



Inspiring and Connecting Thoughtful Giving

Toledo Community Foundation

toledocf@toledocf.org

300 Madison Avenue

Suite 1300

Toledo, Ohio 43604

P.419.241.5049

F.419.242.5549

About Your Foundation

Since 1973, **Toledo Community Foundation** has provided individuals, families and businesses interested in the well-being of our community with an *efficient, effective, low-cost, professionally managed* mechanism to achieve their charitable goals.

For philanthropists wishing to maximize the impact and life of their charitable gifts, the Foundation provides *resources for thoughtful giving*. Using its expertise and personalized services, **Toledo Community Foundation** helps donors transform their philanthropic impulse to measurable community impact. Beyond the gifting of assets, the Foundation helps donors identify issues of importance to them and *inspires engagement* with community organizations addressing these issues, thereby maximizing the impact of charitable gifts and creating a greater sense of fulfillment.

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Giving in Uncertain Times

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Tax laws are rapidly changing, the estate tax remains undecided and the economy is still a bit on the wild side. What issues and technique should advisors be considering with clients during these trying times?

The advisor's role continues to be vital to client charitable planning. But the combination of tax uncertainty and recent economic developments requires that more care and creativity be brought to the process to achieve client goals.

The calculus of the marginal tax benefit of a donation will change in 2013 when the new 3.8% Medicare tax on investment income takes effect. Using charitable remainder trusts (CRTs) and non-grantor charitable lead trusts (CLTs) will shift investment income to the trust formed and avoid the new Medicare investment income tax. So as ordinary income and capital gains tax rates rise in the future, the benefits of these charitable giving techniques will grow.

The following issues are pertinent to keep in mind when talking with clients.

CRT Tax Uncertainty

Charitable remainder trusts have long been a favored giving technique. The donor, your client, donates appreciated

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assets to a charitable trust and receives a current income tax deduction based on the present value of the donation. The CRT can then sell the appreciated securities without recognizing capital gains.

But one of the implications of the repeal of the estate tax makes it presently inadvisable to set up a CRT. The reasons for this are rather technical, but until the issue is clarified, caution must be exercised in completing any CRT plan. Alternatives, such as outright gifts for a smaller amount with an investment of the proceeds, use of charitable gift annuities, and other techniques might be used in the interim.

Divorce and Charitable Planning

Economic turmoil has wreaked havoc with everything, including marriages. Many surveys list financial stress as one of the top reasons for divorce. If your client is in the process of divorcing, or has divorced, and has existing charitable planning in place, there might be some creative ways to enable each ex-spouse to pursue their own investment and charitable goals.

An existing charitable remainder trust can be divided pro-rata into two separate trusts. This division will not cause the trusts to fail the CRT tax law requirements under Code Section 664(d). These divisions will not be treated as a sale, exchange or other disposition producing gain or loss.

Carryover Basis Rules

Even though most tax experts believe the estate tax will be repealed, it is presently law and advisors have to address that when helping clients. At a client's death, the amount they paid for an asset (carryover basis) will remain the tax basis for their heirs to calculate gain or loss on an eventual sale. This is tremendously important when planning to harvest gains and losses, among other decisions. These rules have significant impact to advisors assisting clients in planning charitable gifts.

There are a two major exceptions. First, up to \$1.3 million of appreciation on any assets can be eliminated. Second, an additional \$3 million can be eliminated on bequests to a surviving spouse. In determining how to allocate these limited adjustments among the decedent's assets, advisors should add the use of charitable gifts to the analysis.

When planning a gift program, clients will be tempted to select appreciated assets, or assets they wish to divest, to use in charitable giving. In some instances, the trusts or other entities that the clients wish to use to affect the intended donations may not have the legal authority in their governing documents to fund charitable donations.

Be certain that the client's counsel has reviewed the governing documents of any trust or entity before the donation is consummated. The client might simply be able to draw up an amendment to the operating partnership or shareholders' agreement for a limited liability company, family partnership, or closely held corporation in order to remove restrictions on charitable transfers.

This is more than a mere formality. If the client makes donations from entities that have no authority to do so, a future claimant may raise this as proof that the client disregarded the formalities of the entity. The claimant could then argue that he or she should not be limited to the entity's assets in satisfying the claim.

Defined Value Clauses

A common estate-planning tool for very wealthy clients is to sell interests in a business or other entity to a grantor trust. A grantor trust is a trust that remains taxable for income tax purposes to the client. So for income tax purposes, it is as if the sale did not occur. But in spite of no income tax implication to the sale, it can be effective for gift and estate tax purposes so that all future appreciation is out of the client's estate. With the possibility of the estate tax never being repealed, and even with the potential for a low \$1 million exclusion in 2011, now may be the time for high-net-worth clients to pursue this type of planning.

A significant risk with these types of transactions involves the Internal Revenue Service. The agency could successfully argue that the value of the asset sold is much greater than the value the client attributed to it. The result would be that the excess could be a taxable gift. One technique to minimize this risk involves charitable planning.

If the sale documents limit the value of the business interests sold to the trust to a specified amount, this risk may be controlled. If this approach is used, what becomes of the excess interests? They would be for the benefit of a charity. The client/donor would argue that these business interests should be protected from gift tax even if appraisal or discounts are successfully challenged by the IRS because they benefit charity.

Consider the case of the Estate of Helen Christiansen v. Commissioner, 130 TC 1. In this case the court permitted a charitable contribution deduction for the value of the property that passed directly to a foundation.

Private Foundation No Longer Practical

Some family foundations have declined considerably in value because of the economic turmoil of recent years. In many instances the willingness, or even ability, to continue previously intended funding has waned.

One solution for some of these ailing foundations, especially if operational costs are now uneconomical relative to size, may be to terminate the entity by distributing its assets into a donor advised fund. To accomplish this, the private foundation would transfer all of its assets to the sponsoring organization of the fund. If that fund is a public charity that meets certain requirements, the tax that may have otherwise been imposed on for the termination can be avoided. The family will still have the ability to direct distributions but the costs and burdens of the foundation will have been eliminated.

Martin M. Shenkman, CPA, JD, is an estate planning attorney in Paramus, N.J. He sponsors the Law Made Easy

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