

**GIANT, IMPORTANT**

**DISCLAIMER: WE AREN'T GIVING LEGAL, TAX OR FINANCIAL ADVICE. PLEASE SEEK YOUR OWN COUNSEL FOR ANY DONATIONS. MANY OF THESE QUESTIONS ARE OPEN TO SOME INTERPRETATION, ARE GENERAL IN NATURE OR ARE UNIQUE TO A PARTICULAR JURISDICTION. ASSUME ALL ANSWERS ARE WRONG UNTIL YOU/YOUR DONOR CONFIRMS WITH HER/HIS ADVISOR.**

**Q & A from:**

**“Top Five Charitable Cases/Legislative Updates Impacting 2022”  
Webinar, Jan. & Feb. 2022**

<p><b>What are the prospects for passage of S 1981 regarding DAFs? I think Russ might have mentioned it, but I think I missed that comment.</b></p>	<p>S 1981 was filed in June of last year and referred to the Senate Finance committee, where it has as they say languished. The co-sponsors are Chuck Grassley (R-IA), who sits on the Finance Committee, and Angus King (I-VT), who does not. While Sen. King does "caucus with" the Democrats, it may be telling that they were not able to find a Democrat, much less a Democrat who sits on the Finance Committee, to co-sponsor the bill. There has been no revenue estimate, and the Congressional Research Service has not produced a summary of the bill.</p> <p>In short, this bill has essentially zero chance of moving this session. However,</p> <ol style="list-style-type: none"> <li>1. the concepts are now in the ether,</li> <li>2. Roger Colinvaux, who co-authored the bill, has considerable credibility with Joint Committee staff, for whom he was counsel for many years,</li> <li>3. there is a lot of money behind this effort.</li> </ol>
<p><b>How is date of death treated under the 15-year limit for DAFs under this bill? Is it 15 years or end of donor's lifetime, whichever comes first? Will this force the donor to set up a charitable successor beneficiary?</b></p>	<p>The death of the contributor is not a factor in the 15 year requirement. The bill seems to assume implicitly that there might be a successor advisor, but the requirement is still 15 years.</p>



<p><b>At what point is a real estate sale considered a pre-arranged sale? For example, if the property is already listed at the time of the charitable transfer or if there is a potential offer at the time of the transfer.</b></p>	<p>Listing would not be pre-arrangement.</p> <p>The Tax Court applies an "assignment of income" analysis to the question, per Palmer, 62 TC 684, aff'd on other grounds, 523 F.2d 1308 (8th Cir. 1975).</p> <p>In other words, the contributor will be deemed to have sold the property, recognized the gain, and contributed the proceeds, only if at the time of the contribution the purchase agreement was already enforceable.</p>
<p><b>Please do not say The ACE Act was "thought through." It was not.</b></p>	<p>Again, my point was that the bill has been carefully drafted by folks who know how to draft tax legislation. They have fully addressed the issues they intended to address in a comprehensive and systematic manner, leaving few if any loose ends.</p> <p>My comment was not intended to express a view as to the merits of the proposed legislation.</p>