

---

# CLIFFORD ASSOCIATES

---

INVESTMENT · COUNSELORS SINCE 1915

---

Planned Giving News—Summer 2003

---

## Proposed Charitable Giving Legislation

---

By Ken Dike

On April 9, 2003 the Senate passed S.476, *The Charity Aid, Recovery and Empowerment ("CARE") Act of 2003* by a vote of 95 to 5. On May 7, 2003 the House introduced companion legislation H.R.7, *The Charitable Giving Act of 2003*. Among other objectives, the purpose of both bills is to provide additional tax incentives for charitable contributions by individuals and businesses and change the way certain nonprofit entities are regulated. The following summarizes certain provisions of this proposed legislation. We will keep you updated on future developments.

### Charitable Deduction for Non-Itemizers

Currently, tax deductions for charitable contributions can only be taken as an itemized deduction on Schedule D. Both the House and Senate would allow those who do not itemize deductions on their tax returns a charitable contribution tax deduction for amounts given in excess of \$250 (\$500 for joint returns) in any tax year with a ceiling of \$500 (\$1,000 for joint returns). The House version would make this provision effective for tax years 2004 & 2005 as compared to tax years 2003 & 2004 in the Senate bill.

### Charitable Gift of IRA Distribution

Distributions from individual retirement plans that are given to a charity are currently included in the gross income of the taxpayer. The taxpayer must claim an itemized deduction on their tax return for the amount given to the charity subject to all

the limitations otherwise in force for charitable contributions such as the 20% and 50% of adjusted gross income ceilings. Both the House and Senate would allow an exclusion from gross income for direct transfers from an IRA to a charity by an individual over age 70½. Although both versions allow the exclusion for transfers to a split-interest trust such as a charitable remainder annuity trust, charitable

remainder unitrust, and a pooled income fund, the Senate minimum age is over 59½ while the House version retains the over age 70½ requirement.

### CRT Excise Tax on Unrelated Business Income

Charitable remainder annuity trusts and unitrusts are tax-exempt entities. For any year in which they receive any unrelated business income (even \$1) they lose their

“Both the House and Senate bills would replace this penalty with an excise tax equal to the amount of unrelated business income received.”

---

Continued on back

---

tax exemption and are subject to tax on all income. Both the House and Senate bills would replace this penalty with an excise tax equal to the amount of unrelated business income received.

### Private Foundation Excise Tax and Required Annual Payout

Both the President's 2004 budget and the House bill would decrease the tax private foundations pay on their net investment income from a two-tier (1% and 2%) rate system to a flat tax rate of 1%. In addition, the House bill would exclude administrative expenses from payments that qualify in satisfaction of a private foundation's required 5% annual payout. The Senate bill does not address these issues.



## Case of the Disappearing Mutual Fund

By Jim Fox

Trustees of Charitable Remainder Trusts and other life income arrangements may from time to time receive notice regarding their mutual fund investments. Specifically, one of their mutual funds used for investment is being merged into another fund managed by the same fund company. In almost all of these cases, it is the result of substandard investment returns. The advertised rationale, however, will most likely be to economize and reduce fund expenses. We have seen these combinations effected by such companies as Putnam, Berger, Federated, Morgan Stanley and others. A year ago, 372 funds were merged out of existence, up from 30 the year before.

Fund companies sell their products by promoting their funds with the best track record. By merging a loser into another fund in their family, they successfully "erase" the poor performers. What are trustees' options when notice is received of a proposed merger? There are two choices: agree to the transfer of fund assets, or sell the fund and reinvest in another of *your* choosing. Voting against the merger is also a choice, but is ineffective as these combinations always receive adequate votes of approval.

In general, trustees should not accept the proposed merger. There are two primary reasons for our recommendation. First, in almost every case we examined, the surviving fund had a different investment charter than the one acquired. "Odd couples" are not consistent with the trust investment policies previously adopted as a rationale for the original fund selection. The second reason is the trust should capture the benefits of immediately realizing a tax loss. This should be done before the assets are combined. The loss will be reflected in the K-1 and will shelter future trust income. One should also reject the promoted new investment on the basis there are now over 8,000 alternative funds, many with more appropriate objectives.

"What are trustees' options when notice is received of a proposed merger?..

In general, trustees should not accept the proposed merger."

As a reinforcement to the above, in June of this year, AIM Investments and Invesco, the American subsidiaries of Amvescap, announced the merger of 20 of their mutual funds! These have combined assets of \$4.5 billion. The biggest in this reorganization is the Invesco Balanced fund, which will be merged into Invesco Total Return fund.

The names alone suggest two different investment objectives. Trustees must look carefully at these maneuvers.

