



## Charitable Giving

In addition to providing funds for charitable organizations of the donor's choice, charitable gifts provide donors with deductions for income and/or estate and gift tax purposes. Because there are many ways to make charitable gifts, you should consult with your tax advisor to implement a gifting plan that is appropriate for you. Some popular charitable gift techniques are outlined below.

### Outright Charitable Gifts

Lifetime gifts of cash to qualified charities are fully deductible for both federal and most state income tax purposes, to the extent the total of such contributions does not exceed 50 percent of your "contribution base" (usually equal to your adjusted gross income) if the cash gift is made to a public charity, and 30 percent if the cash gift is made to a private foundation. The unused portion of any such charitable deduction may be carried forward on your personal income tax return for up to five years.

If you make a contribution of \$250 or more to a charity, you must have written substantiation from the charity when claiming a deduction for the donation. Charities which solicit or receive gifts in excess of \$75 which are partly contributions and partly consideration for gifts or services must supply the donor with a written statement of the portion of the gift which is tax deductible. There is a *de minimis* exception for contributions of \$75 or less and an exception for receipt of an intangible religious benefit.

If you donate appreciated property, e.g., stock, to a charity, (i) you avoid capital gains tax that would be imposed if you sold the property yourself, and (ii) you receive an income tax deduction, usually for the full market value of the property, up to 30 percent of your contribution base if the gift is made to a public charity, and 20 percent if made to a private foundation. Again, the unused portion of the deduction may be carried forward for up to five years.

The tax treatment of contributions of appreciated tangible personal property depends upon the way the charity plans to use the property. If the use is unrelated to the charity's purpose, you must reduce the amount of the charitable deduction by the amount of the capital gain which would have been assessed had you sold the property. For example, if you donate a painting to your alma mater and the painting is hung in the university's art gallery and used for an educational purpose, the use is not an unrelated use. However, if the university sells the painting and uses the proceeds for educational purposes, the use of that property is an unrelated use and your deduction would be reduced by the capital gain.

If the claimed value of the donated property (other than cash or publicly traded securities) is over \$5,000, you must obtain a qualified appraisal and attach a summary of it to your income tax return.

Outright transfers to qualified charities at your death escape both federal and state death taxes. However, you lose the benefit of any income tax deduction associated with lifetime gifts.

### Charitable Giving of Retirement Account Assets

At your death, assets remaining in your retirement accounts are included in your taxable estate. These funds will also be subject to federal and state income taxes. The impact of these combined taxes can significantly deplete assets remaining on hand in a retirement account at your death.

The transfer of retirement account assets to a charity at your death, however, can reduce the impact of this combined taxation, allowing you to (i) avoid payment of deferred income taxes, (ii) reduce estate taxes, and (iii) fund charitable gifts at a tax cost of as little as 10 cents for every gifted dollar. Therefore, if you plan to incorporate charitable giving in your estate plan, you should consider using retirement accounts rather than other assets to satisfy those gifts.

### **Split-interest Gifts to Charities**

The tax laws recognize other forms of charitable gifts that also provide significant benefits for you and/or your family. These gift techniques reduce your income taxes and/or transfer taxes, while providing for family members or transferring assets to them at reduced transfer tax costs.

Split-interest gifts to charities, however, are subject to stringent requirements found in the Internal Revenue Code and its regulations. Therefore, in order to receive income tax deductions and/or estate or gift tax savings, you should consult either an attorney or tax advisor to ensure that your split-interest gift meets all of the necessary technical requirements.

Some examples of these split-interest gifts are as follows:

#### *Charitable Gift Annuity*

You give property to the charity in exchange for which the charity guarantees to pay a specified lifetime annuity to you and/or your designated beneficiary.

#### *Charitable Remainder Annuity Trust ("CRAT")*

#### *Charitable Remainder Unitrust ("CRUT")*

You make a gift to the charity and retain for yourself and/or your designated beneficiary for a fixed term (not to exceed 20 years or the life of each individual beneficiary) the right to receive a fixed amount each year (an Annuity Interest) or an amount equal to a stated percentage of the value of the trust assets determined annually (a Unitrust Interest). This technique is most beneficial if you have appreciated property and you wish to use the income generated by

that property for your benefit and/or the benefit of your designated beneficiary.

#### *Charitable Lead Annuity Trust ("CLAT")*

#### *Charitable Lead Unitrust ("CLUT")*

These trusts are the reverse of the Charitable Remainder Trusts. An Annuity or Unitrust Interest is paid to the qualified charity for a term of years or during the life or lifetimes of one or more of the designated individuals living when the trust was created. At the end of the term, the remaining trust property passes to your designated non-charitable beneficiaries, usually family members. These arrangements are appropriate if you wish to benefit a charity currently but provide for family members in the future.

#### *Charitable Gift of Remainder Interest in Residence*

You deed the remainder interest in your residence to a charity. Although you receive a current income tax deduction, there are restrictions which limit your use of the property, e.g., you cannot sell the property without the charity's permission.

#### *Pooled Income Funds*

Many charitable organizations have established pooled income funds. Donors make gifts to the charity, which combines those funds into certain investment vehicles it has established. You and/or your designated beneficiary receive the benefits from your chosen fund during your lifetimes, at the end of which the remaining funds in your account are paid outright to the charitable organization.

### **Summary**

The tax savings methods described above can be used separately or in combination, but they may not be appropriate for everyone. In addition, they are not the exclusive means of transferring assets for personal and/or transfer tax-savings purposes. Therefore, your personal and financial situation should be reviewed before determining which, if any, of the methods listed above, as well as other arrangements, would be useful and appropriate for you and your family.

*Would you prefer to receive Planning Pointers by e-mail? If so, please notify William Russo-Appel at [wrussoappel@rc.com](mailto:wrussoappel@rc.com).*

*This bulletin, which has been prepared by the attorneys of the Individual Clients Group of Robinson & Cole, is intended to provide only general information on the topics presented.*

*If you wish to examine how this information may impact your estate plan, please contact Robinson & Cole and ask for an attorney in the Individual Clients Group.*



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