GIFT ANNUITIES: NEW DEVELOPMENTS, PLANNING OPPORTUNITIES, AND OPERATIONAL QUESTIONS

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INTRODUCTION

This paper presupposes that the reader already has a general understanding of gift annuities. Therefore, it does not deal with the basics but rather focuses on matters pertaining to the operation of a gift annuity program. It considers in turn:

- Changes regarding gift annuity rates and the implications.
- Proposed regulations regarding ratable reporting of capital gain.
- New developments and existing requirements pertaining to state regulation of gift annuities.
- Some planning opportunities and intriguing questions.
- Controlling risk to the charity.

I. CHANGES REGARDING GIFT ANNUITY RATES AND THE IMPLICATIONS

A. Current Gift Annuity Rates

In April of each year the ACGA board decides on the maximum gift annuity rates to be recommended to charities. Any changes in the recommended rates become effective on July 1 and continue until the following June 30.

Last April, the ACGA board recommended that the rates for immediate gift annuities be continued through June 30, 2007. Although immediate gift annuity rates did not change, there were changes in the assumptions underlying them. The return assumption increased by 25 basis points, and the age setback increased by .5 years. These two factors offset each other, resulting in no change in the recommended rates for immediate gift annuities.

There was a 25-basis-points increase in the interest rate credited during the deferral period of deferred gift annuities.

The Gift Annuity Rates Committee is now conducting its annual review and will submit its recommendation to the ACGA board at its spring meeting. Any changes approved by the board will become effective on July 1.

B. Assumptions Underlying Gift Annuity Rates (Immediate and Deferred)

1. The residuum (amount of the contribution remaining at the death of the annuitant) will be 50 percent.

2. Life expectancies are based on the Annuity 2000 Tables, assuming all annuitants are female and are 2.0 years younger than their actual ages. The rates take into consideration projected increases in life expectancy since those tables were published.

3. The charity's expenses for investing gift annuity reserves and administering gift annuities total 100 basis points.

4. The total return on gift annuity reserves for immediate gift annuities is 6.25 percent, or 5.25 percent net of expenses. This return assumption is based on an assumed portfolio consisting of 40 percent equities, 55 percent 10-year Treasury bonds, and 5 percent cash equivalents, using historical averages on large-cap equities and current yields on the bonds and cash.

   Note: This 6.25 percent is the assumed total return for annuitant ages 51 to 86, in the case of one-life annuities, and for ages 59 and older, in the case of two-life annuities. A lower return assumption for the oldest ages for one-life annuities effectively results from capping the rates, and the lower return assumption for younger ages is necessary to produce rates that result in a charitable deduction for more than 10 percent in the event of a low CMFR. The present value of the annuity payments must be less than 90 percent of the gift amount for a gift annuity to qualify for favorable tax treatment under the Internal Revenue Code and Regulations.

5. The interest credited during the deferral period for deferred gift annuities is 5.25 percent.

C. Effect of the Increase in the Credited Interest Rate on Deferred Gift Annuities

Deferred gift annuities are now somewhat more attractive to donors.

Following is a comparison of the annual payments and charitable deductions for deferred gift annuities established before and after July 1, 2006. In both cases, the annuitant is age 50 at the time of the contribution and age 65 when payments begin. A CMFR of 5.6 percent is assumed in both calculations in order to show how the higher payment affects the deduction.

	Annual Payment	Charitable Deduction
Gift prior to 7/1/06	$6,250	$25,660
Gift on or after 7/1/06	$6,450	$24,881

D. How a Gift Annuity Compares With a Certificate of Deposit ("CD")

The rates on CDs have been increasing, and it is now possible to obtain a CD paying in the range of five percent. Even so, the cash flow from a gift annuity remains higher as the following chart demonstrates. Keep in mind, however, that in the case of a gift annuity the principal is irrevocably committed, and gift annuity payments consist partly of a return of that principal.

Comparison of a $50,000 CD and a
Contribution of $50,000 for a Gift Annuity
Donor Age 75, CMFR of 5.8%

CD

Investment	$50,000
Interest	2,500
Income tax (assuming a 33% combined federal and state tax rate)	825
Net spendable	$1,675

Gift Annuity

Contribution	$50,000
Annual Payment	3,550
Taxed as follows during life expectancy:	
Ordinary income	1,409
Tax-free	2,141
Income tax (assuming a 33% combined federal and state tax rate)	465
Net after-tax cash flow	3,085
Charitable deduction	23,442
Tax savings resulting from deduction	7,736
Interest on invested tax savings (5% return)	387
After-tax interest on invested tax savings	259
Net spendable	$3,344

E. Comparison of a Commercial Annuity and a Gift Annuity

The total financial benefit from a commercial annuity is greater than from a gift annuity, even factoring into the calculation the benefit of the charitable deduction. Thus, there must be charitable intent for a gift annuity to make sense.

Below is a comparison of what a 75-year-old female donor-annuitant might receive from a commercial annuity and a gift annuity. The assumed discount rate is 5.8 percent.

	Commercial Annuity	Gift Amounts
Amount of premium or contribution	$100,000	$100,000
Annual annuity payment	$10,100	$7,100
Charitable deduction	0	46,884
Tax savings from deduction (assuming a 33% combined federal and state tax rate)	0	15,472
Investment of tax savings at 5%	0	774
Total annual benefit	$10,100	$7,874

Suppose she owned stock having a fair market value of $100,000 and a cost basis of only $20,000. The stock pays small dividends, and, if she doesn't establish the gift annuity, she would sell the stock, withhold enough for tax on the gain, and purchase a commercial annuity.

Sales proceeds	$100,000
Capital gain	80,000
Tax on the gain	12,000
Invested in commercial annuity	88,000
Annual annuity payment	8,888

There is still more cash flow from the commercial annuity, but the differential is smaller.

The following table shows gift annuity rates as a percentage of average commercial rates at selected ages. The commercial rates are an average of rates offered by five insurance companies in February of 2006. Although the commercial rates have changed somewhat in the past year, the percentages should still be in the same range.

Age	AGCA Rate as a % of Commercial Rate
60M	76.9%
60F	83.0
65M	72.3
65F	79.2
70M	67.5
70F	75.5
75M	61.5
75F	69.9
80M	55.5
80F	63.4

85M	50.6
85F	57.6
90M	45.0
90F	50.7

II. PROPOSED REGULATION REGARDING RATABLE REPORTING OF GAIN

A proposed regulation (REG -141901-05) would require gain in property contributed for private annuities to be recognized immediately. Ratable reporting in private annuities (those typically established between family members) would no longer be permitted.

Although the notice of proposed rule making doesn't at this time propose to change the way gain is reported in gift annuities, comments are requested as to whether the reporting of gain in gift annuities should be changed to conform to the rules for private annuities. This would mean a change in Reg. 1-1011-2.

A. Practical Effect of Extending the Rule Change to Gift Annuities

Under existing Reg. 1-1011-2, if the donor is the annuitant, or the initial annuitant in a two-life annuity, and the annuity is non-assignable except to the charity, the taxable gain can be reported ratably over the donor's life expectancy. The gain attributable to the gift value is not taxed at all. It's the gain attributable to the present value of the payments that is taxed. The only question is when – over life expectancy if above conditions are met, or immediately if they are not.

The consequences of eliminating ratable reporting of gain in gift annuities is shown in the following example:

Situation
On January 1, 2007, donor whose date of birth is December 29, 1932 contributes for a gift annuity stock having a fair market value of $100,000 and a cost basis of $20,000. Payments are quarterly, the charity offers the ACGA rate, and the December CMFR of 5.8 percent is used.

	Current Rule Ratable Reporting of Taxable Gain	If Proposed Regulation Applied to Gift Annuities No Ratable Reporting
Amount Contributed	$100,000	$100,000
Charitable Deduction	46,541	46,541
Gain Taxable the Year of the Gift	3,262.32	42,767.20

Taxation of Annual Payment During
Each Full Year of Life Expectancy

Ordinary Income	2,822.10	2,822.10
Capital Gain	3,262.32	- 0 -
Tax-free	815.58	4,077.90
	$6,900.00	$6,900.00

B. Response on this Matter by ACGA and NCPG

Silence on this matter might be construed as acquiescence to extending the rule change to gift annuities, which is absolutely not the case. Therefore, the ACGA and NCPG have submitted written comments, and the ACGA has arranged for Conrad Teitell to testify on its behalf. He also drafted the written comments submitted by the ACGA, and which can be read on the ACGA website.

The written comments make the following points:

- Unlike private annuities, gift annuities are not used to pass untaxed appreciation to family members.

- A change in the rule would result in fewer annuities with a reduction of dollars for charitable causes.

- Eliminating ratable reporting of gain would discriminate against people of more modest wealth. People who can make larger contributions can establish a charitable remainder trust and recognize the gain over a number of years, but those, who need to receive payments and cannot afford a gift large enough for a charitable remainder trust to be practical, cannot achieve deferral of taxation of gain.

- An installment sale is generally not available to gift annuity donors because, at most, only 3.6 percent of property contributed for a gift annuity would qualify for the installment sale tax treatment.

- Gift annuities have been offered for a long time, and they are not abusive. Furthermore, the ACGA promotes responsible philanthropy and cooperates with regulatory and legislative bodies.

III. UPDATE ON STATE REGULATIONS

A. Recent Changes in State Regulation

Between May 2005 and January 2007 several states have enacted new or revised legislation relating to regulation of gift annuities. While the results of the legislation are integrated in the summary contained in Section B below, an overview of the most significant changes is provided here.

1. Arkansas

Charities may now invest gift annuity reserves in accordance with the Arkansas prudent investor standard. The legislation did not substitute the prudent investor standard for specific investment restrictions, but rather added it as an option.

2. California

Charities may now invest up to 50 percent of California reserve assets in equities (previously the equities limitation was 10 percent). Charities may also invest reserve assets in mutual funds as part of the equity allocation, without needing to obtain approval from the Department of Insurance.

3. Oregon

While previously a charity was required to obtain a permit from the state insurance division, and to annually file a detailed report on its annuity reserve fund, both filing requirements have been eliminated. However, in order for the issuance of a gift annuity to not be subject to insurance regulation, a charity must still meet certain requirements regarding years of operation and minimum net assets, and maintain a segregated reserve fund.

4. West Virginia

Previously a "silent" state (no law specifically governing issuance of gift annuities), West Virginia now requires a charity to notify the insurance commissioner regarding intent to issue gift annuities in the state.

B. Current Summary of State Regulations

1. Requirements for issuance of gift annuities

At the present time:

- 11 states require a segregated reserve fund, annual reporting, and/or a detailed application. (Four additional states that exempt charities from most regulations require a reserve fund.)

- 17 states exempt gift annuities from regulation but require a notification to the state of an intent to issue gift annuities. All but one of these states require certain disclosure language in the gift annuity agreement.

- 18 states exempt gift annuities from regulation and do not require notification to the state. Five of these states require disclosure language in the gift annuity agreement.

- 5 states and the District of Columbia either do not address gift annuities or have determined that they are not subject to insurance regulation.

2. Segregated reserve fund

Fifteen states require a charity to establish an annuity reserve fund: Alabama, Arkansas, California, Florida, Hawaii, Maryland, Montana, New Hampshire, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Washington, and Wisconsin. The fund is to be segregated, held separate and distinct from other assets of the organization, and its assets may not be used to pay any obligations other than annuity payments. The amount required to be held in the fund is generally calculated based on an actuarial methodology, utilizing mortality tables and interest rates that can vary from state to state. Some states require a surplus, most often an additional 10 percent of the calculated reserve. However, in Hawaii, New Jersey and Wisconsin the surplus is the <u>greater</u> of 10 percent or $100,000. (Thus, until a charity's calculated reserves exceed $1 million, the required surplus will be $100,000.) For a charity just launching a gift annuity program that includes any of these three states, this in effect creates a minimum fund balance requirement of $100,000. Arkansas has a minimum as well, requiring that the fund hold at least $50,000.

3. Restrictions on investment of reserve fund

California, Florida, and Wisconsin all place specific limitations on how the segregated reserve fund is invested. In general, the investment limitations imposed are:

- government bonds allowed without limit;
- corporate bonds generally limited only as to percent in any one company, except in California where they are included in limit on publicly-traded securities;
- stock limited to 20 percent (Wisconsin) or 50 percent (California, Florida) of required reserve assets;
- mutual funds have various limitations including a 10-percent limit on any one fund (Florida), an overall limit of 20 percent (Wisconsin), or as part of the stock limitation (California);

- real estate is not permitted as a reserve investment in California, and is limited to 5 percent by Florida and 20 percent by Wisconsin.

As California requires a "California only" reserve fund, the restrictions apply only to reserves held for California residents. Two states (Florida and Wisconsin) allow a charity the option of creating a state-specific fund; otherwise the investment restrictions apply to reserves held for all annuities.

Six other states — Hawaii, Maryland, New Hampshire, New Jersey, New York, and Washington — have statutes or regulations that specifically mention investment of reserve fund assets, with each requiring investment in accordance with a "prudent investor" standard.

4. Annual reporting

Certain states (Arkansas, California, Hawaii, Maryland, New Jersey, New York, Washington, and Wisconsin) have a detailed annual reporting requirement, involving either use of a specific state form or a statement from a CPA (either in the audited financial statements or separate). Washington and Wisconsin specifically require an actuary to verify the reserve requirement as part of the annual filing. (Note that Oregon's annual reporting requirement was eliminated as of January 1, 2006.)

A few other states involve minimal annual reporting: Alabama, Georgia, North Dakota and Oklahoma simply require annual submission of audited financial statements, while Florida uses a sworn statement in lieu of a detailed annual reporting. (The agent registrations required by Alabama, with respect to those who market gift annuities in the state or who are authorized to sign gift annuity agreements on behalf of a charity, must also be renewed annually.) Montana and New Hampshire both require annual re-notification of a charity's qualification under the applicable state gift annuity exemption law. In addition, Kentucky requires a copy of the charity's IRS Form 990 (not applicable to religious organizations or educational institutions).

See *Appendix A* for a summary of state regulations.

5. Application of state regulations

A charity is subject to the regulations of the state where the donor or annuitant resides at the time the agreement is executed. It is not enough to comply with the regulation of the state where the charity is domiciled. If state regulations become aware of a charity's failure to comply, they could issue a "cease and desist order," levy a fine, order the charity to refund contributed money, or impose other penalties. The charity could also be vulnerable to a lawsuit filed by a disgruntled heir or donor.

IV. PLANNING OPPORTUNITIES

A. Fund a Gift Annuity with IRA Assets

1. *Inter vivos* gift annuity funded with IRA assets

The Pension Protection Act, signed into law in August of 2006, permits up to $100,000 per year to be distributed tax-free from an IRA to a charity, excluding private foundations and supporting organizations, and also excluding a gift to a charity for a donor advised fund. The transfer must be for an outright gift, and the donor has to be age 70½ or older. If those conditions are met, the distribution to the charity will count towards the IRA owner's mandatory distribution and will not be included in his or her taxable income. Distributions for gift annuities, charitable remainder trusts, and pooled income funds do not qualify. The law sunsets at the end of 2007 unless extended. The ACGA, the NCPG and others had sought legislation that would make life income plans eligible for a tax-free distribution from an IRA, but they have not been successful, though they will renew their efforts to extend and expand the legislation. At the present time, the only way a lifetime gift of IRA funds can be made is to withdraw money from the IRA, reserve whatever will be required for tax (including the withholding), and contribute the balance for a gift annuity. The deduction resulting from the contribution for a gift annuity will reduce the amount that has to be reserved for tax.

2. Testamentary gift annuity funded with IRA assets

Whether or not lifetime rollovers of IRA assets for a gift annuity are eventually permitted by new legislation, planners may want to propose funding a testamentary gift annuity with all or a portion of remaining IRA assets. This gift arrangement was addressed in PLR 200230018. The most important conclusion in the ruling was that the proceeds payable to the charitable beneficiary will be income in respect of a decedent to the charity under IRC Sec. 691(a)(1)(B) and will not be income in respect of a decedent to the taxpayer's estate. Since the charity is tax-exempt, none of the IRA proceeds will be taxed at the time the annuity is funded. Though the IRS did not rule directly on the matter, it is presumed that payments would be entirely taxable as ordinary income, unless some portion of the IRA was funded with after-tax contributions. Distributions from an IRA left to an heir would likewise have been fully taxable.

A testamentary gift annuity funded with remaining IRA assets could be appealing when:

- the donor wants to provide fixed, guaranteed payments to a surviving friend or relative and make a charitable gift, or

- the donor wants to provide for a survivor and make a charitable gift, but the contribution would be too small for a charitable remainder trust to be practical, or

- the donor wants to assure payments to a surviving spouse for as long as he or she lives without concern that they might cease because of market losses or ever escalating mandatory distributions.

Note: Even if legislation permitting a lifetime tax-free rollover for a gift annuity does not pass, the growing number of Roth IRAs creates an expanding market for *inter vivos* gift annuities since distributions would not be taxed.

B. Fund a Gift Annuity With a Life Insurance Policy or a Commercial Deferred Variable Annuity

1. Life insurance policy

Some individuals have life insurance policies that are either paid up or, at least, have been owned long enough to have accumulated considerable cash value. In some cases, the policy is no longer needed for family protection or liquidity to cover estate expenses, and it is just sitting in the safe deposit box. To derive some current benefit from the policy, the owner might be willing to transfer ownership to a charity for a gift annuity.

In many cases, the current value of the policy will exceed the policy holder's adjusted cost basis. The gain, if the policy were surrendered, would be taxed as ordinary income, not as capital gain. If the policy is contributed for a gift annuity, the income tax charitable deduction must be reduced by the amount of gain allocated to the gift value. The reduction is computed the same way as when "unrelated use" tangible personal property is contributed for a gift annuity.

It is not clear whether taxable gain in a life insurance policy, or other ordinary income property, that is contributed for a gift annuity can be reported ratably over the donor's life expectancy. Reg. §1.1011-2(a)(4)(11) simply refers to "gain" in providing for ratable reporting. However, the example to which reference is made – 1.1011-2(c)(8) – concerns a gift of long-term capital gain property. Arguably, the example merely cites the most common type of gifted property and is not meant to be limiting.

Example: *Mr. W, age 74, owns a paid-up life insurance policy which he would like to contribute for a gift annuity. The face value is $100,000, the cash value is $40,000, and the adjusted cost basis is $22,000.*

He could either transfer ownership of the policy or surrender the policy and then contribute the cash proceeds. In both cases, his annual payments for the rest of his life will be $2,760.

However, the tax consequences will be different, depending on whether he transfers the policy or gives the proceeds.

If he transfers the policy:

Income tax deduction	*$10,239*
Taxation of payments during life expectancy:	
Ordinary income	*1,129*
Tax-free	*897*
Taxable ordinary gain	*734*

If he surrenders the policy and contributes the proceeds:

Income tax deduction	*$18,616*
Taxation of payments during life expectancy:	
Ordinary income	*1,129*
Tax-free	*1,631*
Taxable ordinary gain in year of gift	*$18,000*

The calculation assumes the contribution was made on February 1, 2007 and the December 2006 CMFR of 5.8 percent applied.

The advantage of transferring ownership of the policy is that none of the gain in the policy will be taxed in the year of transfer. However, a smaller portion of each payment will be tax-free. Surrendering the policy and then contributing the proceeds causes the gain to be taxed in the year the policy is surrendered. However, the charitable deduction will offset most of the taxable gain, resulting in little tax.

The advantage of this second alternative is that more of the payments will be tax-free. In deciding which alternative is preferable, the donor must weigh the larger up-front savings from transferring the policy against the more favorable taxation of payments from giving the proceeds following the policy surrender.

2. Commercial deferred variable annuity

Example: *Many people have purchased deferred variable annuities from insurance companies, and in the years since the purchase considerable gain has accrued. That gain will be taxed as ordinary income – over time if the owner elects to receive life payments, or all at once if the contract is surrendered. If the contract is given to beneficiaries (other than charities) when the donor dies, the gain will be taxed as ordinary income to them. Owners of these contracts can transfer them for a gift annuity and thereby reduce the tax on the gain, receive life payments, and have the satisfaction of making a charitable gift. The tax savings do not result from avoidance of tax on the gain but from an income tax charitable deduction that totally or partially offsets the taxable gain.*

Example of transfer of a commercial deferred variable annuity for a gift annuity:

Ms. K, age 79, transferred a commercial deferred variable annuity for which she paid $25,000 and which at the time of transfer had a cash value of $40,000. The transfer was made on February 1, 2007, and she receives quarterly payments from the gift annuity funded with the transfer.

Total annual payment (paid quarterly)	*$3,120*
Taxed as follows:	
Taxation of payments during each full year of life expectancy:	
Ordinary income	*1,104*
Tax-free return of capital	*2,016*
Income tax charitable deduction	*$20,048*
Taxable gain	*$15,000*
Excess deduction after offsetting taxable gain	*$5,048*
Tax savings (assuming a 28% tax rate)	*1,413*

The calculation assumes a gift made on February 1, 2007 and is based on the 5.8 percent CMFR for December, 2006.

Ms. K was able to convert her commercial annuity to a stream of payments, a substantial portion of which will be tax-free. Had she elected to receive life payments from the commercial annuity, a higher percentage of the payments would have been taxable because of the accrued gain.

IRC §1035 permits a tax-free exchange of one annuity contract for another. It is not certain whether this applies only to annuities issued by insurance companies, or whether it would also include an exchange of a commercial annuity for a gift annuity.

C. Establish a Gift Annuity to Benefit Someone Other Than the Donor

In their marketing, charities should keep in mind that it can make sense for a donor to establish a gift annuity for someone else. This means that younger individuals – for example, those providing for an aged parent, wanting to assist a friend or provide for a retiring domestic worker – could be prospects. Often, such assistance is paid with after-tax dollars, which can be quite costly for the donor. For example, a person subject to a 35-percent tax rate must earn $769 in order to provide a $500 monthly check. It could be advantageous to transfer capital for a gift annuity and name as the annuitant the person whom the donor desires to help. The donor receives an income tax deduction, and the tax paid by the annuitant will probably be minimal because a portion of the annuity payments will likely be tax-free for a number of years, and the taxable portion of the payments will be taxed at a low rate.

***Example*:** *On February 1, 2007, Mr. F contributed stock having a fair market value of $100,000 and a cost basis of $40,000 for a gift annuity and named his mother as annuitant, reserving no power to revoke her interest. His mother, age 82, will receive $8,500 per year ($2,125 per quarter) based on the ACGA rate of 8.5 percent and the December, 2006 CMFR of 5.8 percent.*

Mr. F in the example will recognize the capital gain allocated to the present value of the annuity, which is $28,541. However, his charitable deduction of $52,432 will offset the taxable gain and reduce taxes on other income somewhat, assuming he is able to use the deduction.

Since Mr. F will already have recognized the taxable gain, no part of his mother's payments will consist of capital gain. For the balance of her life expectancy, those payments will be partly tax-free and partly taxable as ordinary income. The payments to her will be taxed the same as they would have been if Mr. F had contributed $100,000 cash.

Mr. F makes a gift to his mother of $47,568 (the present value of her annuity payments). As a present-interest gift, it qualifies for the gift tax annual exclusion of $12,000. Thus, assuming he has made no other gifts to her in the year he establishes the gift annuity, the taxable gift to his mother would be $35,568 ($47,568 – 12,000). He could avoid making any taxable gift by retaining in the gift annuity agreement the right, during his life or upon his death, to revoke his mother's annuity interest. Then he will have made no completed gifts to his mother until she actually receives the annuity payments, and since each year's payments are under $12,000, they will be covered by the gift tax annual exclusion.

However, some legal advisors are concerned that if an individual sets up an income stream payable to a third person and retains control over that stream (e.g., is able to terminate it), the income will be taxable to the person who created it. They note that although the applicable statute (IRC Sec. 674) pertains to trusts, the principle might be broad enough to apply to gift annuities as well. Other authorities take the position that there is no basis for concluding that a statute applicable to a trust should also apply to a gift annuity, which is not a trust. They note as well that the payments would not be taxable under the assignment of income doctrine because assignment of income arises only when the right to receive income has matured in the hands of the assignor, which is not the case here because the donor never had a right to the income.

Considering the uncertainty and difference of opinion on this matter, a charity and a donor, pursuant to a consultation with their own legal counsels, should decide whether to include both *inter vivos* and testamentary powers of revocation or a testamentary power only. Because there is no statutory authority for concluding that payments would be taxable to the donor if there is an *inter vivos* power, and because there are advantages to retaining an *inter vivos* power, the author's sample gift annuity agreements do include both an *inter vivos* and a testamentary power.

D. Create a Flexible Deferred Gift Annuity

In 1997, the IRS approved a deferred annuity in which the donor does not have to choose in advance the starting date for payments. See PLR 9743054. That decision can be made later, depending on circumstances. The older the donor (or other annuitants(s)) when payments begin, the larger the payments. A national charitable organization recently obtained its own private letter ruling approving the flexible deferred annuity. See PLR 200449033.

Consider the following example:

Mr. J, whose date of birth was January 2, 1956, wants to provide a supplemental retirement income when he retires, but he does not know at this time when he will be ready to retire. On February 1, 2007, he contributed stock having a fair market value of $100,000 and a cost basis of $60,000 for a gift annuity, and reserved the option to start quarterly payments on June 30th of any year during the period 2013 – 2028.

The income tax charitable deduction (the lowest deduction resulting from any of the possible payment start dates) was $37,184. The following table shows taxation of payments for full years during life expectancy:

Elective Start Date	Age at Start Date	Capital Gain	Tax-free Portion	Ordinary Income	Total Annuity
6/30/2013	57	$942.48	$1,413.72	$5,343.80	$7,700.00
6/30/2014	58	$974.16	$1,461.24	$5,764.60	$8,200.00
6/30/2015	59	$1,009.20	$1,513.80	$6,177.00	$8,700.00
6/30/2016	60	$1,041.04	$1,561.56	$6,497.40	$9,100.00
6/30/2017	61	$1,081.92	$1,622.88	$7,095.20	$9,800.00
6/30/2018	62	$1,123.20	$1,684.80	$7,592.00	$10,400.00
6/30/2019	63	$1,170.40	$1,755.60	$8,074.00	$11,000.00
6/30/2020	64	$1,213.05	$1,819.55	$8,767.40	$11,800.00
6/30/2021	65	$1,264.80	$1,897.20	$9,238.00	$12,400.00
6/30/2022	66	$1,314.05	$1,971.05	$10,014.90	$13,300.00
6/30/2023	67	$1,374.56	$2,061.84	$10,763.60	$14,200.00
6/30/2024	68	$1,434.88	$2,152.32	$11,612.80	$15,200.00
6/30/2025	69	$1,503.36	$2,255.04	$12,441.60	$16,200.00
6/30/2026	70	$1,577.76	$2,366.64	$13,355.60	$17,300.00
6/30/2027	71	$1,650.20	$2,475.30	$14,374.50	$18,500.00
6/30/2028	72	$1,734.48	$2,601.72	$15,463.80	$19,800.00

Deferred gift annuities in general may become more popular with the increase in the credited interest rate during the deferral period. Adding a flexible feature will make them even more appealing.

E. Commute the Life Payments to Larger Installments Received During a Limited Period of Time (Also known as "The College Annuity")

Though a gift annuity cannot be for a term of years or guarantee a minimum number of payments, per IRC §514(c)(5), the IRS in certain private letter rulings has approved gift annuity agreements that permit an exchange of life payments for a lump sum or for installments to be received during a limited period of time. (See, for example, PLR 9042043. See also General Counsel Memorandum No. 39826, which gives tacit approval.) Such a commutation provision is typically included in the agreement for a "college annuity," but it conceivably could be used anytime a donor wants to give an annuitant the option of receiving term rather than life payments.

In the case of the college annuity, a donor initially contributes assets for a deferred annuity naming a child or grandchild as annuitant with life payments to begin at age 18. Prior to the annuity starting date, the annuity is commuted to four or more annual installments. Thus, instead of receiving very modest payments for life beginning at age 18, the annuitant receives large installments during the college years. The installments would have the same present value as the life payments.

Example: *A grandparent contributed stock having a fair market value of $50,000 and a cost basis of $30,000 for a "college annuity" for his grandson, who was born August 15, 2005. The gift was made on February 1, 2007, and the agreement provided for the grandson to start receiving quarterly payments for life beginning June 30, 2023. The agreement also contained a provision allowing a commutation of life payments. Shortly after the annuity was funded, the grandson's father, as his guardian, assigned his son's annuity interest to the charity in exchange for eight semi-annual installments:*

Amount contributed	*$50,000.00*
Grandparent's income tax charitable deduction	*21,097.50*
Capital gain recognized by grandparent	*11,961.00*
Taxable gift	*29,902.50**
Total amount paid to grandson during each college year	*21,032.38*
Installments taxed as follows:	
Ordinary income	*13,556.75*
Tax-free	*7,475.63*
	$21,032.38

** Since this was a future-interest gift, it did not qualify for the gift tax annual exclusion. The grandfather could have postponed any taxable gift by retaining the right to revoke the grandson's payments during the grandfather's life.*

A college annuity enables a donor to receive an income tax charitable deduction while providing for a descendant's education. Moreover, there is tax-free growth within the annuity, and the payments are taxed at the student's low tax rate. On the other hand, the college annuity has certain disadvantages:

1. The donor recognizes capital gain if the annuity is funded with appreciated property.

2. The 10 percent penalty tax per IRC §72(q) apparently applies to the taxable portion of term payments started before the annuitant reaches age 59½. This tax would be in addition to whatever income tax the student would pay on the installments. The penalty tax does not apply after a person attains age 59½, or when the person receives life payments, whatever the age of the person when those payments begin.

Notwithstanding these disadvantages, a philanthropically-minded parent or grandparent who wants to make a gift to the University as well as help cover college expenses of a child or grandchild might be interested in a college annuity.

F. Assignment of an Annuity Interest to the Charity

Most gift annuity agreements permit an assignment of the annuity interest to the charity. Once the assignment is made, the charity's obligation under the contract will terminate, and it will be free to use the residuum.

The amount of the gift is the present value of the remaining annuity payments computed as of the date of the assignment. However, the income tax charitable deduction that can be claimed by the annuitant may be less than the amount of the gift (i.e., the benefit to the charity). The reason can be demonstrated with an example.

Example: *A few years ago Mr. A contributed $100,000 cash for a gift annuity. At the present time the present value of the annuity payments is $60,000, the unreturned capital is $45,000, and the gain (interest) is $15,000.*

If the assignment of a gift annuity interest is analogous to the assignment of a commercial annuity, the annuitant would have to recognize $15,000 of ordinary gain. That is because the owner of a commercial annuity is taxed on the gain in the annuity when transferring it to either an individual or a charity. Since the gain will have already been recognized, the annuitant will be entitled to an income tax charitable deduction of $60,000. The net deduction, $60,000 less $15,000 of ordinary gain offset by the deduction, is $45,000.

If the assignment of a gift annuity interest is analogous to the forgiveness of a loan, then the deduction would be limited to the unreturned investment in the contract ($45,000 in this instance) because of the reduction under IRC Sec. 170(e) for gain that would be other than long-term gain. General Counsel Memorandum 39826 (1990) dealing with IRC Sec.

501(m) states that the issuance of gift annuities has historically been treated "as a borrowing of money by the issuing organization," and that is why gift annuities that qualify under IRC Sec. 514(c)(5) are exempted from being considered acquisition indebtedness. Thus, it would follow that the assignment of a gift annuity interest is to be treated like the forgiveness of a debt owed by the charity. By this line of reasoning, the assignment would not result in any taxable gain.

Although there are no Revenue or private letter rulings specifically on point, it seems reasonable to conclude (1) that the assignment would not result in taxable gain and (2) the income tax charitable deduction would be limited to the investment in the contract (i.e., the remaining capital that would have been returned tax-free over remaining life expectancy if the annuity interest had not been assigned). This gift should be subject to a 50-percent-of-adjusted-gross-income contribution limitation because the interest transferred to the charity by virtue of the forgiveness of the annuity obligation is cash.

Suppose, in the above example, that A had originally contributed appreciated stock. At the time of the assignment, the present value of the annuity payments, the unreturned investment in the contract, and the ordinary gain are again, respectively, $60,000, $45,000, and $15,000. However, the unreturned investment in the contract consists of $33,000 of unreported capital gain that would have been so taxed, and $12,000 of basis that would have been returned tax-free. The annuitant would not be taxed on the $33,000 of gain, for Reg. Sec. 1.1011-2(a)(4)(iii) says that unreported capital gain is not included in the gross income of the transferor when the transferor relinquishes the annuity to a charitable organization. The income tax charitable deduction would remain the same at $45,000. However, it would be subject to a 30-percent-of-adjusted-gross-income contribution limitation because the interest transferred to the charity by virtue of the forgiveness of the annuity obligation is a long-term capital asset.

G. Gift Annuity Funded With Real Estate

A charity may accept real estate to fund a gift annuity, even in New York. However, in certain states, like California, the value of the real estate cannot be counted in required reserves. The charity would have to place in the California gift annuity trust account sufficient permitted assets to meet the reserve requirements. To avoid having to advance its own funds to meet reserve requirements, the California charity might want to identify a willing buyer in advance of the gift and then arrange a simultaneous closing. That is, the property is donated and then sold on the same day. Can a simultaneous closing be structured in a way that avoids unwelcome tax consequences?

According to Rev. Rul. 78-197, a sale will not be considered prearranged, and the donor will not be taxed on the capital gain, if the charity is under no binding obligation to sell. If the charity, in anticipation of a gift of real estate, talks to prospective buyers, determines that one or more of them is seriously interested, receives the property, and soon thereafter enters into a purchase and sale agreement with one of these buyers, the donor should not be exposed to taxation on the gain because the charity was under no binding obligation to sell at the time of the gift.

Wanting more assurance, the charity might go a step further and enter into an oral agreement to sell for a certain price, contingent upon its receiving the property for a gift annuity. Some would say the charity has not gone too far because it has stopped short of a legally enforceable sales agreement (assuming state law does not treat an oral commitment as binding).

Suppose the charity goes still further and actually enters into a written contingent sales agreement with a prospective buyer and possibly opens an escrow account. It could be argued that the donor has not subjected the charity to an obligation to sell, but that the charity, being under no compulsion to do so, has simply made arrangements to sell in the event it receives certain property by gift. This argument might prevail, but certainly the risk level has increased.

Some charities, having entered into a contingent sales agreement, arrange for a simultaneous closing. On the same day, title is transferred to the charity and then to the prospective buyer. To avoid excise tax on both transactions, a charity might have title transferred directly from the donor to the buyer, in which case the charity does not appear on the chain of title. The question is whether a transfer of title directly from the donor to the buyer, if done at the direction of the charity, would be treated as a gift of the property to the charity. In the case of *Guest v. Commissioner* 77TC9 (1981), Temple Emanuel of Yonkers, New York, agreed to accept certain properties from Winston and Lucy Guest, and the Temple instructed them to retain the properties as nominee on its behalf and to have their attorney prepare deeds conveying the property to the purchaser to whom it would later identify. As to whether Mr. and Mrs. Guest made a completed gift of the proceeds from the sale of the properties, the Court said, "We see no difference between the situation where a donee sells a gift prior to actual receipt of it, and, instead of accepting delivery himself, the donee directs that delivery be made to the purchaser."

While agreeing that the direct deeding did not affect the issue of whether a gift of property was made, the Court found that it did affect the timing of the gift. According to the Court, the gift occurred not in year one when Mr. and Mrs. Guest informed the Temple of their intent to make the gift, but rather in year two when delivery was completed. This means that by the time the gift occurred (delivery of deeds to the purchaser) the charity was under a binding obligation. Of course it has, acting in its own volition, bound itself. Would this cause a donor to be construed as having sold the property, using the charity as agent, and contributing the net cash proceeds?

There are other, less risky, ways to mitigate the risk when real estate is contributed for a gift annuity. One, as mentioned above, is to offer a discounted gift annuity rate. Another is to do advance marketing, stopping short of an actual purchase agreement. Another is to have the donor delay payments for a year or so to allow time for a sale. Still another is to identify a potential buyer and enter into a "put" agreement that would state that if the charity receives a gift of "x" property, it has a period of "y" days to require the buyer to purchase the property based on certain terms and conditions, which would then be set forth. This appears to satisfy the conditions of Rev. Rul. 78-197 because the charity has the right to compel a purchase, but it is under no obligation to exercise the "put."

Fearing that the net sales proceeds may be substantially less than the appraised value, some charities offer to pay an annuity equal to the published rate for a person of the annuitant's age multiplied by the net sales proceeds. Sometimes they delay executing the gift annuity agreement until the property is sold, and they indicate on Schedule A of the gift annuity agreement that the value of the property contributed was the net sales proceeds. In an IRS audit, it may appear that the donor sold the property, with the charity acting as agent, and then contributed the net proceeds. If that were the conclusion, the charitable deduction would stand, but the donor might be taxed on all of the capital gain in the property in the year it was sold.

The safest way to proceed is to make a conservative estimate of the net proceeds to be realized and offer a gift annuity rate equal to

$$\frac{\text{estimated net proceeds}}{\text{appraised value}} \times \text{normal gift annuity rate}$$

This results in discounting the gift annuity rate, and, of course, the donor should consent to the discount through some written instrument. It is the rate, not the property value, that should be discounted, for the value of the property reported on Schedule A of the gift annuity agreement should be the same as the value determined by the appraisal and entered on Form 8283. The financial consequences to the charity are the same whether the property value is discounted 10 percent of whether the gift annuity rate is discounted 10 percent.

V. OPERATING A GIFT ANNUITY PROGRAM TO CONTROL RISK

A. Offer Gift Annuities Only if the Charity is Financially Sound

Donors entrust their money to charities in expectation that they, or other named annuitants, will receive life payments. In some instances they depend on these payments for living expenses. When a charity issues a gift annuity it has a moral, as well as financial, obligation to fulfill the commitments in the gift annuity agreement. Thus, only charities that are prepared and able to make long-term commitments should start a gift annuity program.

B. Do Not Exceed the Rates Recommended by the ACGA

Exceeding the ACGA rates puts a charity at greater risk of losing money and definitely reduces the residuum. When the Charitable Midterm Federal Rate (CMFR) is low, higher rates may also cause the present value of the annuity to exceed 90 percent of the contribution, in which case the obligation to make annuity payments will be treated as acquisition indebtedness, possibly creating unrelated business taxable income for the charity. (A charitable gift annuity will not be considered commercial insurance and will be tax exempt to the charity provided it meets the conditions of IRC Sec. 514(c)(5), one of which is that the present value of the annuity is less than 90 percent of the value of the property transferred.)

C. Invest Gift Annuity Reserves Prudently

An investment strategy for gift annuity reserves, in addition to taking applicable state regulations into consideration, may include the following risk-control techniques:

- An asset allocation that strikes the proper balance between risk and potential return.
- Diversification within each asset class.
- Selection of investments based on expected cash flow needs.

D. Have Gift Annuities Issued by an Affiliated Organization

Many national organizations with local affiliates have established national gift annuity programs. The local affiliates can direct their donors to establish a gift annuity through the national office. Small charities not affiliated with a national organization may be able to have annuities for their donors issued by the local community foundation.

E. Consider Reinsuring Some or all Gift Annuities

One way to transfer most of the financial risk of gift annuities is to reinsure them. The charity would use a portion of the contributed assets to purchase an annuity from an insurance company that will pay the amount promised to the annuitant(s).

F. Adopt Sensible Policies Regarding Gift Annuities

The present value of the residuum is generally larger when annuitants are older, though the mortality risk is higher in the case of the oldest annuitants. On balance, a charity likely can increase the cost effectiveness of its gift annuity program by raising the minimum age of annuitants, so charities have a good reason to take this action.

For an annuity to be cost effective, it should also be of a certain size.

G. Adopt a Prudent Policy Regarding Expenditure of Gift Annuity Funds for Charitable Purposes

According to the 2004 survey on gift annuities conducted by the ACGA, 83 percent of charities place the entire contribution for a gift annuity in the reserve fund and, upon termination of the annuity, use the residuum for charitable purposes. Only 17 percent spend some portion of the contribution immediately.

The latter is permissible so long as the charity maintains sufficient reserves to back outstanding annuities and meet state reserve requirements. However, it increases the risk that, during an economic downturn, a charity may have to move some of its general funds into the reserve fund. Some financially-strapped charities spent a significant portion of each contribution when it was received, intending to replace these "borrowed" funds when circumstances improved. They have been unable to replenish the reserves, and now they are inadequate to fulfill future obligations. This is a ticking time bomb.

To avoid ever finding itself in such a situation, a charity should adopt one of these spending policies:

- If it tracks individual annuities (i.e., does fund accounting), it spends nothing until the annuity terminates, and then uses the residuum for charitable purpose – the policy of 81 percent of charities according to the 2004 ACGA survey.

- If its annuities are unrestricted and it does not track them individually, then it may periodically make a distribution from the reserve fund for charitable use, being careful at all times to maintain reserves of at least 125 percent of the present, or actuarial value of annuity obligations.

- If it chooses to spend some of the contribution immediately, then it should transfer to the reserve fund at least 125 percent of the present, or actuarial value, of that annuity obligation and spend only the balance. This is preferable to a policy of spending "x" percent of contributions and investing the balance because, when interest rates are low, the balance may be barely adequate to meet reserve requirements, let alone provide a cushion. Spending "x" percent probably would not be a problem if the percent is small. It should be remembered that the projected 50-percent residuum is based on the assumption that 100 percent of the contribution is invested in the reserve fund. If a portion is expended, the residuum will be less.

- It could unitize gift annuities, which means operating the gift annuity reserve fund like a pooled income fund. At inception, each annuity is assigned x number of units, and when the obligation terminates, an amount equal to the number of units multiplied by the then value if a unit is severed from the gift annuity reserve fund and used for the designated charitable purpose. Under this system no annuity runs dry unless the entire reserve fund is exhausted. Question: Is this in accord with UMIFA provided the procedure is disclosed to donors?

H. Develop a Strategy for Dealing with Problem Annuities

One of the following scenarios will apply to a charity's pool of gift annuities.

- All of the annuities will be for the unrestricted purposes of the charity.

- Some of the annuities will be for designated purposes and others will be unrestricted.

- All of the annuities will be for designated purposes.

If all gift annuities are unrestricted, the charity need not set up a fund accounting system to track the performance of each annuity. Even if it does, it will be more concerned with the performance of the pool as a whole than with that of a particular annuity.

If all or some annuities are for designated purposes, the charity must necessarily do fund accounting in order to determine the residuum to be transferred for the stated purpose when the annuity terminates. The residuum would be the original contribution, increased by the annuity's pro rata share of earnings, and decreased by annuity payments plus the annuity's pro rata share of expenses.

Even in a financially-sound gift annuity program, a particular annuity may run dry. In other words, the residuum (balance in the account) will reach zero before the death of the sole or surviving annuitant. The payments, obviously, must continue for the life of the annuitant(s), and they must come from another source. Assuming some gift annuities are unrestricted and have surplus reserves, some of those assets could be used to continue payments on the failed gift annuity. The more difficult challenge is to find money to continue the payments, if all of the charity's gift annuities are restricted.

Obviously, a charity could transfer some of its general funds to continue payments, but this will not be a popular solution when the administration has precious little discretionary money at its disposal.

To assure that money will be available when an annuity runs dry, the charity might:

- Assess a modest administration fee against all annuities (50 bases points, for example) and use these fees to build a contingency fund.

- Require that a certain percentage (for example, five or ten percent) of all gift annuities be for the unrestricted purposes of the charity.

I. Arrange for an Audit of Your Gift Annuity Program

This would entail:

- Determining the adequacy of gift annuity reserves

- Identifying problem annuities

- Reviewing investment strategy

- Reviewing documents

- Reviewing administrative procedures
- Determining whether the charity is in compliance with state regulations
- Re-visiting policies

J. Examples of Assessment of Risk

An audit may include an assessment of the current level of risk in your gift annuity program. There are a number of ways that this analysis can be done, depending on the size and characteristics of your program. Generally, probable outcomes are projected for each contract based on the current fair market value. Following is an example showing projected residua at the end of life expectancy and the probabilities for exhaustion for a gift annuity, valued at $10,000, paying out an annuity of $710 to a male age 75. In this example, projections are made using two methodologies – the straight-line investment assumption method that assumes a constant net return and the model known as "Monte Carlo" simulation.

1. Constant Net Returns

The annuitant is assumed to live to life expectancy and, for the duration of life expectancy, the investment returns are assumed to be constant. Returns of 4, 5, 6 and 7 percent are shown. Mortality assumptions are based on a) the Annuity 2000 Tables and b) the Annuity 2000 Tables set back 1.5 years and assuming annuitant is female (these latter assumptions underlie the ACGA rates). The projected residua are as follows:

Constant net return	Beginning fair market value	Residuum at end of life expectancy based on Annuity 2000 Tables	Residuum at end of life expectancy based on Annuity 2000 Tables set back 1.5 years and female
4%	10,000	3,727	3,099
5%	10,000	5,394	4,899
6%	10,000	7,381	7,079
7%	10,000	9,741	9,709

Life expectancy for a 75 year-old male according to the Annuity 2000 Tables is 13.2 years. When age is set back 1.5 years, life expectancy is 16.0 years. The following table shows years to exhaustion assuming constant net returns of 4, 5, 6 and 7 percent.

Constant net return	Years to exhaustion
4%	20.8
5%	24.5
6%	31.3
7%	61.4

2. Monte Carlo Simulation

Investment returns are assumed to be variable and assumptions for mortality, based on the Annuity 2000 Tables, are random. The program produces 1,000 trials in each simulation. For every year of every trial, returns are randomly generated for each asset class based on the historical behavior of the asset class – its risk and return. The assumed portfolio consists of 35% large cap equities, 15% small cap equities, 45% bonds and 5% cash.

Out of 1,000 trials, the annuity ran dry 33 times (3%).

Beginning fair market value	50 percent probability of this ending balance or higher	75 percent probability of this ending balance or higher
10,000	11,416	7,909

APPENDIX A **STATE REGULATORY CATEGORIES – Charitable Gift Annuities** **April 30, 2007**

State Filing Required (Department of Insurance)

I. STATE LAW REQUIRES SEGREGATED RESERVE, ANNUAL REPORTING, AND/OR DETAILED APPLICATION (11):

State	Years in operation	Board resolution	Disclosure in agreement	Reserve required	Investment limitations	Other registrations	Notes:
AL	- - -	- - -	yes	yes	- - -	- - -	Regulated by Securities Dept. rather than Insurance
AR	5	yes	- - -	yes[1]	yes[2]	yes[3]	[1] May elect to segregate AR annuitants; [2] Prudent investor standard allowed; [3]registration with Secretary of State
CA	10	yes	- - -	yes[4]	yes[4]	- - -	[4]CA annuitants only
FL	5	- - -	yes	yes[5]	yes[5]	yes[6]	[5] May elect to segregate FL annuitants; [6]registration w/ Dept. of State
HI	10 in HI	- - -	- - -	yes	- - - [7]	- - -	[7] Prudent investor standard; law requires $200,000 of assets in Hawaii
MD	10 in MD	- - -	yes	yes	- - - [8]	- - -	[8] Prudent investor standard
ND	- - -	- - -	- - -	yes	- - -	- - -	
NJ	10	yes	- - -	yes	- - -[9]	yes[10]	[9] Prudent investor standard; [10]registration w/ Div. of Revenue and Dept. of Law and Public Safety
NY	10	yes	- - -	yes	- - -[11]	- - -	[11] Prudent investor standard
WA	3	- - -	- - -	yes	- - -[12]	yes[13]	[12] Prudent investor standard; [13] registration w/ Secretary of State; organization must have $500,000 unrestricted net assets
WI	10	- - -	- - -[14]	yes[15]	yes[15]	- - -	[14] Newly registering charities may be asked to include disclosure; [15] may elect to segregate WI annuitants

II. STATE LAW PROVIDES FOR EXEMPTION - NOTIFICATION REQUIRED (17):

State	Years in operation	Board resolution	Disclosure in agreement	Reserve required	Available assets	Other registrations	Notes:
AK	3	- - -	yes	- - -	$300k	- - -	
CT	3	- - -	yes	- - -	$300k	- - -	
GA	3	- - -	yes	- - -	$300k	- - -	Annual submission of audited financial statement
ID	3	- - -	yes	- - -	$100k	- - -	
IA	3	- - -	yes	- - -	$300k	- - -	
MN	3	- - -	- - -	- - -	$300k	- - -	Regulated by Securities Dept. rather than Insurance
MS	3	- - -	yes	- - -	$300k	- - -	
MO	3	- - -	yes	- - -	$100k	- - -	
MT	3[16]	- - -	yes	yes[16]	$100k[16, 17]	- - -	[16] Waived if reinsured; [17] $100,000 in unrestricted assets or $300,000 net worth; annual renotification
NV	3	- - -	yes	- - -	$300k	- - -	
NH	3	- - -	yes	yes	$300k	yes[18]	[18] General registration with the Dept. of Justice; annual renotification; annuity rates must not exceed ACGA suggested rates
NM	3	- - -	yes	- - -	$300k[19]	- - -	[19] Either in unrestricted assets or reserve fund
NC	3	- - -	yes	- - -	$100k	- - -	
OK	3	- - -	yes	- - -	$100k	- - -	Annual submission of audited financial statement

TN	3	- - -	yes	- - -	$1 mil.[20]	- - -	[20] $300,000 for TN colleges or universities
TX	3	- - -	yes	- - -	$100k	- - -	
WV	3	- - -	yes	- - -	$300k	- - -	Newly enacted law, effective 6/9/06

No State Filing Required (Department of Insurance)

III. STATE LAW PROVIDES FOR EXEMPTION - NO NOTIFICATION REQUIRED (18):

State	Years in operation	Board resolution	Disclosure in agreement	Reserve required	Available assets	Other registrations	Notes:
AZ	3	- - -	- - -[21]	- - -	$300k	- - -	[21] Detailed disclosure statement to donor prior to gift
CO	3	- - -	yes	- - -	- - -	- - -	
IL	20[22]	- - -	- - -	- - -	$2 mil.[22]	- - -	[22] Waived if annuities reinsured
IN	- - -	- - -	- - -	- - -	- - -	- - -	
KS	- - -	- - -	- - -	- - -	- - -	- - -	May voluntarily seek a “no objection” letter from Securities Dept.
KY	- - -	- - -	- - -	- - -	- - -	yes[23]	[23] Certain charities must file copy of Form 990 with Attorney General
LA	- - -	- - -	- - -	- - -	- - -	- - -	
ME	5	- - -	- - -	- - -	- - -	yes[24]	[24] Registration w/ Secretary of State (qualified as foreign corporation)
MA	- - -	- - -	- - -	- - -	- - -	- - -	
MI	- - -	- - -	- - -	- - -	- - -	- - -	
NE	3	- - -	- - -	- - -	- - -	- - -	
OR	5	- - -	yes[25]	yes	$300k	No	[25]Language modified when law changed 1/1/06
PA	3	- - -	yes	yes	$100k	yes[26]	[26] Certain charities must register w/ Dept. of State (general solicitation law)
SC	5	- - -	- - -	- - -	- - -	- - -	
SD	10	- - -	yes	- - -	$500k	yes[27]	[27]Registration w/ Secretary of State (qualified as foreign corporation)
UT	- - -	- - -	- - -	- - -	- - -	- - -	
VA	3	- - -	yes	- - -	$100k	- - -	
VT	3	- - -	yes	- - -	$300k	- - -	

IV. STATE LAW DOES NOT SPECIFICALLY ADDRESS GIFT ANNUITIES (5):

DE[28] DC OH[29] RI WY

[28] Insurance Code definition of annuity excludes those issued by tax-exempt organizations.
[29] Ohio previously provided for an exemption from securities law under now rescinded administrative rule. Court of Appeals case decided in 2002 held gift annuities not subject to insurance regulation (Ohio Supreme Court declined to hear appeal).