1 Hour of Self-Study CE

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Charitable Giving of Life Insurance and IRAs

by Michael S. Campbell, VP of Endowment Development, The Able Trust

Many individuals own life insurance at some time in their life. A life insurance policy may provide peace of mind, financial liquidity, investment diversification or an inheritance for loved ones. As an individual's situation changes over time, however, the life insurance policy may no longer be needed for its original purpose. For individuals with philanthropic intent, they may decide to make a charitable contribution of the life insurance policy.

If an individual wants to make a gift of a life insurance policy, he or she must irrevocably transfer ownership of the policy to a charity. With this transfer, the individual must relinquish all incidents of ownership and rights in the policy. Most states allow for such a transfer to a charity; some, however, may not. Therefore, it is imperative that an individual determines whether his or her state allows such a transfer before proceeding.

To effectuate a transfer, the individual will need to contact the insurance company and fill out the proper change of ownership forms. Once the charity is the owner of the policy, the charity may hold or surrender the policy. In many cases, however, the charity will hold the policy until the individual's death. In this case, the charity should verify that it not only owns the policy, but is the designated beneficiary as well.

Value of Policy for Income Tax Purposes

An outright gift of a life insurance policy will produce a charitable income tax deduction equal to the lesser of the policy's value or the individual's basis in the policy. In general, the individual's basis in a policy equals the total amount of premiums paid by the individual. As a practical matter, the charitable income tax deduction will normally equal the individual's basis because, in most instances, the cost basis will not be greater than the policy's value, i.e. replacement cost or interpolated terminal reserve value (ITRV).

If the policy is paid in full, then the policy's value is generally equal to the replacement value of the policy. Replacement value is the cost of an identical policy given the individual's age and health. If the policy is not paid up, then the policy's value will be based upon the interpolated terminal reserve value (ITRV) plus any unearned premium. The insurance company provides the ITRV. The ITRV plus unearned premium is, in many cases, slightly higher than the policy's cash surrender value.

The rationale behind the "lesser of" rule is derived from the income tax reduction rules. Under the income tax reduction rules, an individual's charitable deduction is reduced by the contributed asset's ordinary income component. So, if an individual surrendered his or her policy for cash, the individual would realize taxable income equal to the excess of the policy's value over the cost basis. This taxable income would be treated as ordinary income (not capital gain income), and the insurance company would report the income on IRS Form 1099. As a result, the contribution of a policy usually produces a charitable deduction equal to its cost basis only, with no increase for the ordinary income component of the policy. Keep in mind, however, that the charity would own the policy outright and could surrender it for the full value (minus any administrative or surrender charges).

Example: John and Mary own a second-to-die whole life policy. After contacting the insurance company, the individuals determine that the policy's value is $400,000. The individuals have paid premiums of $10,000 for 25 years. Thus, the individuals' basis in the policy is $250,000 (25 x $10,000 annual premium). John and Mary contribute the policy outright to their favorite charity. Accordingly, the individuals are entitled to a charitable deduction of $250,000, since it is less than $400,000. The reduction rules deny John and Mary a charitable deduction for the ordinary income component of $150,000 (400,000 - 250,000).

The $250,000 deduction will be subject to the 50% AGI limitation (not the 30% limitation), because there is no capital gain element involved in the charitable deduction. In other words, it is treated in a manner similar to a cash gift. Once the charity owns the policy, it can surrender the policy to the insurance company. Assuming no surrender or administrative charges, the charity will receive $400,000. As a tax-exempt charity, there is no income tax liability imposed upon the charity at the time of surrender.

No Tax Recognition upon Transfer

The transfer of a life insurance policy to charity should not trigger any income tax liability. However, this result may change in some rare instances, i.e. if there are loans against the policy in excess of basis. Therefore, each situation must be reviewed prior to any transfer.

(Private Letter Rulings)

No Gain Recognized on Asset Transfer to FLP: *In this ruling, husband and wife had created a fairly complex set of entities. Trusts one and two were created to hold insurance and possess three insurance policies. Trust three was an earlier trust and the assets from trust three were transferred to trust one and two through a series of notes in order to pay premiums on the insurance policies.*

Gift of Life Insurance Policy Produces Deduction Equal to Premium Paid: *Taxpayer intends to buy a single premium whole life insurance policy from Company. At the time of the purchase, Taxpayer will designate Charity as the irrevocable beneficiary of the policy and will transfer to Charity any and all privileges in the policy. Charity has an insurable interest in Taxpayer's life under State law and is an organization described in Sec. 170(c) of the Code.*

Foundation May Own and Pay Premiums on Life Insurance Policy Contributed By Individual: *Individual created a private foundation and an irrevocable trust during his life. Individual now wishes to have his trust transfer a term life insurance policy to his foundation. The term life insurance policy requires annual premiums, is convertible into a whole life policy, has no cash value and is not subject to a policy loan. Because the policy has no cash value, no one can possibly borrow against it.*

Premium Payments to Charity - 50% AGI Limitation

In some situations, an individual may transfer a life insurance policy to charity with the hope that charity will not surrender the policy. With respect to the remaining annual premiums, the individual will typically continue to make those payments. Specifically, the individual will make cash contributions to the charity each year, so that charity may maintain the policy.

It is important, however, to remember that charity is not obligated to pay the premiums or keep the policy. In fact, the charity owns the policy outright and may elect to surrender the policy at any time. However, in most cases, the charity will honor the individual's wish. In this case, the charity will use the cash contributions to pay the premiums on the policy. Therefore, as long as the individual continues to contribute cash each year, the charity may pay the policy premiums.

As a result of these yearly cash gifts, an individual will be entitled to additional charitable income tax deductions each year. Because it is a cash gift, the deduction will be subject to the 50% of AGI limitation.

Example: Isaac gave Great Charity a life insurance policy earlier this year. The policy will pay $500,000 upon Isaac's death. The policy's premiums each year are $15,000. Isaac wants Great Charity to hold the policy until his death. At that time, Isaac wants the $500,000 to fund an endowment within Great Charity. While completely within its discretion, Great Charity decides to hold the policy. However, they do not want to be responsible for the annual premiums. Thus, Isaac informally agrees that each year he will contribute $15,000 to Great Charity. The annual gift is unrestricted.

As a result, Great Charity feels comfortable holding the policy. In addition, Isaac will receive a $15,000 charitable deduction each year that he makes the contribution to Great Charity. If the gift is made in cash, then it will be subject to the 50% AGI limitation. If the gift is made with appreciated stocks, then it will be subject to the 30% AGI limitation.

Premium Payments to Insurance Company - 30% AGI Limitation

Because the charity owns the policy outright, charity could (while unlikely) elect to surrender the policy at any time. Therefore, in some cases, a fearful or control-oriented individual may prefer to make the premium payments directly to the insurance company and remove the charity from the premium paying process. In that case, an individual will be entitled to a charitable income tax deduction each year that he or she pays the insurance premium on the policy, which is now owned by the charity.

For cash gifts, the deduction normally is subject to the 50% of AGI limitation. However, this direct payment plan may subject individuals to the lower 30% AGI limitation. Specifically, the individuals' direct payment of the premiums may be deemed as a contribution "for the use of" charity rather than "to" charity. The 50% AGI limitation only applies to contributions "to" charity.

In some circumstances, an individual may fully deduct each year's premium payment under either AGI limitation rule. Therefore, the lower AGI limitation may not pose a problem. However, if the 50% AGI limitation is preferable, then an individual should make gifts to charity each year equal to the policy's premium payments.

Related Topics on Premium Payment Deductions

Deduction 50%, 30%, 20% Limits: There are several limits for deducting charitable gifts. Generally, cash gifts and appreciated gifts to public charities are deducted first. Then, cash and appreciated gifts to private foundations are deducted. If there are carry forwards in either category, those are deducted next if the current gifts have not reached the applicable deduction limits.

Valuing the Insurance Charitable Gift: Many individuals own life insurance at some time in their life. A life insurance policy may provide peace of mind, financial liquidity, investment diversification or an inheritance for loved ones. As an individual's situation changes over time, however, the life insurance policy may no longer be needed for its original purpose. For individuals with philanthropic intent, they may decide to make a charitable contribution of the life insurance policy.

Naming a Charity as Beneficiary

Revocable Beneficiary Designation

If the individual wishes to maintain ownership over a life insurance policy, he or she may merely designate a charity as the beneficiary of the policy. In other words, the individual will retain full control of the policy during his or her lifetime and charity will receive the insurance proceeds at the individual's death. This is a common situation for individuals who wish to maintain utmost flexibility and control.

Unfortunately, the individual will not receive a charitable income tax deduction for this future gift, because he or she has not made an irrevocable charitable contribution. Generally, the tax code requires an irrevocable transfer under state law of cash or property for a deductible gift. Since the individual retains ownership of the policy and may elect to change the beneficiary in the future, a charitable income tax deduction will not be allowed.

Irrevocable Beneficiary Designation

There is also no deduction even when the beneficiary designation is irrevocable. While the future gift to charity is irrevocable, the partial interest rules deny a charitable income tax deduction on such transfers. If the individual desires a charitable deduction, then he or she must irrevocably transfer all rights and incidents of ownership in the policy to charity, not just the future right to receive the death benefit.

Example: Irene loves XYZ Charity. In order to benefit it upon her death, she names XYZ Charity as the beneficiary of her $1 million life insurance policy. Even though revocably naming XYZ Charity as policy beneficiary does not qualify for a current income tax deduction, XYZ Charity wants to "count or recognize" this future gift. Some charities measure this gift by doing a "future value to present value" computation.

In short, XYZ Charity takes the future value of the $1 million and determines the present value of the $1 million using the life expectancy of Irene and an assumed discount rate (e.g. 3% for inflation). Based upon her age, Irene has a life expectancy of 25 years. Therefore, using a 3% discount rate, the present value of the $1 million policy is $477,606. As a result, XYZ Charity may elect to use $477,606 for recognition purposes.

Charitable Estate Tax Deduction

There is positive tax aspect to naming charity as beneficiary of a life insurance policy. Upon the death of the individual, the individual's estate will be entitled to a charitable estate tax deduction for the amount transferred to charity. Accordingly, the value of the life insurance policy should not be subject to any estate tax.

(Private Letter Rulings)

Insurance Proceeds Properly Excluded from Estate: *Husband and wife created a revocable trust and transferred most of their property to the trust. Husband and wife then created an irrevocable life insurance trust and transferred a second to die life insurance policy to that trust. The insurance trust stated that the proceeds of the life insurance policy were to be paid to the trust. Moreover, after the debts and obligations of the trust had been paid, the trustee was directed to* *distribute the proceeds to Husband and Wife's children and grandchildren. The insurance trust specifically stated that the trustee is not required to pay any kind of debts or liabilities of either Husband or Wife's estate. However, the insurance trust did give the trustee the discretion to pay the federal estate tax of the wife's estate.*

Related Topics on Naming a Charity as Beneficiary

Valuing the Insurance Charitable Gift: Many individuals own life insurance at some time in their life. A life insurance policy may provide peace of mind, financial liquidity, investment diversification or an inheritance for loved ones. As an individual's situation changes over time, however, the life insurance policy may no longer be needed for its original purpose. For individuals with philanthropic intent, they may decide to make a charitable contribution of the life insurance policy.

Premium Payment Deductions: In some situations, an individual may transfer a life insurance policy to charity with the understanding that charity will not surrender the policy. With respect to the remaining annual premiums, the individual will typically continue to make those payments. Specifically, the individual will make cash contributions to the charity each year, so that charity may maintain the policy.

Form 8283 and Form 712

Form 8283 and Appraisal Rules

If a person makes a non-cash charitable contribution greater than $500, IRS Form 8283 must be included with his or her tax return. If the property is not publicly traded stock that may be valued on an exchange and exceeds $5,000 in value ($10,000 for closely held stock), a qualified appraisal is required. The appraisal must be made not earlier than 60 days prior to the gift and not later than the date the return is due (with extensions).

As a result, Form 8283 must be completed for a gift of a life insurance policy (a non-cash gift) with a fair market value in excess of $500. A separate appraisal and separate Form 8283 is required for each policy contributed. For a policy with a fair market value of $5,000 or more, an independent qualified appraiser must determine the policy's value.

The natural choice for an appraiser of a policy is the issuing insurance company, because the insurance company is in the best and easiest position to value the policy. However, the appraisal rules require an independent appraiser. Since the insurance company is directly related to the individual and policy, it is unlikely they are independent. Therefore, the IRS may argue that the insurance company is not an independent with respect to the appraisal rules.

Because most charitable deductions will be limited to cost basis, some commentators believe that an appraisal is an unnecessary step. Specifically, there is less chance for abuse by individuals when they are merely claiming a deduction for premiums paid. Moreover, an insurance company is the party best situated to provide an accurate valuation of the policy. Nevertheless, if an independent appraisal is desired, an independent insurance appraisal service should be retained. For one such insurance appraiser, see www.deathandtaxes.com.

Form 712 Life Insurance Statement

In addition to IRS Form 8283, IRS Form 712 Life Insurance Statement may also be needed. Form 712 declares the fair market value of a policy 1) at the insured's death for estate tax purposes or 2) for lifetime gifts, including charitable contributions.

Generally, the insurance company at the request of the individual prepares Form 712. This form is extremely useful for obtaining information needed to calculate an individual's charitable deduction. For charitable income tax purposes, the date of Form 712 should correspond to the date of the contribution of the policy.

Related Topics on Form 8283 and Form 712

Form 8283 and Appraiser Qualifications: Gifts of $250 or more to a charity will require a receipt. The receipt issued by the charity must state that no goods or services have been transferred in exchange for the gift. If the individual receives a "Quid Pro Quo" (*i.e.*, something in return) from the charity, the deduction value is reduced by the value of the "Quid Pro Quo." For "Quid Pro Quo" gifts over $75, the charity must make and disclose a good faith estimate of the value of the goods or services transferred to the individual.

Insurance to Charitable Remainder Trust (CRT) or Charitable Gift Annuity (CGA)

In some cases, an individual may not want to give a life insurance policy outright to charity. Instead, an individual may want lifetime income. It is generally permissible for an individual to transfer a life insurance policy to a CRT or CGA. The issue will depend heavily upon applicable state law. Thus, if state law allows a charity to own a life insurance policy, then state law will likely also allow a transfer of a policy to a CRT or for a CGA.

CRT Example: Pat Policy owns a $1 million life insurance policy with a current value of $400,000. Pat pays annual premiums of $10,000 and the total amount of premiums paid so far is $250,000. Pat wants to transfer her policy to a charitable remainder trust.

Since the current value of the policy is $400,000 (not $1 million), the initial trust value will be $400,000. Therefore, Pat creates a one-life, 5% payout CRUT and transfers her policy to the CRT trustee. Once the trustee is the owner of the policy, the trustee may hold or surrender the policy. In this instance, for liquidity and diversification purposes, the trustee elects to surrender the policy and reinvest the funds.

The charitable deduction is based upon the lesser of cost basis or policy value. In this case, $250,000 is less than $400,000. So, although $400,000 is the initial trust value, the $250,000 cost basis is used when determining Pat's charitable deduction. Based upon this lower figure, Pat's charitable deduction is approximately $99,000.

CGA Example: Pat Policy owns a $1 million life insurance policy with a current value of $400,000. Pat pays annual premiums of $10,000 and the total amount of premiums paid so far is $250,000. Pat wants to transfer her policy to charity in exchange for a gift annuity.

Since the current value of the policy is $400,000 (not $1 million), charity agrees to a one-life $400,000 gift annuity for Pat. Once charity is the owner of the policy, charity may hold or surrender the policy. In order to meet its gift annuity obligations, charity elects to surrender the policy and reinvest the funds.

The charitable deduction is based upon the lesser of cost basis or policy value. In this case, $250,000 is less than $400,000. So, although $400,000 is the gift annuity value, the $250,000 cost basis is used when determining Pat's charitable deduction. Based upon this lower figure, Pat's charitable deduction is approximately $65,000. In addition, each annuity payment will include a tax-free return of principal, which is based upon the $250,000 cost basis.

Ordinary Income Spread over Lifetime

If Pat Policy surrenders her life insurance policy she will have $150,000 of ordinary income ($400,000 - $250,000). However, if she transfers the policy in exchange for a gift annuity, the question is “does the amount of ordinary income attributable to the annuity get spread out over the individual’s lifetime or is it triggered immediately upon transfer?” While there is no prior precedent, it appears that the ordinary gain will be spread over the individual’s life expectancy.

The rationale for this assumption is threefold. First, the tax regulations state that any gain realized upon funding a gift annuity is spread out over the lifetime of the individual if the individual is the only annuitant or the individual and a successor annuitant are the only annuitants. In this case, Pat Policy is the only annuitant. Therefore, she should be able to spread the gain out over her life expectancy.

Second, gifts of other types of ordinary income property enjoy this “deferral” of gain benefit. For example, inventory and other ordinary income property commonly are transferred in exchange for a gift annuity. In those situations, the ordinary gain is regularly spread out over the individual’s lifetime.

Finally, in 1986, Congress enacted an amendment to Sec. 72 of the tax code, which deals with annuities in general. In the amendment, it provided that certain transfers would trigger ordinary income. For instance, a transfer of a commercial annuity requires the taxpayer to recognize the gain, if any, as ordinary income. However, there were no similar ordinary income trigger rules with respect to life insurance. As such, it is arguable that life insurance in exchange for a gift annuity does not require that an individual to immediately report the ordinary income

Related Topics on Insurance to CRT or CGA

Form 8283 and Form 712: If a person makes a non-cash charitable contribution greater than $500, IRS Form 8283 must be included with his or her tax return. If the property is not publicly traded stock that may be valued on an exchange and exceeds $5,000 in value ($10,000 for closely held stock), a qualified appraisal is required. The appraisal must be made not earlier than 60 days prior to the gift and not later than the date the return is due (with extensions).

IRA Bequests to Charity

Nearly all IRAs are funded with pre-tax dollars. Many IRAs result from the rollover of other qualified plans at retirement. Payouts from these qualified plans would be ordinary income, and the participant rolls the plan over into an IRA to defer recognition of the income. Thus, the payment to IRA beneficiaries will generally produce ordinary income that is subject to taxation.

With the growth in IRAs and pension plans, the percentage of estate value that is an IRA is also growing. Especially for professionals, business owners and nonprofit employees, 30% to 80% of an estate could consist of IRAs or other retirement plans. If individuals with large IRAs desire to transfer an inheritance to children and leave a bequest to charity, then the preferred method is to transfer part or all of an IRA to charity and leave non-IRD assets to family.

Charities Receive IRAs Tax Free

Since charities are exempt from income tax, a charity can receive the entire IRA and avoid payment of the income tax. For example, a $100,000 IRA may be transferred to a charity and the charity will receive the full $100,000. However, if the $100,000 were transferred to a child in the 35% tax bracket, cashing out the IRA would produce a tax of $35,000 and there would be $65,000 remaining. Even with the "stretch" option, the child would eventually pay a substantial tax on the ordinary income.

There are two distribution provisions that facilitate IRA bequests to charities. First, if an IRA is designated in part to family and a fractional part to charity, the IRA owner still is permitted to use the Uniform Lifetime Table to calculate minimum required distributions. There is no change in the MRD with a charity as the designated beneficiary.

Second, the designation date is September 30 of the year after the IRA owner passes away. Therefore, if 10% of an IRA is designated to a qualified charity and this amount is distributed to the charity prior to September 30 of the year after death, then the charity is no longer a designated beneficiary. The remaining designated beneficiaries may then use the life expectancy payout method.

Example IRA Bequest with Moderate-Size Estate: John has an estate of $800,000 and therefore will not have to be concerned about paying estate taxes. $200,000 of his estate is an IRA. Since John desires to benefit his favorite charity, he selects favorite charity as the designated beneficiary. Under the Uniform Lifetime Table, this does not have any impact on his MRD. When John passes away, the family receives the majority of his estate, comprised of his home, CDs and bonds. The favorite charity receives the $200,000 IRA. This saves over $60,000 in income tax, since the charity is tax-exempt.

Saving Both Income and Estate Tax

If an individual has an estate subject to estate tax, then the IRA could be subjected to both estate tax and income tax. While there is a Sec. 691(c) deduction on income tax for a portion of the estate tax paid, there still may be a very substantial total tax rate due to the double taxation. For example, the individual could pay 45% estate tax on the IRA and the beneficiaries could then be subject to a 35% income tax. Even with the 691(c) deduction, the combined tax rate can approach 60%. Therefore, for individuals with large estates, a bequest of an IRA to charity could save 60 cents on the dollar. This might be the most cost-effective way to make a transfer to charity.

Example Major Estate IRA Bequest: Mary has an estate of $5 million. She has an IRA of $500,000. Since Mary desires to give one-tenth of her estate to favorite charity, she selects the favorite charity as the designated beneficiary of the IRA. The $500,000 bequest of the IRA saves over $300,000 in income and estate taxes.

When Mary passes away, her estate receives a $500,000 charitable deduction and the remaining $4.5 million is subject to tax. The non-IRD assets, less estate tax costs, are distributed to family. The charity receives the $500,000 and saves both the estate tax and the income tax on this distribution. Total tax savings are over $300,000. This is very cost-effective giving.

(Private Letter Rulings)

Unqualified Deferred Comp and Options Bequeathed to Charity: *Taxpayer has accrued a right to three different types of unqualified deferred compensation. He has compensation that has been payable but has been deferred, non-statutory stock options that he may exercise and a right of his estate to receive an additional amount of nonqualified deferred compensation.*

Bequest of Nonqualified Options IRD to Charity: *Senior officers of technology companies and other corporations frequently receive stock options as part of their compensation. The taxpayer in this ruling is the retired chairman of Company X and holds vested nonqualified stock options that will expire in 15 years. He desires to transfer the options upon his death to a qualified Sec. 501(c)(3) charity. The taxpayer requests rulings that the unexercised options will be IRD to the charity, and not to the estate or to his heirs.*

***IRA Beneficiary Designation Was Not Timely or Properly Made**: Taxpayer was executor of her mother's estate, which consisted of five IRA accounts. Unfortunately, Taxpayer's mother did not name a designated beneficiary on any of her IRA accounts. Not wishing the negative implications inherent in this situation, Taxpayer, as executor of her mother's estate, established another IRA account in her mother's name, and attempted to roll over the five IRA accounts into the newly created IRA account. In addition, Taxpayer named herself as the designated beneficiary of the newly created IRA account.*

Related Topics on IRA Bequests to Charity

Bequests of IRAs and Other IRD Assets

Some assets transferred to heirs do not receive a stepped-up basis. This "income in respect of a decedent" (IRD) is defined as gross income "not properly includable in computing [decedent's] taxable income for the taxable year ending with the date of his death." IRD assets are those in which there is either untaxed ordinary income or a deferral of capital gain. When the beneficiary receives the asset, the beneficiary is subject to taxation on the asset, just as the original owner would have been subject to such taxation if he or she had recognized the income or gain.

IRA to Testamentary Gift Annuity

IRAs and pension plans have grown dramatically in aggregate size during the past decade. Even with the reduction in value due to the stock markets, Federal Reserve data suggest that there is approximately $3 trillion in IRAs and over $10 trillion in cumulative qualified plans.

IRA to Testamentary Unitrust

During life, an IRA is an excellent asset. It grows tax free, the minimum withdrawals under the regulations are fairly modest and it provides both retirement income and liquidity for the IRA owner. However, for the children or other individual heirs of the IRA owner, the IRA is not nearly as desirable an asset. Many other assets will be distributed to family or other heirs free of income, capital gain or estate tax. However, with the IRA comes a frequently very large income tax bill. All distributions from the IRA to the individual heirs are taxable income. Worse yet, the IRA payouts, even if stretched over a long period, are added on to the taxable income and could increase the tax bracket of the recipient.

Unauthorized Entities

by Paul S. Brawner, AIP, NAIFA – Florida Director of Professional Development

Introduction and Overview

Unauthorized entities engaging in insurance are a serious and growing problem in Florida for consumers and agents. Consumers are being substantially harmed with these entities failing to pay claims and defrauding through deception. Agents are unwittingly (sometimes knowingly) representing these entities and placing clients and themselves at risk. Florida law is being violated under the guise of these unauthorized entities claiming to be ERISA exempt or some type of association plan that claims to not be insurance or to be exempt from Florida regulation. All of this is simply not true! This is a problem in the state of Florida and other states.

The problem of unauthorized entities selling unauthorized products originated in the health insurance arena. These unauthorized entities promised low health insurance premiums, a promise fueled by skyrocketing health insurance premiums with legitimate health insurance carriers. In the current market, low health insurance rates just do not exist. The public and certain agents, apparently, were ripe for the picking by these scam artists. Remember, these *are* scams and the intent is to collect as much premium as possible without having to pay claims, or very few claims.

Unsuspecting licensed insurance agents are also vulnerable to this type of scam because representatives of the unauthorized entity will contact the licensed agents and send them (or give them in person) printed marketing materials touting the unauthorized entity and their bogus products which, again, gives the impression of legitimacy and credibility.

Maybe the agent is asking too many questions of the representative – is just a little too inquisitive – about who they are, where they're located, how long they've been in business, etc. The agent may even question the legitimacy of the product. Some of the scam artists are telling agents that their products do not have to be authorized by the Department because the plan is an ERISA plan, or that the plan is part of a MEWA (multiple employer welfare arrangement) or it's to be sold to labor unions – all the while stating that under any of these previously-mention circumstances, the products do not have to be approved or authorized by the Department.

The representative of the unauthorized entity might say, "It doesn't have to have approval, because this is an ERISA plan." Or "It doesn't have to have approval because this is plan is part of a MEWA plan." Or "This plan doesn't require approval of the DFS because it's for labor unions." None of this is correct! Any employee benefit plan which contains an insurance component is required, by law, to receive authorization of that component by the Department before it can be sold in Florida. Any legitimate company representative who approaches you about selling and representing their products should not mind the scrutiny you put them under by verifying their status with the Department.

It should be pointed out that the problem of representing unauthorized entities is no longer just a problem in the health insurance arena. The problem now seems to be spreading into property-casualty and general lines licensed agents are to be cautioned.

626.902 Penalty for representing unauthorized insurer.—

(1) In addition to any other penalties provided in the insurance code:

(a) Any insurance agent licensed in this state who in this state represents or aids an unauthorized insurer in violation of s. 626.901 commits a **felony of the third degree**, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person other than an insurance agent licensed in this state who in this state represents or aids an unauthorized insurer in violation of s. 626.901 commits a **felony of the third degree**, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.(2) In addition to the penalties provided for in subsection (1), such violator shall be liable, personally, jointly and severally with any other person or persons liable therefore, for payment of taxes payable on account of such insurance under s. 626.938.

Agents or any other persons are prohibited from representing or aiding an unauthorized insurer. If an agent or any other person represents an unauthorized insurer, they are subject to severe penalties, including possible civil and criminal action. Agents are subject to **suspension or revocation of their licenses** and/or monetary penalties for violation of the unauthorized insurer law. Agents can be held liable for claims and losses not paid by unauthorized insurers. Agents who represent or aid an unauthorized insurer commit a **felony of the third degree**.

Don't let yourself be fooled by phony health plans that sound too good to be true – they probably are not true! Your career and personal financial security are at risk. Investigate before you sell or buy these plans. Check to determine if an entity or plan is an authorized insurer by calling the Department of Financial Services at 800-342-2762 for calls in Florida. Call 850-413-3131 for out-of-state calls.

“Charitable Giving of Life Insurance and IRAs”

*(**Michael S. Campbell** is Vice President of Endowment Development for The Able Trust. With 18 years of experience in the financial industry, Mike manages The Able Trust’s endowment program and is responsible for establishing and maintaining relationships with individuals, corporations and affiliate groups through planned giving opportunities and endowment accounts as well as marketing the program across the state.*

The Able Trust, also known as the Florida Governor’s Alliance for the Employment of Citizens with Disabilities, is a 501(c)(3) public-private partnership foundation established by the Florida Legislature in 1990. Its mission is to be the leader in providing Floridians with disabilities fair employment opportunities through fundraising, grant programs, public awareness and education. Its programs enable approximately 2,000 Florida citizens with disabilities to enter the workforce each year.

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“Unauthorized Entities”

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