

Got a Charitable Interest?

Revisiting the Registration Requirements for Charitable Estates and Trusts

Joseph T. La Ferlita and Nicholas G. Moneta

Frequently, estates and trusts have charitable beneficiaries. Trusts and estates attorneys should familiarize themselves with the rules that require certain estates and trusts to register and make periodic filings with the Charities Bureau of the New York Attorney General's Office (the "Charities Bureau").¹

Which Estates and Trusts Must Register?

§ 8-1.4 of the Estates, Powers and Trusts Law (EPTL) requires registration of certain estates and trusts with charitable interests that are formed, or otherwise conduct activity, in New York State.

Foreign estates and trusts, that is, (i) estates of decedents who were not domiciled in New York and (ii) trusts created under a last will and testament of a decedent domiciled outside of New York or under an agreement executed by non-residents of New York, generally are exempt from registration unless they conduct activity or own property in New York.² However, registration would not be required if the only asset of the foreign estate or trust is a bank, custody, investment or similar account in New York.³

What falls within the purview of a foreign estate or trust "conducting activity" in New York? The answer might not always be crystal clear, but the authors submit that it would include ownership of property located in New York (other than merely a bank or investment account) that is or could be the subject of the charitable disposition that otherwise requires registration.⁴

Registering Trusts with the Charities Bureau

Put simply, any trust that was formed or conducts activity in New York and has a current charitable interest must register with the Charities Bureau. This includes (i) charitable lead trusts,⁵ (ii) charitable remainder trusts (when the charitable remainder interest becomes current),⁶ (iii) wholly charitable trusts, including private foundation trusts and public charities organized in trust form⁷ and (iv) revocable grantor trusts that become irrevocable upon the death of the grantor where all or a portion of the remainder is required to be distributed to charity.⁸ The foregoing trust types and the process by which each is registered with and regulated by the Charities Bureau are discussed below.

Registering a Charitable Lead Trust With the Charities Bureau

The Regulations⁹ define a charitable lead trust (CLT) as including "any trust for which a charitable beneficiary has

a lead interest, including without limitation charitable lead annuity trusts and charitable lead unitrusts."¹⁰

Within six months after a CLT is funded, the CLT shall submit to the Charities Bureau: (i) a completed Form CHAR001-LT (Registration Statement for Charitable Lead Trusts)¹¹ and (ii) a copy of the trust instrument and any amendments thereto. There is no registration fee due when registering a CLT.¹²

Upon registration, the Charities Bureau will issue a registration number for the CLT. Thereafter, the CLT is required to file annual reports with the Charities Bureau via Form CHAR004 (Annual Filing for Charitable Lead Trust) and a copy of the CLT's IRS Form 5227 (Split-Interest Trust Information), along with an annual report fee, which is based on the total amount distributed to charity during the CLT's fiscal year.¹³ The annual fee can be as low as \$25 (if the total amount distributed to charity by the trust during the fiscal year is less than \$50,000) and as high as \$1,500 (if the total amount distributed to charity by the trust during the fiscal year is \$50 million or more).¹⁴

Registering a Charitable Remainder Trust With the Charities Bureau

The Regulations define a charitable remainder trust (CRT) as "any trust for which a charitable beneficiary has a remainder interest, including without limitation charitable remainder annuity trusts and charitable remainder unitrusts."¹⁵

Within six months after the date on which, pursuant to the terms of a CRT, all or part of the CRT assets or income is required to be applied to charitable purposes, the CRT must submit to the Charities Bureau (and mail a copy of same to each identified current charitable beneficiary) a completed Form CHAR001-RT (Registration Statement for Charitable Remainder Trusts with Notice of Termination of Intervening Trust Interest).¹⁶ The filer must attach to the CHAR001-RT a copy of the trust instrument and any amendments.¹⁷

CRTs are not required to pay a registration or notice of termination fee.¹⁸ Also, CRTs are not required to file annual reports (unlike CLTs discussed above).¹⁹ The CRT must file a final report (in the form of an accounting, informal or judicial)²⁰ and pay a filing fee²¹ when the CRT's term ends, and the charitable remainder becomes payable.

Registering a Wholly Charitable Trust With the Charities Bureau

A wholly charitable trust (WCT) is a trust in which all the beneficiaries are charities (including tax-exempt private foundations in trust form).²² The WCT's trustee must file a completed Form CHAR410 (Registration Statement for Charitable Organizations) with the Charities Bureau within six months after the trust is funded.²³ A \$25 fee will be required only if the WCT registers to solicit contributions in New York State.²⁴

Upon filing the CHAR410, the Charities Bureau will assign a registration number to the WCT.²⁵ Thereafter, the WCT must submit annual financial reports to the Charities Bureau via Form CHAR500.²⁶ The filing fee is based on the WCT's net worth at the end of the reporting period. It ranges from a minimum of \$25 (if the value is less than \$50,000) to a maximum of \$1,500 (if the value is \$50 million or more).²⁷

Certain Trusts Are Exempt From Registration and/or Reporting Requirements

The registration and reporting requirements of EPTL Section 8-1.4 "do not apply to . . . any trust in which and so long as the charitable interest is deferred or contingent."²⁸ This makes sense when considering, for example, that a CRT is not required to register until six months after the date on which, pursuant to the terms of a CRT, all or part of the CRT assets or income is required to be applied to charitable purposes (i.e., the application of assets from the trust to charitable purposes is deferred).

Also, EPTL Section 8-1.4 exempts from the annual reporting requirements trusts that file with the Attorney General a verified statement executed by the trustee attesting that during the annual reporting period (i) the gross receipts received by the trustee during such period were less than \$25,000 and that (ii) the total assets held by the trustee at no time during such period exceeded \$25,000.²⁹

Registering Estates With the Charities Bureau

Any estate with a charitable interest must register with the Charities Bureau within six months after the earlier of the issuance of letters (including preliminary letters) to a personal representative.³⁰ The term "estate with a charitable interest" ("Charitable Estate") is defined in the Regulations as including any estate with a charitable bequest that is either to an unnamed charity or is an unspecified amount (including without limitation a bequest of all or part of the residuary estate) or indefinite property.³¹

Thus, an estate in which the only charitable interest is a general legacy or specific bequest (i.e., either a specific amount of money or specific property) to one or more

named charities is not required to register.³² However, an estate not initially required to register could later become required to do so. If the charitable bequests otherwise not triggering a registration cannot be paid in full for any reason (for example, if the Charitable Estate has insufficient assets to do so or if the named charity no longer exists), then the Charitable Estate must register as soon as possible, but no later than six months after these facts become known.³³

Unlike the registration process for trusts, the Charities Bureau does not require a particular registration form or filing when registering a Charitable Estate.³⁴ Instead, the Charitable Estate's personal representative must file copies of the Charitable Estate's Notice of Probate, and Last Will and Testament (including codicils).³⁵ Upon receipt of these documents, the Charities Bureau will open a registration file and assign a registration number to the Charitable Estate.³⁶

After registering with the Charities Bureau, a Charitable Estate is not required to file annual reports, but it must file a final report.³⁷ The final report consists of a judicial or informal final accounting containing sufficient information for purposes of the Attorney General's review.³⁸ A filing fee is due with the final report, which is based on the total value of all assets distributed or proposed to be distributed to charitable beneficiaries from the Charitable Estate, including distributions from specific and residuary gifts paid from the Charitable Estate's principal or income.³⁹ The fee ranges from a minimum of \$25 (if the total value of all assets distributed by the Charitable Estate is less than \$50,000) to a maximum of \$1,500 (if the total value of all assets distributed by the Charitable Estate is \$50 million or more).⁴⁰

Attorney General's Discretion To Require Additional Disclosure

In addition to any documents required above by the Attorney General for filing under EPTL Section 8-1.4 and the Regulations, the Attorney General may require a trust or estate with a charitable interest to submit any information or documentation relevant to the Attorney General's review of entity. The scope of such a request could be very broad and may include, without limitation, that a trustee provide a periodic account, a detailed schedule of securities, Form 706, Form 1041, and Form ET-90.⁴¹

Failure To Properly Register and Submit Required Filings

Failure to properly register an estate or trust with the Charities Bureau may trigger the impositions of penalties and fines. Under EPTL Section 8-1.4, these fines can range from \$10 to \$1,000 per failure.⁴²

In addition, the Attorney General may commence appropriate proceedings against a trustee or executor for breach of fiduciary duty for failing to properly register with the Charities Bureau and/or for otherwise failing to adhere to the strictures of the EPTL and the Regulations.⁴³

Conclusion

Because many estates and trusts have charitable beneficiaries, it is imperative that attorneys who practice trusts and estates law become familiar with the registration and filing requirements associated with them.

Joseph T. La Ferlita is a partner in the Personal, Family & Business Planning Practice Group at Rivkin Radler LLP. La Ferlita concentrates his practice on estate and trust planning and administration. He helps individuals develop appropriate business succession, gift, estate and GST tax plans, taking into account their particular family and business circumstances. He also counsels individual and corporate fiduciaries, as well as beneficiaries, in all aspects of estates and trusts, including tax and breach of fiduciary duty issues. La Ferlita is a frequent lecturer and author. He serves as Co-Chairperson of the Estate Planning Committee of the New York State Bar Association's Trusts and Estates Law Section and on the Board of Directors of the Nassau County Estate Planning Council.

Nicholas G. Moneta is an associate in the Personal, Family & Business Planning Practice Group at Rivkin Radler LLP. Moneta concentrates his practice on estate and trust planning and administration. He helps individuals craft an estate plan that considers all aspects of each of the gift, estate, and GST tax while meeting their individualized needs. Moneta currently serves as Co-Chairperson of the Estate Planning Committee and Tenth District Representative of the New York State Bar Association's Trusts and Estates Law Section. Previously, he served as the Editor-in-Chief of the *Trusts & Estates Law Section Journal* of the New York State Bar Association and as Chairperson of the New York State Bar Association's Newsletter & Publications Committee. He is an active member of the Nassau County Estate Planning Council and the Surrogate's Court, Estates & Trusts Committee of the Nassau County Bar Association.

Endnotes

- 1 This article focuses on reporting requirements for estates and trusts only, and does not include requirements that may exist, e.g., for a charitable corporation.
- 2 EPTL 8-1.4(a); 13 N.Y.C.R.R. § 91.3.
- 3 EPTL 8-1.4.
- 4 *See id.*
- 5 *See* 13 N.Y.C.R.R. § 92.4.
- 6 *Id.* § 92.3.
- 7 *See Informal Accountings for Charitable Estates and Trusts*. Note, a charitable trust that will be a private foundation must file Form 1023 with the IRS in order to secure recognition as a charity exempt from tax, Form CT-247 with the New York Tax Department to secure exemption from the corporate franchise tax and must register pursuant to EPTL 8-1.4.
- 8 *Informal Accountings for Charitable Estates and Trusts*, Office of the Attorney General, Charities Bureau (May 2021), [informal-accounting-guidance-f.pdf](https://www.charitiesnys.com/pdfs/CHAR001-LT.pdf) (charitiesnys.com).

- 9 For purposes of this article, the term "Regulations" means 13 N.Y.C.R.R. §§ 90.3, 92.1-92.6.
- 10 13 N.Y.C.R.R. § 90.3; *see also* *FAQs – About Registration of Charitable Trusts and Estates*, CHARITIESnys.com, https://www.charitiesnys.com/faqs_trust_estates_new.html (a "Charitable Lead Trust" is "a trust where the charitable interest occurs first in time, followed later by other, usually non-charitable interests").
- 11 *See* Form CHAR001-LT (2018), at <https://www.charitiesnys.com/pdfs/CHAR001-LT.pdf>.
- 12 13 N.Y.C.R.R. § 92.4(b)(2).
- 13 *Id.* § 92.4(b).
- 14 *Id.* § 92.4(b)(2).
- 15 *Id.* § 90.3(b)(1).
- 16 *See* Form CHAR001-RT (2018), <https://www.charitiesnys.com/pdfs/CHAR001-RT.pdf>.
- 17 13 N.Y.C.R.R. § 92.3(a)(1)(ii).
- 18 *Id.* § 92.3(a)(2).
- 19 *Id.* § 92.3(b).
- 20 *Informal Accountings for Charitable Estates and Trusts*, Office of the Attorney General, Charities Bureau (May 2021), [informal-accounting-guidance-f.pdf](https://www.charitiesnys.com/pdfs/informal-accounting-guidance-f.pdf) (charitiesnys.com).
- 21 13 N.Y.C.R.R. § 92.3(c).
- 22 *See Informal Accountings for Charitable Estates and Trusts*.
- 23 *See* Form CHAR410 (2010), <https://www.sefanys.org/sites/sefanys.org/files/Charities%20Bureau%20-%20Char410.pdf>.
- 24 Instructions for Form CHAR410 (2006), <https://eformrs.com/Forms09/States09/NY/NY410.pdf>.
- 25 *Id.*
- 26 *See* Form CHAR500 (2021), [CHAR500_2021.pdf](https://www.charitiesnys.com/pdfs/CHAR500_2021.pdf) (charitiesnys.com).
- 27 Instructions for Form CHAR500, <https://www.charitiesnys.com/pdfs/char500i.pdf>.
- 28 EPTL 8-1.4(b)(8).
- 29 *Id.* § 8-1.4(q). For purposes of paragraph (q), "gross receipts" mean the total received during the financial reporting period of (A) gifts, grants, and contributions; (B) gross income and revenue from all sources; and (C) gross amounts from sales of assets, other than inventory; and total assets mean the total principal and the accumulated, if any, held by such trustee for purposes of charitable distribution on any day during such annual reporting period." *Id.*
- 30 13 N.Y.C.R.R. § 92.2(a)(3).
- 31 *Id.* § 90.3(a)(1).
- 32 *Id.* § 92.2(a).
- 33 *FAQs – About Registration of Charitable Trusts and Estates*, New York State Office of the Attorney General, CHARITIESnys.com, https://www.charitiesnys.com/faqs_trust_estates_new.html.
- 34 *See id.*
- 35 *Id.*
- 36 *Id.*
- 37 13 N.Y.C.R.R. § 92.3(a)(2).
- 38 *Id.* § 92.3(c).
- 39 *Id.* § 92.3(c)(2).
- 40 *Id.*
- 41 13 N.Y.C.R.R. § 92.5.
- 42 EPTL 8-1.4(r).
- 43 *See id.* § 8-1.4(m) ("The attorney general may institute appropriate proceedings to secure compliance with this section and to secure the proper administration of any trust...or other relationship to which this section applies").