Gary D. Aronowitz, JD, LLM, CLU, editor of the newsletter, authored an article, "Insurable Interest and Charitable Giving: Beware of Potholes," outlining problems created by the New York State Insurance Department's legal interpretation of a state law saying that charities do not have an insurable interest in the life of a donor.

In that article and in the September 1990 newsletter, he presented his research on the subject, including techniques that could potentially help circumvent this problem. Mr. Aronowitz had pointed out that as of July 1990, 14 states — Arizona, Connecticut, Delaware, Hawaii, Idaho, Kentucky, Maine, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Texas, and Wyoming — had specific statutes giving charities an insurable interest in the lives of donors.

In the May 1991 issue of the newsletter, an item by Mr. Aronowitz underscored the value of national networking through the Section. "After I published my initial article, I

Continued on page 24

Insurable Interest

Continued from page 6

received letters from a number of people around the country telling me how their laws and state insurance departments had interpreted charitable insurable interest questions."

"Subscriber Frank Venable, CLU, of Georgia notified me that the Life Underwriters of Georgia were very active in a recent change in the insurance laws giving charities insurable interest. In New Jersey, where I live, my state assemblyman, who happens to be the assistant minority leader, has introduced legislation to amend the New Jersey statutes, and hopefully we will have some action on this change in the near future. I have notified many of my contacts in charitable organizations in New Jersey about the introduction of this bill."

With the recent release of Private Letter Ruling 91 10 016 (please see related article on page 6), it became clear that Mr. Aronowitz and the subscribers of the Estate Planning Section were on to something with even broader reaching implications.

In the May 1991 issue, Mr. Aronowitz wrote that in a previous issue, "I responded to an inquiry from one of our members with regard to possibly having a savings provision in a decedent's will specifically bequeathing any proceeds by the estate back to the charity. In my response, I also raised the possibility that, in a state where a charity does not have an insurable interest, the IRS could deny a deduction for the premium payments. Little did I know, at that time, that my worst fears were being realized in a request for a Private Letter Ruling."

For now, many aspects of the issue remain unclear, with the potential for new state laws, changes in IRS interpretations, court challenges, etc. Mr. Aronowitz's ongoing expert analysis of the situation, as well as other important developments in estate planning, will appear in future publications sent to Section subscribers.

For more information on Sections, please see page 12. SP

Alaska State Association of Life Underwriters

Ken Snider CLU, ChFC
President
1600 "A" Street # 301
Anchorage, AK 99501 907-277-1616 Fax 907-277-1619

January 22, 1992

State Senator Frank
Juneau, AK

Dear Senator Frank,

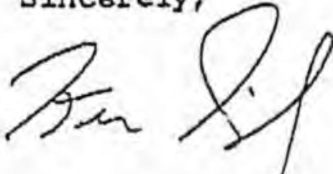
As president of the Alaska State Association of Life Underwriters and as president of the Alaska Chapter of the Society of CLU and ChFC, I would express our support for either Senate bill 342 or the similar proposed legislation that is being put forward by the division of insurance.

Allowing charitable organizations to own and be beneficiaries of life insurance policies is beneficial to the charities and provides an avenue for the donor who can only afford small periodic donations but would like to give the charity a large gift.

Most states have provisions that allow this. The few states who's laws were not in alignment with the federal IRS statutes are all in the process of correcting this conflict.

I support your proposal which would bring Alaska's laws into alignment with the federal law and allow this beneficial activity.

Sincerely,



Ken Snider CLU, ChFC

THOMAS & ASSOCIATES

Danny L. Thomas, CLU
Lester R. Thomas, CLU

January 21, 1992

Mr. Rick Solie
Office of Senator Steve Frank

RE: S.B. 342

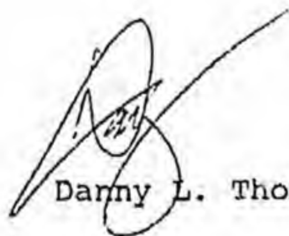
Dear Rick:

Per our previous discussions relating to the insurable interest on life insurance either transferred to or purchased by a charity, the Alaska Insurance code needs to clarify that such eligible charity's insurable interest is recognized.

It is my understanding that an insurable interest is determined by the laws of the applicable state and that if the laws in Alaska (for those domiciled in Alaska) does not recognize that a charity has an insurable interest in the life of donor, a deduction may not be allowed for gifting of policy and premiums paid, and potentially may cause proceeds payable to charity to be questioned. It therefore is important that State clarify the insurance laws giving charities insurable interest. If the code is amended, if it is possible, it would be beneficial if it would cover people already having been insured by a charity or a policy already transferred to a charity.

Enclosed is a copy from the American Society of Chartered Life Underwriter monthly newsletter indicating that States have been working on specific statutes giving charities an insurable interest in the lives of donors.

Sincerely,



Danny L. Thomas, CLU

Enclosure
DLT:lafs

Box 70338 • Fairbanks, Alaska 99707 • (907) 452-3253 • FAX (907) 452-3272

Post-it™ brand fax transmittal memo 7671		# of pages ▸	
To	Rick Solie	From	Phil Younker
Co.	Sen. Steve Frank	Co.	
Dept.		Phone #	452-6393
Fax #	456-3346	Fax #	452-1600

STATE OF AL

DEPARTMENT OF ECONOMIC D

DIVISION OF INSURANCE

PHONE: (907) 465-2515

August 16, 1991

Phil A Younker, Jr.
Phil A Younker & Associates Ltd.
P. O. Box 83529
Fairbanks, Alaska 99709

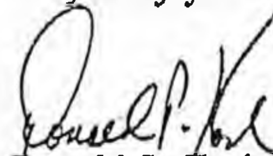
Dear Mr Younker

Re: Insurable Interests of Charities

Director Walsh advised me that you had called concerning the captioned subject and has asked me to respond to your inquiry.

This is a question that has come to this Division with a bit more frequency since the IRS issued its private ruling 9110016 on November 30, 1990 based on New York law. It unfortunately is an area on which we do not issue opinions. We have not been able to locate any Alaska case law on the subject. We believe that this is a grey area and one that should be specifically clarified and structured in statute. This would require specific legislation.

Very truly yours,



Donald P. Koch, CIE
Chief of Market Surveillance

910816 00 PY1

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INSURANCE CODE
OF THE
STATE OF CALIFORNIA

ARTICLE I

General Provisions

§ 10110. Insurable Interest

Witkin Summary (9th ed) Contracts § 509.

Cal Fam L Serv § 3:36.

11 Am Jur Proof of Facts 2d, Life Insurance, p 351 (proof that insured was unaware his aggression could cause his death).

§ 10110.1. "Insurable Interest"; Who has Insurable Interest; Voidness of contract in absence of insurable interest

(a) An insurable interest, with reference to life and disability insurance, is an interest based upon a reasonable expectation of pecuniary advantage through the continued life, health, or bodily safety of another person and consequent loss by reason of that person's death or disability or a substantial interest engendered by love and affection in the case of individuals closely related by blood or law.

(b) An individual has an unlimited insurable interest in [illegible] or her own life, health, and bodily safety and may lawfully take out a p[illegible] of insurance on his or her own life, health, or bodily safety and have the policy made payable to whomsoever he or she pleases, regardless of whether the beneficiary designated has an insurable interest.

(c) An employer has an insurable interest, as referred to in subdivision (a), in the life or physical or mental ability of any of its directors, officers, or employees or the directors, officers, or employees of any of its subsidiaries or any other person whose death or physical or mental disability might cause financial loss to the employer; or, pursuant to any contractual arrangement with any shareholder concerning the reacquisition of shares owned by the shareholder at the time of his or her death or disability, on the life or physical or mental ability of that shareholder for the purpose of carrying out the contractual arrangement; or, pursuant to any contract obligating the employer as part of compensation arrangements or pursuant to a contract obligating the employer as guarantor or surety, on the life of the principal obligor. The trustee of an employer or trustee of a pension, welfare benefit plan, or trust established by an employer providing life, health, disability, retirement, or similar benefits to employees and retired employees of the employer or its affiliates and acting in a fiduciary capacity with respect to

those employees, retired employees, or their dependents or beneficiaries has an insurable interest in the lives of employees and retired employees for whom those benefits are to be provided. The employer shall obtain the written consent of the individual being insured.

(d) An insurable interest shall be required to exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs.

(e) Any contract of life or disability insurance procured or caused to be procured upon another individual is void unless the person applying for the insurance has an insurable interest in the individual insured at the time of the application.

(f) Notwithstanding subdivisions (a), (d), and (e), a charitable organization that meets the requirements of Section 214 of the Revenue and Taxation Code may effectuate life or disability insurance on an insured who consents to the issuance of that insurance.

Section TO Add to AK LAW

(g) This section shall not be interpreted to define all instances in which an insurable interest exists.

Added Stats 1990 ch 1418 § 1.5 (SB 2281).

§ 10110.2. Reliance of insurer on statements made by applicant regarding insurable interest in insured

An insurer shall be entitled to rely upon all statements, declarations, and representations made by an applicant for insurance relative to the insurable interest that the applicant has in the insured, and no insurer shall incur any legal liability except as set forth in the policy, by virtue of any untrue statements, declarations, or representations so relied upon in good faith by the insurer.

Added Stats 1990 ch 1418 § 2 (SB 2281).

7-LS1532\A.1
Ford
01/23/92

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 342

BY SENATOR FRANK

Page 1, after line 7:

Insert a new bill section to read:

"* Sec. 2. APPLICABILITY. This Act applies to a policy of life or disability insurance that is issued or renewed on, before, or after the effective date of this Act."

MEMORANDUM

State of Alaska

TO: Steve Frank
Senator
Alaska State Senate

DATE: January 31, 1992

FILE NO.:

THRU: Glenn A. Olds
Commissioner
Department of Commerce
and Economic Development

TELEPHONE NO.: (907) 465-2515

SUBJECT: Insurable Interests for Charitable Organizations

FROM: Dave Walsh
for Director
Division of Insurance
Department of Commerce
and Economic Development

You have asked for a memo from the Division of Insurance discussing the issues leading to introduction of SB 342 and the complementary address of the issue in Section 152 of HB 425 and SB 376.

The issue is that AS 21.42.020 - 030 leaves some question as to whether a non-profit or otherwise qualified tax exempt charity has an insurable interest in an insured where the charity is named beneficiary of a life insurance policy. The answer to this question has substantial tax implications. This kind of question has arisen on several occasions, most recently following the last legislative session.

Financial planners have been most interested in the issue in view of a private ruling issued by the IRS in a New York case. Exhibit 1 is a copy of that ruling. Exhibit 2 is a reaction that appeared in the Chronicle of Philanthropy on July 30, 1991.

This issue is not a clear cut one as can be seen in Exhibit 3, a newsletter written by "Endow America" of California. When the IRS is interpreting state law to determine deductibility of donations of insurance made, it is not too hard to understand that a state agency or private financial planner would want some precision in statute. Current statute is subject to some variance in interpretation. Since we do not know how the IRS might come down on Alaska law as presently written, we have avoided interpretation. For example, the IRS private ruling seems to infer that an actual benefit must inure to the charitable institution if it is to be tax deductible for the donor. A whole life policy and an annuity would appear to fill this requirement, but whether a term life policy, which has a fixed expiration date, meets that requirement is under some doubt and should be explored with the IRS. The same concern is true of health insurance policies.

Even without the question of taxation, the concept of allowing or encouraging donation is one that has generally been supported. Philanthropy has been viewed as almost an American idea. Clarification of the issue legislatively may well benefit charities for which public funds are becoming increasingly scarce. The discussion on "- To Sustain Assignment" and "Interest of Insured" found in 44 C.J.S. §201 - §202 is attached as Exhibit 4. The attached exhibits do provide some backup and discussion of the issue.

PRIVATE RULING 9110016

"This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code."

EXHIBIT
/

SECTION 0170
Charitable Contributions and Gifts

SECTION 2055
Transfer for Public, Charitable, and Religious Uses

SECTION 2522
Charitable and Similar Gifts

0170-0000
2055-0000
2522-0000

PRIVATE RULING 9110016; 1990 PRL LEXIS 3271

DATE: November 30, 1990

REFER REPLY TO: [*1]

CC:P&SI:4/TR-31-820-90

Dear * * *

This is in reply to your letter dated March 5, 1990, in which you request several rulings concerning A's proposed purchase and transfer of life insurance to the Charity, an organization described in section 501(c)(3) of the Internal Revenue Code.

The information presented indicates that A is an independent contractor of the Charity and also a past contributor to the Charity. A intends to apply for a life insurance policy and name the Charity as sole beneficiary of the policy proceeds. Upon receipt of the policy from the insurance company, A also intends to irevocably assign the policy to the Charity. Although there is no agreement between A and the Charity, A plans to continue payment of the future policy premiums. A will be the applicant for the policy because, A concedes, the Charity does not have an insurable interest in A's life.

You have requested the following rulings:

1. That A will be entitled to an income tax charitable deduction, pursuant to section 170(a)(1) of the Code, within the limits of section 170(b)(1)(A), for the amount of the initial premium of the policy and the amounts of any subsequent premiums she pays.

2. That [*2] A is entitled to a gift tax charitable deduction under section 2522(a)(2) of the Code for the initial premium payment and future premium payments.

3. That, if A dies within three years of the gift of the policy to the Charity and the proceeds are included in her gross estate under section

2035(a), A's estate will be entitled to an estate tax charitable deduction under section 2055(a)(2) of the Code.

4. That, if A survives the policy gift date by three years, the proceeds will not be inlcuded in her gross estate.

Ruling Request 1

Section 3205(b)(2) of the New York Insurance Law prohibits anyone without an insurable interest from obtaining an insurance policy on the life of another person unless the benefits are to be paid to someone with an insurabl interest. A will obtain the insurance policy with the intent of transferring it to an organization without an insurable interest. Her inten to circumvent the law in this manner should result in the organization's being treated as having obtained the policy on her life directly from the insurance company. See, e.g., Steinback v. Deipenbrock, 158 N.Y. 24, 52 N.E. 662 (1899); Annotation, Validity of Assignment of Life Insurance [*3] Policy to One Wh Has No Insurable Interest in Insured, 30 A.L.R.2d 1310 (1953).

Therefore, it appears that the transaction will violate section of 3205(b)(2 of the New York Insurance Law, even though A rather than the organization wil obtain the policy from the insurance company. If the transaction violates section 3205(b)(2), then, upon her death, the insurance company may not have to pay the proceeds of the policy to the organization. Or if it does, the executor or administrator of her estate may maintain an action under section 3205(b)(3) to recover the proceeds from the organization.

As a general rule, section 170(a)(1) of the Code allows as a deduction any charitable contribution (as defined in section 170(c)) if payment is made within the taxable year.

A deduction for a contribution of property is allowed in section 1.170A-1(c)(1) of the Income Tax Regulations.

Under section 170(c)(2) of the Code, the term " charitable contribution" includes a contribution to an organization created in the United States and organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, if no part of its net earnings inures to the benefit [*4] of any private shareholder or individual and the organization i not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation.

Generally, under section 170(f)(3)(A) of the Code, the deduction for a transfer of an interest in property (not made by a transfer in trust) that is less than the taxpayer's entire interest in the property is allowed only to the extent that the value of the interest contributed would be allowable as a deduction under section 170 if the interest had been transferred in trust. Certain exceptions to this rule are provided under section 170(f)(3)(B) to allo contributions of (i) a remainder interest in a personal residence or farm, (ii) an undivided portion of the taxpayer's entire interest in property, and (iii) a qualified conservation contribution. Section 170(f)(3) was added by the Tax Reform Act of 1969, Pub. L. No. 91-172, 83 Stat. 487, to disallow charitable deductions for contributions of less than the taxpayer's entire interest in the property. See H.R. Rep. No. 413, 91st Cong., 1st Sess. 57-58 (1969), 1969-3 C.B. 200, 237; S. Rep. No. 552, 91st Cong., 1st Sess. 83-84 (1969), 9169-3

C.B. 423, 477; H.R. [*5] Rep. No. 782, 91st Cong., 1st Sess. 294 (1969), 1969-3 C.B. 644, 654.

Section 170(f)(2) of the Code allows deductions for certain charitable contributions of property placed in trust. Under section 170(f)(2)(A), dealin with remainder interests, the trust must be a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund. As to other interests in property transferred in trust, section 170(f)(2)(B) requires to th interest to be in the form of a guaranteed annuity or the trust instrument to specify that the interest is a fixed percentage distributed yearly of the fai market value of the trust property. The requirements for deductibility of a contribution of property placed in trust are further elucidated by section 1.170A-6 of the regulations.

Section 1.170A-7(a)(2)(i) of the regulations provides that a deduction is allowed for a contribution of a partial interest in property if such interest the taxpayer's entire interest in the property, such as an income interest or a remainder interest. If, however, the property in which such partial interest exists was divided in order to create the taxpayer's interest and thus avoid section 170(f)(3)(A) [*6] of the Code, the deduction will not be allowed.

Section 1.170A-7(b)(1)(i) of the regulations states that an undivided portic of a donor's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the donor i such property and must extend over the entire term of donor's interest in such property and in other property into which such property is converted.

Section 1.170A-7(a)(3) of the regulations provides that a deduction will not be disallowed under section 170(f)(3)(A) of the C e and section 1.170A-7 of th regulations merely because the interest which pas s to, or is vested in, the charity may be defeated by the performance of e act or the happening of some event, if on the date of the gift it appear hat the possibility that suc act or even will occur is so remote as to be neg ible. A cross reference is given to section 1.170A-1(e).

Section 1.170A-1(e) of the regulations provides that, if as of the date of a gift, a transfer for charitable purposes is depe dent upon the performance of some act or the happening of a precedent event in rder that it might become effective, no deduction is allowable [*7] unles the possibility that the charitable transfer will not become effective is so remote as to be negligibe. If an interest in property passes to, or is vested in, a charity on the date of the gift and the interest would be efeated by the subsequent perf
mance of some act or the happening of some event, e possibility of occurrence of which appears on the date of the gif to be so remote as to be negligible, the deduction is allowable. For exam e, a taxpayer transfers land to a city government for as long as the land is u d by the city for a public park. If on the date of the gift the city does pl n to use the land for a park and the possibility that the city will not use the land for a public park is so remote as to be negligible, the taxpayer is entitl d to a deduction under section 170 for a charitable contribution.

A's submission represents that the organization to which she is donating the life insurance policy is tax-exempt under section 501(c)(3) of the Code. Because the definition of charitable contributio under section 170(c)(2) essentially includes the requirements of section 5 1(c)(3), a donation to the

organization could potentially qualify as a charitable [*8] contribution and be deductible under section 170(a).

Partial Interest

Since A is obtaining the policy with the intent of transferring it to the organization which does not have an insurable interest, the transaction will violate section 3205(b)(2) of the New York Insurance Law. As a result, when she dies, the insurance company may not have to pay the benefits of the policy to the orgaization or, if it does, the executor or administrator of her estate may maintain an action under section 3205(b)(3) to recover the benefits. Therefore, when she transfers the policy to the organization, she cannot transfer all the rights associated with it. She is instead donating a partial interest in the policy, not in trust, which under section 170(f)(3)(A) of the Code is generally not deductible as a charitable contribution.

A contribution of a partial interest in property for charitable purposes is deductible under section 170(f)(3)(A) of the Code if it would have been allowable under section 170 had it been transferred in trust. However, the interest in the current case would not have been allowable if it had been transferred in trust because it is not an income or remainder interest set [*9] out in section 170(f)(2) of the Code and section 1.170A-6 of the regulations.

On the other hand, a contribution for charitable purposes of an interest that is A's entire interest could be deductible under section 170(f)(3)(A) of the Code. It could be argued that the interest contributed in the present case will represent her entire interest, since it appears only the insurance company and the administrator or executor of her estate, and not she, will have the power to deny the charity the insurance proceeds. However, because A will have the ability through a will to name her heirs who will benefit if the proceeds of the policy are returned to the estate, the interest she will be transferring cannot be treated as an entire interest. In effect, this is similar to retaining the right to name the beneficiary outright, a circumstance covered in Rev. Rul. 76-143, 1976-1 C.B. 63, discussed below.

In Situation 1 of Rev. Rul. 76-143, the taxpayer contributed the cash surrender value of a paid-up life insurance policy paid on his life to a college. The college was given possession of the policy, but the taxpayer retained the right to name or change the beneficiary and to assign the [*10] balance of the policy subject to the college's right to the cash surrender value. The revenue ruling states:

"In Situation 1, the gift made by the taxpayer of the right to the cash surrender value of the policy was a gift of less than an entire interest in the property. Furthermore, a gift of this kind is not a gift of a fraction or percentage of each and every substantial interest owned by the donor in such property since the taxpayer retained the right to designate the beneficiary. Even if the taxpayer irrevocably designated the beneficiary prior to making the gift in order to create a remainder interest that would then constitute the taxpayer's entire interest in the property, such a provision would be regarded as having been made to avoid section 170(f)(3)(A) of the Code and the deduction would not be allowed."

Accordingly, a charitable contribution deduction is not allowable under section 170 of the Code for the irrevocable assignment described in Situation [1976-1 C.B. at 63]

Rev. Rul. 76-143 revoked the contrary holding of Rev. Rul. 69-79, 1969-1 C. 63, and applies to gifts made after the effective date of the Tax Reform Act c 1969. We find that the rights to be retained [*11] in the current case are similar enough to those retained in Rev. Rul. 76-143 for us to conclude under its holding that A will not actually be transferring her entire interest in th property within the meaning of section 170(f)(3)(A). Although the rights retained in the current case may not be as definite as those retained in the revenue ruling, they are substantial and only if they were insubstantial could they be disregarded for the purposes of section 170(f)(3). Compare Rev. Rul. 75-66, 1975-1 C.B. 85, which uses the standard set forth in section 1.170A-7(b)(1)(i) of the regulations to infer that the retention of an insubstantial right will not disqualify a contribuiton under section 170(f)(3) of the Code.

Under the reasoning set forth in Rev. Rul. 76-143, A will not have contributed an undivided portion of her entire interest in property so as to qualify for a deduction under section 170(f)(3)(B)(ii) of the Code and section 1.170A-7(a)(2)(i) of the regulations, since she will not have given a fraction or percentage of each and every substantial right she will own in the insurance policy. Nor would her contribution meet either of the other exceptions to section 170(f)(3)(A) [*12] of the Code provided under sectio 170(f)(3)(B).

We conclude that A's contribution should be disallowed under the partial interest rules of section 170(f)(3) of the Code. Further, as explained below, charitable contribution would not be allowable under section 170 in this case unless it is deductible under the standards provided in sections 1.170A-1(e) ar 1.170A-7(a)(3) of the regulations regarding contributions subject to conditions

Remoteness

Sections 1.170A-1(e) and 1.170A-7(a)(3) of the regulations are applicable to the present case since A will transfer the policy to the organization subject t the possibility that her insurance company may retain the proceeds for the benefit of A's estate or the administrator or executor of her estate may maintain an action to recover them. Therefore, for the donation of the policy to be deductible under section 170(a) of the Code the possiblity that the organization's rights to the policy will be divested must be so remote as to be negligible.

Rev. Rul. 73-1, 1973-1 C.B. 117, holds that a charitable contribution subject to the future possibility of being divested by actions of the donor is not deductible under section 1.170A-1(e) [*13] of the regulations. The contribution in question was the amount paid by the donor in excess of the valu of an annuity purchased from the donee, a qualifying charity, where the donor retained the power to have the total purchase price returned to him prior to th commencement of the annuity some years later. The revenue ruling reasons that since the donation to charity is subject to the donor's power to require that the entire purchase price be repaid to him, more than a remote possibility exists that the charitable transfer will not become effective.

In the current case, the proceeds of the policy may eventually be paid to A estate rather than returned to her. But this distinction makes the contributi here subject to an event that is less remote than the one in the revenue rulin since even if A desires the contribution to remain effective, her, insurance company and the executor or administrator of her estate still have the power, and perhaps the duty, either to retain the benefits or recover them from the organization.

In contrast, a charitable contribution subject to sections 1.170A-1(e) an 1.170-7(a)(3) of the regulations is allowed in Rev. Rul. 77-148, 1977-1 C.B. [*14] 63, holding that a gift of timber land to a charitable organization for subsequent transfer to the United States is deductible, even though the grantor retained c rtain timer and mineral rights. In Rev. Rul. 77-148, the United States planned to use theland as a wildlife preserve. The timber right could be exercised only if the donees attempted to dispose of the timber, and the mineral rights could only be exercised if approved by the Secretary of the Interior. The revenue ruling concludes that the grantor's exercise of these rights is so remote as to be negligible, since their exercise is dependent upo the actions or the permission of the ultimate donee, the United States, and it is not in its interest, given the land's proposed use, to allow the rights to b exercised. The donee's control of the condition subsequent coupled with an adverse interest in its being exercised distinguishes Rev. RUl. 77-148 from th present case and Rev. Rul. 73-1.

The requirements of section 1.170A-1(e) of the regulations are further elucidated by Briggs v. Commissioner, 72 T.C. 646 (1979), which involved the deductibility of property subject to conditons subsequent that would allow reentry. [*15] In its analysis, the court interpreted the phrase "so remot as to be negligible" to mean "a chance which persons generally would disregard as so highly improbable that it might be ignored with reasonable safety in undertaking a serious business transaction" and to "a change which every dictate of reason would justify an intelligent person in disregarding as so highly improbable and remote as to be lacking in reason and substance." The court applied these standards to find the donation was not deductible under section 1.170A-1(e).

A has not demonstrated that the chance that the organizaton would be diveste of its rights to the policy in the future would meet either of the standards enunciated in Briggs. The rights to be retained by the insurance company and by the administrator or executor of her estate would be in exercise of rights created by New York law. There actons would be motivated either by their own interests or those of the estate, and not by the interests of the donee. In addition, A could discontinue payments of the premiums on the insurance which would cause the policy to lapse, if the organization did not pay them. Therefore, the contribution of the policy would [*16] not meet the requirements of section 1.170A-1(e) of the regulations.

Finally, we note Rev. Rul. 58-372, 1958-2 C.B. 99, which is based on a situation in which the initial premium on a life insurance policy is paid the same day the policy is contributed to charity. The amount of the initial premium is allowed as a charitable contribution under secton 170(a) of the Code. In the revenue ruling, the possible application of former section 1.170-1(e) of the regulations, which governed contributions subject to a condition when Rev. Rul. 58-372 was published, is not made an issue. Also, the "highly improbable" standard that was applicable to a condition subsequent

under former section 1.170-1(e) is less stringent than the "so remote as to be negligible" standard that applies now.

More importantly, Rev. Rul. 58-372 was published before the enactment of the partial interest rules in section 170(f)(3) of the Code. Finally, Rev. Rul. 58-372 does not indicate whether, under the law of the state involved in that ruling, the charity has an insurable interest, which charities do have in so[me] states, nor does it indicate whether the insurance policies were obtained wi[th] the intent to transfer [*17] them to charity. The focus of the revenue ruling is instead on the valuation of the initial premium donated. So althoug[h] the revenue ruling could be relevant to the amount of the deduction, in the present case, if the policy were deductible, it is not relevant to the determination of whether or not the transfer of the policy is deductible.

Ruling Requests 2-4

Section 2501 imposes a tax on the transfer of property by gift. Section 25[11] provides that the gift tax applies to all transfers by way of gift, whether the transfer is in trust or otherwise, and whether the gift is direct or indirect.

Section 25.2511-2(b) of the Gift Tax Regulations provides that, for a gift [to] be complete and, therefore, subject to the gift tax, the donor must have parte[d] with dominion and control over the transferred property.

In Robinett v. Helvering, 318 U.S. 184 (1943), the United State Supreme Cour[t] concluded that, in valuing a gift of an interest transferred in trust where the donor retains an interest in the trust, the donor has the burden of proof in establishing that the donor's retained interest has any value that may be deducted from the taxable value of the transfer. The Court stated [*18] tha[t] if the donor's reversionary interest is incapabl[e o]f valuation, the donor must disregard the retained reversionary interest for [pu]rposes of valuing the taxabl[e] gift made as a result of the transfer to the tru[st].

Section 2522 of the Code provides for a deduc[tio]n in computing taxable gifts for a calendar year for the value of property transferred to charitable organiztions described in section 2522(a).

Section 2522(c)(2) of the Code provides that wh[e]re a donor transfers an interest in property to a charitable eorganizati[o]n and a remainder interest i[n] the same property to noncharitable ben[e]ficiaries, [n]o deduction is allowed for the interest passing to charity unless it is in [t]he form of an interest described in section 170(f)(3)(B) or is a guarante[e]d annuity or is a fixed percentage distributed yearly of the fair market [va]lue of the property (to be determined yearly).

In the present case, the transfer by A to the [c]harity is not a transfer of A's entire interest in the policy because, at A's [d]eath, A's esta[t]e may have th[e] right to recover the insurance proceeds. Altho[ug]h A has made a completed gif[t] of a substantial interest in the insurance poli[cy], A has not retained an interest [*19] that is susceptable of valuatio[n] under generally accepted gif[t] tax valuation principles. See Robinett.

As in the case under section 170(a) of the Code, a deduction is disallowed under section 2522(a) because of the possibility that the organization's rights to the policy will be divested is not so remote as to be negligible. And as

is the case under section 170(f)(3), the partial interest in the policy receiv by Charity is not a qualified interest referred to in section 2522(c)(2). Thus, A is not entitled to a gift tax charitable deduction under section 252 for the value of the initial premium payment or for that of future premium payments.

Section 2033 of the Code provides that the value of the gross estate shall include the value of all property to the extent of the decedent's interest therein at the time of his death.

Section 2035(a) of the Code provides that the gross estate includes the val of all property interest transferred by a decedent within three years before death. Thus, the value of the transferred property is included in the decedent's gross estate as if the transfer had not been made and as if the decedent had owned the property at the time of death. [*20]

Under section 2035(d)(1), the provisions of 2035(a) are not applicable to t estate of decedents dying after December 31, 1981. However, section 2035(d)(2 of the Code provides that section 2035(d)(1) shall not apply "to a transfer of an interest in property which is included in the value of the gross estate und section 2036, 2037, 2038, or 2042 or would have been included under any of suc section if such interest had been retained by the decedent".

Under section 2042(1) of the Code, the decedent's gross estate includes the proceeds of insurance on the decedent's life receivable by the decedent's estate. Under section 2042(2), the gross estate includes the proceeds of insurance on the decedent's life receivable by beneficiaries other than the decedent's estate under policies in which the decedent possessed at death any incidents of ownership that can be exercised either alone or in conjunction wi any other person.

Section 20.2042-1(c)(2) of the Estate Tax Regulations provides that the term "incidents of ownership" is not limited in its meaning to ownership of the policy in the technical legal sense. Generally speaking, the term has referenc to the right of the insured [*21] to the economic benefits of the policy. Thus, it includes the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke an assignment, to pledge the polic for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc.

The insurance proceeds will be included in A's gross estate under section 2035 of the Code if A dies within three years of the policy assignment because has made a "transfer of an interest in property which is included in the value of the gross estate under section . . . 2042 or would have been included under any of such section if such interest had been retained by the decedent". The insurance proceeds will also be included in A's gross estate under section 2033 of the Code if A dies more than three years after the policy assignment date if, at that time, A's executor can recover the policy proceeds for the benefit of A's estate. A's estate will not be entitled to a deduction under section 2055(a) of the Code in the event that A's executor is able to recover the proceeds for the benefit of A's heirs. In addition, A's estate will not be entitled to a deduction under section 2055(a) of [*22] the Code if A's executor fails to recover the policy proceeds and the proceeds are paid to the Charity, because the property will not pass to the Charity from A, but rather the property will pass to the Charity as a result of action or

inaction by A's executor.

Except as we have specifically ruled under the cited Code provisions, we express no opinion as to the federal tax consequences of the proposed transaction under those provisions or under any other provision of the Code.

In accordance with the instructions in a power of attorney, we are sending copy of this letter to the taxpayer.

This ruling is addressed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be cited or used as precedent.

Sincerely,
Assistant Chief Counsel
(Passthroughs and Special Industries)
Richard Grosgebauer
Chief, Branch 4
Enclosure
Copy for 6110 purposes

The Chronicle of Philanthropy
July 30, 1991

EXHIBIT
2

IRS Ruling on Insurance Gifts Prompts Action by 2 States

NEW YORK and Illinois have both changed their laws on gifts of life insurance to charity.

New York has clarified a law that, in effect, prevented charities from receiving gifts of life insurance from living donors. The legislation, signed by Gov. Mario Cuomo this month, allows donors to purchase life-insurance policies and then immediately to give those policies to charity, so long as the gift was the donor's idea.

The new law leaves unclear the extent to which charities may promote gifts of life insurance to raise money.

"This isn't everything we wanted," said Donald Kent, director of endowment development at the Council of Jewish Federations in New York, which was one of several charities that pushed for a change in the law.

The legislation was prompted by an I.R.S. private-letter ruling released in March.

In the ruling, which applied only to the unidentified New York woman who requested it, the service said that she could not claim federal tax deductions on income, gift, and estate taxes for a charitable donation of life insurance because the state's law did not recognize charities as having an insurable interest in their donors.

The service said that because the donor was going to purchase the policy with the intention of immediately giving it to charity, the charity had effectively obtained the policy on the donor.

The I.R.S. said that would violate New York law, which said that one must have an insurable interest in a person to obtain a policy on his or her life.

Because the policy on the New York woman would be invalid, it could be taken away from the charity after the donor's death, the I.R.S. reasoned. Thus the federal government could have granted tax deductions for a charitable gift that never ended up benefiting a charity.

Under the new law, charities still do not have an insurable interest in their donors, which means that they still are barred from directly or indirectly obtaining insurance policies on their donors' lives.

The New York Insurance Department is working with charities to clarify what, if anything, they may do to encourage life-insurance gifts.

In Illinois, the legislature has passed a measure designed to help protect charitable gifts of life insurance. The measure, which would take effect on January 1, 1992, has been sent to Gov. Jim Edgar for his signature, which is expected.

The legislation says donors may obtain life-insurance policies naming certain kinds of non-profits as sole beneficiaries.

Qualified organizations include charities that meet the requirements of Section 501(c)(3) of the Internal Revenue Code as well as social-welfare organizations, labor and agriculture groups, voluntary employees' beneficiary societies, and fraternal beneficiary societies.

The legislation says non-profits may continue to pay premiums to insurance companies if donors discontinue premium payments and if continuing the policy would be a prudent investment.

Don Tebbe, president of the Springfield-based Council of Illinois Nonprofit Organizations, which with others promoted the legislation, called it a "stopgap measure." Lawmakers will be pressed later this year to pass a bill containing "even more explicit language that charities have an insurable interest," said Mr. Tebbe.

Scott Taylor
U of A Foundation
910 Yukon Dr.,Suite 208,
Fairbanks, AK 99775
474-7687
Position Statement: Supported HB 360

Linda Hulbert
New York Life
110 Cushman St
Fairbanks, AK 99701
452-4400 Position Statement: Observer

PREVIOUS ACTION

BILL: HB 360
TITLE: "An act relating to life or disability insurance obtained by charities."

PRIME SPONSORS: BOYER, B. DAVIS, KOPONEN

JRN-DATE	JRN-PG		ACTION
01/03/92	1948	(H)	PREFILE RELEASED
01/13/92	1948	(H)	READ THE FIRST TIME REFERRAL
01/13/92	1948	(H)	L&C, JUD
01/15/92	1988	(H)	COSPONSOR (S): KOPONEN

ACTION NARRATIVE
TAPE 1, SIDE A
NUMBER 001

Chairman Finkelstein called the meeting to order at 1:04 p.m. and noted members in attendance. He advised members that they would be considering HB 360.

NUMBER 015

Representative Boyer informed the members that this bill was specifically drafted to address a problem based on an IRS ruling to an individual in the state of New York on whether an individual could take a tax deduction based on her gift of her life insurance policy to a charity. The IRS ruled that she was not entitled to a tax deduction because in the state of New York the statutes did not provide for a insurable interest by that non-profit. Since then 14 other states have enacted specific statutes allowing for insurable interest by charities so they can continue to receive gifts of life insurance policies. HB 360 allows charities to use every tool given to them to receive outside income. This bill is for the benefit of charities, universities, and other organizations that receive gifts like these.

NUMBER 072

Representative Bruckman said the bill sounded good, but asked which non-profits were considered charities in HB 360.

NUMBER 081

Representative Boyer explained that he had kept the definition of charities very narrow. The qualifiers are 26 U.S.C 501(c)(3) groups.

NUMBER 192

Dave Walsh, Director of the Division of Insurance, expressed his general support for the bill.

NUMBER 236

Representative Taylor asked if churches are 501(c)(3) organizations, and Dave Walsh's answer was that they are.

NUMBER 275

Scott Taylor, of the University of Alaska Foundation, spoke in favor of this bill, and noted that a lot of donors are quite confused by the New York ruling. As a result there has been a chilling effect on the giving of life insurance policies. He pointed out that Alaska is one of seven states which do not provide for donors to make gifts of their insurance.

NUMBER 315

563-3676

John Hoffer, an Anchorage tax practitioner, spoke in favor of HB 360, and noted that the IRS ruling has caused quite of number of problems in Alaska because it is really unclear if Alaska has a problem under the letter ruling. 26 U.S.C 501 (c)(3) determines which organizations must declare income, not which donors may take tax deductions.

NUMBER 403

Representative Donley moved that HB 360 pass out of the House Committee with individual recommendations.

NUMBER 461

There were no objections to passing the bill out of committee. Chairman Finkelstein adjourned the meeting at 1:31 P.M.

University of Alaska Foundation

University of Alaska
910 Yukon Drive, Suite 208
Fairbanks, Alaska 99775-5240
Office (907) 474-7687
FAX (907) 474-7664 or (907) 474-5140

Office of Development
£YDEV

Representative Mark Boyer
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99811

VIA FAX

January 17, 1992

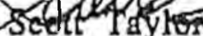
Dear Representative Boyer:

I understand that HB 360, which deals with changes to Alaska's statutes regarding life insurance policies, will receive its first hearing next Tuesday. The University Foundation strongly supports this bill since it will provide us, and other non-profits in Alaska, with the ability to have an insurable interest in the lives of donors who contribute life insurance polices to us. Through this change, our existing donors and potential contributors will be assured that their gifts of life insurance policies will be deductible as charitable donations under the Internal Revenue Service's rulings.

At the annual meeting of the University of Alaska Foundation on November 6, 1991, the Board of Trustees passed a unanimous motion indicating strong support for this change in Alaska's insurance statutes and directing that a resolution be prepared indicating their support. That resolution has not yet been completed. I shall send it to you when it is. In the interim I hope that this letter and the Board's action I have described will serve to indicate the Foundation's strong support of the statute changes outlined HB 360.

I thank you for all you are doing to help bring Alaska's laws into line with those in almost all other states which now do provide for charities to have an insurable interest in their donors.

Sincerely,



Scott Taylor
Executive Director

cc: Members of the Board of Trustees

United Way
of Anchorage

Post Office Box 102052
Anchorage, Alaska 99510-2052
Phone (907) 562-4483
Fax (907) 563-0020

January 16, 1992

Representative Mark Boyer
State Capitol
Juneau, Alaska 99801

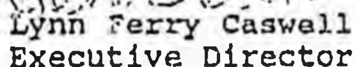
Dear Representative Boyer:

It is with great enthusiasm that I endorse house Bill 360, which essentially enables donors to assign life insurance policies to charitable organizations.

As funds for the provision of health and human services become more scarce from the federal and state governments, it is increasingly important for charitable organizations to seek other sources of funding. The opportunity for an individual to help insure the future viability of critical services will be of great value to those agencies providing the service.

My thanks to you for bringing this bill forward. I will follow its progress with keen interest.

Sincerely,



Lynn Perry Caswell
Executive Director

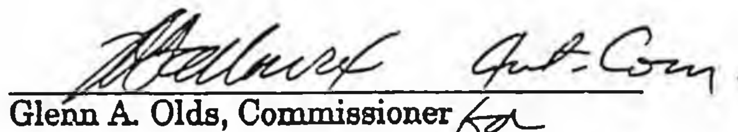
Department of Commerce & Economic Development / POSITION PAPER

SB 342: "An Act relating to life or disability insurance obtained by charities."

The Department of Commerce and Economic Development is in favor of this legislation.

AS 21.42.020 presently provides that insurance on the "life or body" of a person can only be written for the benefit of another person if that person has an "insurable interest" as defined. Charitable institutions are not currently defined as having an insurable interest.

The proposed change provides that a charitable organization may be the beneficiary under an insurance policy. The effect is to allow philanthropic efforts by persons who are not wealthy. A person can, with this legislation, donate the benefits of a policy to a charity exempt from taxation under 26 U.S.C. 501(c)(3) and receive tax benefits for the premium paid. We urge passage of this bill.



Glenn A. Olds, Commissioner

Date: 2-3-92

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