Hit The Easy Button With These Planned Gifts

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Analysis of Proposed Gift

1. Identity of the donor/who owns the asset?
   - What tax issues does the gift create?
   - Does the donor have the legal right to give the asset away?

2. What is the asset being considered and the issues that asset entails?
   - Cash
   - Appreciated stock/depreciated
   - Real estate
   - Life insurance/annuities
   - Art work/jewelry
   - Business interests
   - Etc.

3. What gift technique is being considered?
   - Outright gift during life
   - Charitable gift annuity, charitable remainder trust
   - Bequest
   - Bargain sale
   - Charitable lead trust, etc.

4. What type of charity will be the recipient and what issues does that create?
   - Public charity versus a private foundation, supporting organization, donor advised fund, etc.?
**Charitable IRA Rollover**

Donor – Age 69

Asset – IRA

Gift Technique – Direct Transfer

Type of Charity – Qualified Charity

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Donor – Age 72

Asset – 403(b)

Gift Technique – Direct Transfer

Type of Charity – Qualified Charity

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Donor – Age 72

Asset – IRA

Gift Technique – Into a CGA

Type of Charity – Qualified Charity

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Donor – Over age 70.5

Asset – IRA

Gift Technique – Direct transfer

Type of Charity – Donor Advised Fund

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**Nonprofit’s Viewpoint**

1. The nonprofit’s gift acceptance policy
2. Risks to the nonprofit
3. Will the asset be kept by the nonprofit or sold – is it useful to the nonprofit?
4. Carrying costs to the nonprofit (short and long-term) – applies to real estate and TPP items
   - Insurance
   - Maintenance
   - Storage

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**Level I – Easy Assets to Give Outright**

- Cash - deductible up to 100% of AGI for 2021 (normally 60%)
- Non-itemizers can deduct $300/$600 in 2021(not to supporting orgs or DAFs)
- Highly appreciated stock/marketable securities owned for more than one year (long-term capital gain property) deductible up to 30% of AGI
Level II - Complex Assets to Give Outright

“The Paper Foursome”
1. IRAs and other qualified retirement plan accounts (given to charity at death)
2. Savings bonds (given to charity at death)
3. Commercial annuities (given to charity at death)
4. Life insurance policies (without a policy loan)

IRAs and Qualified Retirement Plans

1. IRAs and Qualified Retirement Plans
2. Savings bonds (given to charity at death)
3. Commercial annuities (given to charity at death)
4. Life insurance policies (without a policy loan)

Lifetime Gifts Create Tax Issues

- These assets make lousy lifetime charitable gifts because the qualified retirement plan owner/donor must pay taxable income on them when donating them to charity
- It’s technically a withdrawal from the plan, followed by a charitable gift of cash/charitable deduction
- **Exception: Charitable IRA Rollover

Naming a Charity as Beneficiary of Qualified Plans and IRAs

- Simple to implement in that the client only needs to change the account’s beneficiary designation to charity
- Eliminates income and estate tax on amount given to charity at death.

Naming a Charity as Beneficiary of Qualified Plans and IRAs

- Donor retains total access and control over the qualified plan values during his/her lifetime – can change investment allocations, etc.
- Donor can still change the plan beneficiary at any time in the future if desired
Technical Point

- The spouse, if any, needs to consent to changing the qualified plan beneficiary to someone other than the spouse or a charity (not required for IRA accounts) unless community property.

Savings Bonds

Charitable Gift of a Savings Bond

- Types of savings bonds
- Government website for all information on processing gifts of bonds: www.publicdebt.treas.gov

Charitable Gift of a Savings Bond

- Savings bonds - if given during donor’s life, interest earned but deferred in the bond is taxed to the donor as ordinary income in the year of the gift
- Offset by: full value of bond is eligible for income tax deduction

Charitable Gift of a Savings Bond Example

- Donor gives a U.S. savings bond valued at $50,000
- Donor originally paid $20,000 (cost basis)
- Upon gift to charity, the donor has:
  - $30,000 of taxable, ordinary income, plus
  - $50,000 income tax deduction

Naming Charity at Death

- Name a charity as beneficiary of the bonds through the donor’s will as a “specific bequest” (See Tuvim, GA Sup Ct 2009; 31 CFR Sections, 351, 353 & 360)
- The charity as beneficiary does not pay income taxes on the built-up gain
- Neither family/heirs nor estate has to pay any income tax
- Wipes out taxable gain, plus estate receives a charitable estate tax deduction for full amount of bonds
Nonqualified Commercial Deferred Annuities

For annuities issued before 4/23/87, the gain in the annuity is taxed to the donor in the taxable year in which the donee-charity surrenders the annuity to the insurer. The donor can only deduct the cost basis at the time of the gift.

Giving Commercial Annuities to Charity

For annuities purchased after 4/22/87, the gain in the annuity is taxed to the donor as ordinary income in the year of the gift. Offset by: full annuity value is eligible for income tax deduction.

Giving Commercial Annuities to Charity Example

Donor gives a commercial annuity valued at $100,000 purchased in 2002. Donor originally paid $30,000 (cost basis). Upon gift to charity, the donor has:

- $70,000 of taxable income, plus
- $100,000 income tax deduction

Naming Charity as Beneficiary at Death

- Name a charity as beneficiary of the commercial annuity using a change of beneficiary form from the insurer
- The charity does not pay income taxes on the built-in gain as beneficiary
- Neither family/heirs nor estate has to pay any income tax
- Wipes out taxable gain
- Plus, estate receives a charitable estate tax deduction for full amount of the annuity

Life Insurance
1. Giving an Existing Life Insurance Policy to Charity

- Donor transfers ownership and beneficiary designation to charity using forms from the insurer

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1. Giving an Existing Life Insurance Policy to Charity

- Donor deducts value of the policy at date of transfer (cost basis or FMV if lower)
  - FMV is "interpolated terminal reserve plus unearned premium" if premiums are still payable on the policy
  - FMV is replacement cost if "contractually paid-up"
  - The policy cannot have any loans against it for deductibility purposes
  - IRS Forms 712, 8283 and Appraisals
- Then, donor can deduct all future premiums when paid to the nonprofit
- Note that Modified Endowment Contracts (MECs) are taxed differently—can be a taxable event if transferred to charity.

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1. Giving an Existing Life Insurance Policy to Charity - Example

- David owns a Prudential Life Insurance policy. The interpolated terminal reserve value plus the cost of unearned premium = $78,000 (fair market value).
- Death benefit = $250,000.
- Cost basis = $100,000.
- If he gives the policy to charity, he can deduct $78,000. The charity can surrender for something close to $78,000 (i.e., cash surrender value) or keep the policy until David dies.

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2. Giving a NEW Life Insurance Policy to Charity

- Charity is the owner, applicant & beneficiary
- Donor pays future premiums to charity
- Donor receives income tax deduction for premiums paid
- Beware of some schemes or “opportunities”

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2. Giving a NEW Life Insurance Policy to Charity

- Proceeds are never in the donor’s estate
- Insurable interest requirements vary by state
- The charity receives death benefits free of income and estate taxes
3. Naming Charity as the Beneficiary (not the policy owner)

- The charity is named as the beneficiary (only) using form from the insurer
- Donor retains ownership and control of policy
- No income tax deduction for premiums paid
- Estate gets charitable estate tax deduction for death proceeds

Level III - Complex Assets to Give Outright

- Tangible personal property:
  - Artwork
  - Antiques
  - Jewelry
  - Stamps, etc.

- Vehicles:
  - Cars
  - Boats
  - RVs
  - Aircraft

- Real estate – owned for more than one year (mortgage free is preferred); Encumbered real estate

Tangible Personal Property/Collections/ Artwork/Stamps, Etc.

- Lifetime gifts:
  - If asset has a “related use” to mission, donor can deduct fair market value
  - Nonprofit informs the donor if it is “related or not” on IRS Form 8283
  - If asset has an “unrelated use,” the donor can deduct cost basis or FMV if less (normally with depreciable items the deduction is typically the fair market value)

- Gift at Death:
  - No related use rule exists at death; estate can deduct full fair market value

Example

- Fair market value of stamp collection $80,000
- Cost basis is $7,000
- Purchase date by donor: 1/1/2006

Example

- If the donor gives to a nonstamp museum type charity: deduct $7,000 up to 30% of donor’s adjusted gross income; plus 5-year carryforward for any excess deduction; if related use, can deduct $80,000; as a bequest estate can deduct $80,000.

- Avoids 28% capital gains tax on the $73,000 growth

- Note: If an artist donates his/her own work, can only deduct cost basis
**Tangible Personal Property**

- IRS Form 8283 – if more than $500
- Appraisal if worth more than $5,000
- IRS Form 8282 if nonprofit sells it within 3 years

Recapture rules apply if gift > $5K and if charity disposes within 3 years and donor took a FMV deduction - must include the amount (FMV deduction taken minus cost basis) as ordinary income – IRC 170(e) – $73,000 in prior example

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**Cars/Boats/Airplanes/RVs**

**Rules last changed 1/1/2005**

1. Generally limits the deduction to the actual sales price of the vehicle when sold by the charity after donation, and
2. Requires donor to get a timely acknowledgment from the charity to claim the deduction.

See IRS Pub 4303-donors and 4302-charities

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**Donors may claim a deduction for the vehicle’s fair market value under the following circumstances:**

- The charity makes a significant intervening use of the vehicle, such as using it to deliver meals on wheels.
- The charity makes a material improvement to the vehicle, i.e., major repairs that significantly increase its value ... that doesn’t include painting or cleaning.
- The charity donates or sells the vehicle to a needy individual at a significantly below-market price, if the transfer furthers the charitable purpose of helping a poor person in need of a means of transportation.

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**Still need IRS Form 8283 if more than $500**

**Still need appraisal if more than $5,000 if not based on sale proceeds**

**Still need IRS Form 8282 if the nonprofit sells it within 3 years**
Real Estate

- Importance of nonprofit’s gift-acceptance policy
- Real estate is full of due diligence, inspection and environmental review by the nonprofit
- Board approval is important
- Nonprofit will analyze the costs of selling
- Is the property marketable?

Gift of Real Estate

1. Gives property
2. Receives income tax deduction

Outright Gifts of Real Estate

- Long term capital gain property (held for more than 1 year)
- No loans is preferable
- Deduction = to fair market value
- Cost basis
- Avoids (maximum) 20% long-term capital gains tax
- Need appraisal if more than $5,000

IRS Form 8283 if more than $500
- Appraisal if worth more than $5,000 (likely with real estate)
- IRS Form 8282 if the nonprofit sells it within 3 years
Outright Gifts of Real Estate – Example

- Fair market value of building is $500,000
- Cost basis is $300,000
- Purchase date by donor: 1/1/2006
- If given to charity: deduct $500,000 up to 30% of donor's adjusted gross income; plus, 5-year carryforward for any excess deduction
- Avoid 20% (max) long-term capital gains tax on the $200,000 growth

Outright Gifts of Real Estate With Debt – Example

- $500,000 fair market value of building
- Cost basis is $300,000
- Current loan is $200,000
- Purchase date by donor: 1/1/2009
- If given to charity, allocate cost basis like a bargain sale
  - Debt/FMV x cost basis
  - $200,000/$500,000 x $300,000 = $120,000
  - Determine gain: $200,000 - $120,000 = $80,000 long term capital gain income from the debt being released

Outright Gifts of Real Estate With Debt – Example

- $500,000 fair market value of building
- Cost basis is $300,000
- Current loan is $200,000
- Purchase date by donor: 1/1/2009
- If given to charity, deduct $500,000 minus $200,000 = $300,000 up to 30% of donor's adjusted gross income; plus 5-year carryforward for any excess deduction

Book for Charity Staff


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Questions?

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