



Toledo
Community
Foundation

Inspiring and Connecting Thoughtful Giving

Toledo Community Foundation

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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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Tax Uncertainty Spurs Charitable Innovation

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The New York Times

A GROWING number of charities are persuading donors to create a little-known kind of endowment as the troubled economy and this year's hiatus from the estate tax create problems for charities that depend on major lifetime gifts and on bequests.

Charities report that executors of some estates are showing reluctance to hand over bequests until next year, while others say they are in negotiations or even litigation over planned gifts from people who died this year without adjusting their wills to take into account the one-year suspension of the estate tax.

Meanwhile, some donors are deferring their annual gifts to next year, professional fund-raisers said, because top income tax rates may be higher, lowering the net cost of charitable gifts.

Another troubling issue for some donors is a subtle but potentially costly problem for those who created charitable remainder trusts through their wills, should they die this year. That issue could turn tax deductions into tax bills, two estate tax lawyers warned.

All these complications come as Congress wrestles over whether to extend the Bush tax cuts and as the number of wealthy Americans who are dying and leaving significant charitable bequests is smaller because of the low birthrate in the Depression era. That will continue for some years as the even smaller group born during World War II begins running out of time.

The uncertainties about tax policy and the economy mean "this is a time when extreme creativity is needed in philanthropy," said Robert F. Sharpe Jr., president of the Sharpe Group, a philanthropic planning firm based in Memphis.

Mr. Sharpe has been promoting a different kind of endowment to charities since the early 1990s. Called virtual or flexible endowments, they enable donors to hold onto their fortunes during their lifetimes while providing their causes with the same annual cash that an actual endowment would generate. Mr. Sharpe and another fund-raising expert, David R. Dunlop, who was instrumental in promoting the concept, said another advantage was that donors who were successful business owners were likely to increase the value of their assets more during the remainder of their lifetimes than a charity would.

In a traditional endowment, an individual, family or company makes a gift of assets to a charity and receives an income tax deduction.

Typically, the charity spends 5 percent of the endowment each year. An endowed chair at a university with an annual cost of \$200,000 for salary, benefits, research assistants and travel would typically require an endowment gift of \$4 million.

Many endowments are funded as bequests, in part because people are often unwilling to part with good chunks of their wealth during life.

Since 2000, bequests to charity from people leaving taxable estates of \$20 million or more have been trending downward, Internal Revenue Service data shows. Measured in 2009 dollars, the average charitable bequest from the largest estates hit a low of \$10.7 million in 2009, compared with \$14.6 million in 2000.

Paul G. Schervish, director of the Center on Wealth and Philanthropy at Boston College, said the decline in bequests was accompanied by a sharp rise in lifetime giving to foundations by wealthy Americans that began in 1995. When lifetime gifts and bequests from the wealthiest Americans are combined, he says, donations show a net gain.

Virtual endowments aim to capture gifts from wealthy Americans during their lifetimes, said Mr. Dunlop, who arranged more than 40 such gifts before he retired from Cornell in 1997.

In a virtual endowment, the donor retains her or his assets instead of giving them away during life. The donor and the charity agree on a virtual endowment sum, say \$4 million.

The donor then makes a gift equal to the payout that sum would provide if it were in an actual endowment. The charity tells the donor what its endowment earned so future gifts can be adjusted as spending from an actual endowment would be, he said.

For example, a university that earns a 10 percent return on a \$4 million investment and spends only 5 percent would expect a check for \$200,000 the first year, followed by \$210,000 the second year, \$220,500 the next year and so on. Mr. Dunlop said that a virtual-endowment agreement recognized that a donor's ability to give might not grow and might even diminish, so such agreements "should be written not in legal language but in the form of a friendly letter, because the donor is your friend."

Formal pledges are legally enforceable contracts. That has caused some problems this year.

At least three cases before probate judges concern donors who made a planned gift with language that assumed the estate tax would be in effect when they died. Typically, the language in wills of such donors provides that any "residue" in their estate beyond the amount exempt from the estate tax goes to a named charity. In a year when there is no estate tax, there is no residue.

In a case in Florida, said Andrew Fussner, vice president for estate settlement at the American Heart Association, "the donor, whose will made reference to the exemption level set in the 1980s, never updated the document." That's a common problem, fund-raising experts and estate lawyers say.

When a donor has written to a charity and to family members indicating an intent to give a specific amount to heirs or to the charity, the charity probably has a duty to pursue the money, Mr. Fussner and others said.

"We feel that there is a certain fiduciary duty to make sure the donor's wishes are followed," Mr. Fussner said.

He and other charitable-giving experts said probate court judges generally told heirs and charities to negotiate settlements -- and by delaying payouts, can push both sides to reach an accord.

Executors of wills have also shown some reluctance to turn over charitable gifts this year because Congress could enact an estate tax retroactive to Jan. 1, 2010. While it is widely believed that taxes cannot be retroactive, Congress in 2006 enacted a law retroactively raising taxes on teenagers who had worked or had taxable income in an investment account to pay for college.

The Supreme Court in a 1994 case involving an heiress to the Keck oil fortune upheld a retroactive levy. The estate's lawyer, Jerry W. Carlton of O'Melveny & Myers in Los Angeles, said he had no doubt the court would uphold a retroactive reinstatement of the estate tax for 2010.

With the midterm election results, a retroactive tax on estates for 2010 seems less likely. Still, Carleen K. Rhodes, president of both the Minnesota Community Foundation and the St. Paul Foundation, said executors of two estates had recently paid out only about \$3.5 million of \$10 million the foundations were expecting, evidently out of concern about a retroactive tax.

Ms. Rhodes said that her foundations, with assets of nearly \$1.1 billion and gifts last year of \$68.5 million, had not become embroiled in any litigation over bequests because of the estate tax. However, she added, "there are some conversations we are having" with executors, heirs and others.

Ms. Rhodes, like other executives of charities that offered donor-advised funds, said there had been an increase in creation of funds and additions to existing funds as the stock market has recovered from its lows in the two previous years.

Jill S. Dodd, a partner at Manatt, Phelps & Phillips in San Francisco and Jane Peebles of Karlin & Peebles in Beverly Hills, Calif., identified one potential problem that might ensnare donors who created charitable remainder trusts in their wills.

In such a trust, the donor or a designee receives tax-favored income for life. Whatever remains in the trust then goes to a charity. There are tens of thousands of such trusts.

The way these trusts are created when someone dies "is defined in the law, gifts have to be deductible and this year there is no charitable deduction for estates," Ms. Dodd said.

Ms. Peebles said she was surprised that the problem had been ignored, except on some specialized blogs for estate-tax lawyers, given the costly consequences. She characterized the problem as one of the "totally unintended results" from the wording of the 2001 Economic Growth and Tax Relief Reconciliation Act sponsored by the president at the time, George W. Bush.

The problem can be resolved in several ways, but both lawyers said anyone whose will established a charitable remainder trust or had one that would shift income to an heir, should contact their lawyer immediately, Ms. Dodd and Ms. Peebles said.

CHART: Giving Less: The downward trend of the average charity bequest from taxable estates of \$20 million or more hit a low of \$10.7 million in 2009. (Source: I.R.S. Statistics of Income; Inflation adjustments per the U.S. Bureau of Labor Statistics)

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