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on course for tomorrow

Hit The Easy Button With These Planned Gifts

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Analysis of Proposed Gift

Donor | Asset | Gift Technique | Type of Charity

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Analysis of Proposed Gift

Donor

1. Identity of the donor/who owns the asset?
   - An individual? Married couple? Corporate entity? Trust? Etc.
   - What tax issues does the gift create?
   - Does the donor have the legal right to give the asset away?

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Analysis of Proposed Gift

Asset

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.

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Analysis of Proposed Gift

Gift Technique

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

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Analysis of Proposed Gift

Type of Charity

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.?

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Examples of Analysis

Charitable IRA Rollover

- Donor – Age 69
- Asset – IRA
- Gift Technique- Direct Transfer
- Type of Charity - Qualified Charity

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Examples of Analysis

Charitable IRA Rollover

- Donor – Age 72
- Asset – 403(b)
- Gift Technique- Direct Transfer
- Type of Charity - Qualified Charity

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Examples of Analysis

Charitable IRA Rollover

- Donor – Age 72
- Asset – IRA
- Gift Technique- Into a CGA
- Type of Charity - Qualified Charity

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Examples of Analysis

Charitable IRA Rollover

- 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

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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)

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IRAs and Qualified Retirement Plans

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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

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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.

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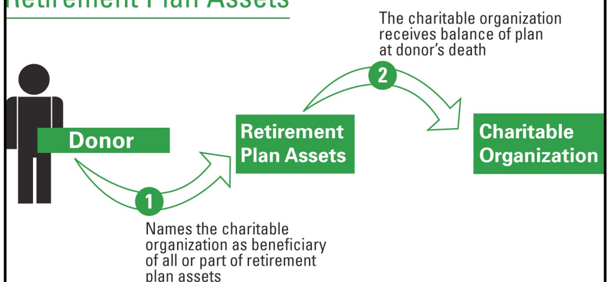
Retirement Plan Assets



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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

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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

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Savings Bonds

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Charitable Gift of a Savings Bond

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

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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

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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

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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

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Nonqualified Commercial Deferred Annuities

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Giving Commercial Annuities to Charity

- 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.

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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

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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

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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

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Life Insurance

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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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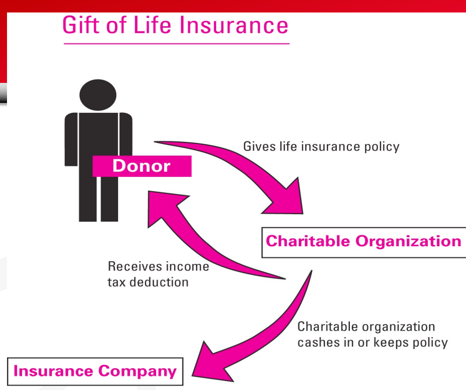

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1. Giving an Existing Life Insurance Policy to Charity - Example

- 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) it 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

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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

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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

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

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Tangible Personal Property

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

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Tangible Personal Property Example

•Fair market value of stamp collection $80,000

•Cost basis is $7,000

•Purchase date by donor:

1/1/2006

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Tangible Personal Property 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

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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

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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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Cars/Boats/Airplanes/RVs

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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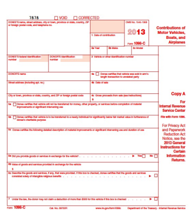
Cars/Boats/Airplanes/RVs

- The IRS Form 1098-C is used to provide the written acknowledgment
- IRS Notice 2006-1 provides guidance on the penalties imposed on charities that provide a false or fraudulent acknowledgment of a vehicle donation, or fail to furnish the acknowledgment properly.



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Cars/Boats/Airplanes/RVs

- 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

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Real Estate

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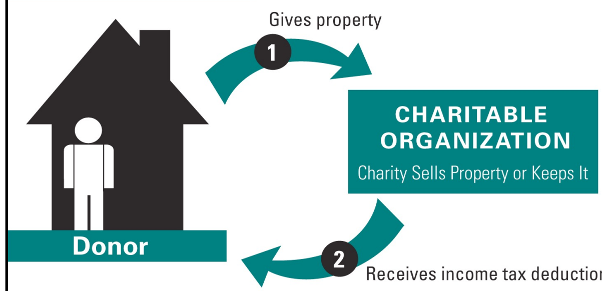
Gift of Real Estate



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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?

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Real Estate

- •What could it sell for price-wise?
- •Is there a mortgage?
- •Is it real property the charity wants to keep and use?
- •Is there an up-to-date appraisal?
- •Property management until charity can sell it

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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

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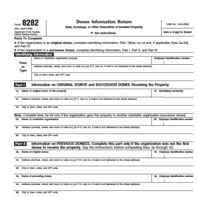
Outright Gifts of Real Estate

- 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


Form 8282 Donee Information Return

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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

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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
- Deduction is reduced by the amount of the debt if given to charity: donor deducts $500,000 minus $200,000 = $300,000 up to 30% of donor's adjusted gross income; plus 5-year carryforward for any excess deduction

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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

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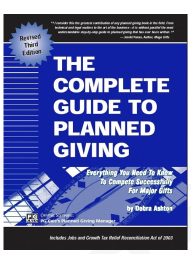
Book for Charity Staff



The Complete Guide to Planned Giving, 3rd Edition, by Debra Ashton, published by Ashton & Associates

For more information, call:

617-472-9316

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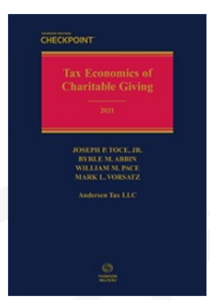
Books for Advisors



Tax Economics of Charitable Giving, 2021 Edition, published by Warren Gorham and Lamont of RIA

For more information call:

800-950-1216

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Books for Advisors

Life and Death Planning for Retirement Benefits, 7th Edition, by Natalie Choate, published by Ataxplan Publications

For more information, contact:
800-247-6553
www.ataxplan.com

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Books for Advisors

The Tools & Techniques of Charitable Planning, 3rd Edition, published by National Underwriter Company

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