CHARITABLE PLANNING

Illinois State Bar Association
Trust & Estate Section
Estate Planning: Hot Topics

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Part 1 Introduction

Donors can write a check to a public charity and be done. But a serious donor who wants to have an impact, who wants to support charitable activities with greater flexibility, and who wants to take advantage of the tax breaks, needs to know how the system works. The system includes the various charitable vehicles available for effective charitable planning and the various types of assets that can be donated to charities.

Part 2 Charitable Vehicles

I. Charitable Remainder Trusts

A. A charitable remainder trust is an irrevocable trust under which one or more individuals receive a stated amount each year for a term of years (not exceeding 20), or for the life or lives of the individual or individuals, and at the end of the term, the remaining trust corpus is distributed to charity Treas. Reg. § 1.664-1(a)(1)(i). The charitable remainder trust is used primarily to provide income security to a non-charitable beneficiary or beneficiaries, while at the same time obtaining an income tax charitable deduction for the value of the remainder interest. The trust may be created either irrevocably during life or at death. If created during life, the grantor may be the beneficiary of the stated income amount.

B. There are two types of charitable remainder trusts, which differ in the manner in which the stated annual amount to be paid to the non-charitable beneficiary is determined.

1. In a charitable remainder **annuity** trust, the stated amount must be a sum certain that is not less than 5 percent of the initial fair market value of the trust. Internal Revenue Code ("IRC") § 664(d)(1).

2. In a charitable remainder **unitrust**, the stated amount must be a sum certain that is not less than 5 percent of the value of the trust assets, determined annually. IRC § 664(d)(2).

3. The annual payout from a charitable remainder annuity trust or unitrust cannot exceed 50 percent of the fair market value of the trust assets. Thus, a charitable remainder trust must have payout rate of at least 5 percent, but not more than 50 percent.

4. In addition, the value of the remainder interest of a charitable remainder annuity trust or unitrust must equal or exceed 10 percent of the net fair market value of the property contributed to the trust on the date of its contribution. This 10-percent test is applied upon each transfer to the trust as of the date of the transfer in question.

II. Gift of a Remainder Interest in Personal Residence or Farm

A charitable deduction is allowed for income, estate and gift tax purposes for a charitable gift of a donor's personal residence or farm, even though the donor retains an estate in the property for life or for a term of years. The donor may either retain a life estate or give one to others, and the life estate may include one or more lives IRC § 170(f)(3)(B) and Treas. Reg. § 1.170A-7(b)(3) and (4).

III. Charitable Lead Trusts

A. A charitable lead trust is the flip-side of a charitable remainder trust. In this case, the charitable beneficiaries receive a stated amount each year for a specified term of years or for the life or lives of an individual or individuals, and at the end of the period the remaining corpus is distributed to or in trust for the grantor's descendants or other non-charitable beneficiaries. A charitable lead trust enables a person to satisfy current charitable intentions and at the same time transfer significant amounts of property to his beneficiaries at a reduced transfer tax cost.

B. As with charitable remainder trusts, lead trusts may be one of two types – either an annuity trust, in which the charitable beneficiary receives a sum certain, or a unitrust, in which the charity receives a fixed percentage of the value of the trust property. The lead trust is very flexible; it may allow the trustee discretion in determining which charities will receive payments, or it can provide for specific charities. Unlike a charitable remainder trust, there is no minimum payout for a charitable lead trust, and it can be for any term of years. The trust may be created irrevocably during life or at death.

IV. Charitable Gift Annuities

A charitable gift annuity involved a transfer of cash or other property to a charity in exchange for the charity's commitment to pay the donor, another party such as a spouse, or both, a fixed and guaranteed annuity for life. The transferor may claim a charitable deduction equal to the value of the property transferred, less the fair market value of the annuity.

V. Qualified Conservation Donation

A. A gift of a partial interest for conservation purposes which meets the definition of a "qualified conservation contribution" will also be eligible for a charitable deduction. IRC § 170(f)(3)(B)).

B. The donated interest must be the donor's entire interest in real property (other than mineral interests), a remainder interest in the property, or a perpetual restriction on the use of property.

C. A donor makes a qualified conservation contribution by donating one of these interests in perpetuity to a governmental unit or a public charity for various conservation purposes that benefit the general public, such as (i) preservation of land areas, (ii) protection of a natural wildlife habitat, (iii) preservation of open space, or (iv) preservation of historically important land areas or historic structures.

D. The 1997 Tax Act added a provision that permits an estate to reduce the Estate tax value of certain real estate subject to a qualified conservation easement. Under IRC § 2031(c), an executor may elect to exclude a portion of the value of such property from the decedent's gross estate, if the following requirements are satisfied.

1. The property has been owned by the decedent or a member of the decedent's family at all times during the three-year period immediately preceding the decedent's death; and

2. A qualified conservation contribution of a qualified real property interest was made after the decedent's death, but before the due date for filing the federal estate tax return, including extensions, to a charity or other qualified organization.

VI. Gift of an Undivided Interest in Properties

A charitable deduction is allowed for a gift of an undivided portion of a donor's entire interest in property. The gift must consist of a fraction or percentage of each and every substantial interest or right owned by the donor in the property and it must extend over the entire term of the donor's interest. IRC § 170(f)(3)(B); Treas. Reg. § 1.170A-7(b)(1). The following are examples of gifts of an undivided interest:

A. A fractional or percentile interest in a life estate in real property in which the donor owns no other interest.

B. A fractional or percentile share of a remainder interest in a trust in which the donor holds no other interest.

C. 50 acres of a donor's 100-acre farm.

D. Property where the charitable donee is given the right, as tenant in common with the donor, to possession, dominion and control of the property for a portion of each year appropriate to the donee's interest in the property.

VII. Pooled Income Funds

Pooled income funds are maintained by many public charities. The pooled income fund receives gifts (usually cash or marketable securities) from a number of donors, which are commingled and invested. Each designated income beneficiary receives a proportionate part of the fund's income based upon the value of the donor's contribution and the value of the fund upon the date of the contribution. Upon the death of the income beneficiary, the charity maintaining the fund becomes entitled to the donated property. The donor receives an immediate charitable deduction equal to the value of the property transferred less the value of the income beneficiary's interest.

VIII. Donor Advised Funds

Donor Advised Funds are created by public charities as to which advice or recommendations concerning distributions are made by a donor contributing to the fund. The fund must be operated as a "component fund" of the public charity to avoid being treated as a private foundation. Although the donor or person designated may make recommendations as to distributions, the public charity must have ultimate control over decisions concerning distributions. The regulations contain guidelines for determining whether an advised fund is a "component part." Treas. Regs. § 1.170A-9(e)(11), § 1.507-2(a)(8)(iv)(A)(2) and (3).

Many community foundations and a number of commercial funds such as the Fidelity Gift Fund and the Vanguard Charitable Endowment Program have made donor advised funds very popular. These charitable gifts are gifts to a public charity and allow the donor an immediate charitable deduction and then recommend which charities should receive the funds.

IX. Supporting Organizations

A. A supporting organization is a public charity by reason of its relationship to one or more public charities that it supports. Examples are religious organizations connected with churches, trusts organized and operated for the benefit of a school, and organizations controlled by, or operated in connection with, a public charity. Under IRC Section 509(a)(3), there are three separate requirements, all of which must be satisfied.

1. Be organized and operated exclusively for the benefit of, to perform the functions or, or to carry out the purposes of, one or more specified public charities;

2. Be operated, supervised, or controlled by, or in connection with, one or more public charities; and

3. Not be controlled directly or indirectly by one or more disqualified persons.

B. There are potential advantages of a supporting organization over a private foundation.

1. No 2% excise tax on the investment income of a supporting organization.

2. Contributions of any type of long-term appreciated property to a supporting organization, including closely held stock, are deductible to the extent of 30% of the donor's "contribution base."

3. Contributions of cash to a supporting organization are deductible to the extent of 50% of the donor's contribution base.

4. A supporting organization can hold a significant interest in any business, including the donor's business.

5. Transactions between the supporting organization and the donor or related parties are permissible, provided that transactions are at arm's length and are reasonable. For example, stock owned by a supporting organization may be redeemed by a corporation controlled by the donor; a supporting organization may purchase stock from the donor's estate, and may sell stock to members of the donor's family.

6. The costs of operating a supporting organization may be reduced when one or more public charities assume administrative responsibility for its operation.

7. Restrictions on a supporting organization's investment activities are less stringent than those applicable to a private foundation.

8. A supporting organization controlled by one or more public charities may accumulate income for a reasonable period for future charitable projects; there are no specific annual payout requirements except as provided in paragraph 10 below.

9. Participation of the representatives of the supported public charities on the board of a supporting organization helps to assure continuity and operation in a consistent manner and helps to provide guidance to younger generation members of the donor's family who become members of the board.

10. The IRS issued proposed regulations (Reg-155929-06) on September 24, 2009. It covers supporting organizations that are not in a comparable corporate parent-subsidiary relationship or a corporate brother-sister relationship. If these proposed regulations are issued, temporary or final supporting organizations not described above will have additional requirements to meet, including a functionally integrated test. If the functionally integrated list is not met, the supporting organizations will have a 5% payout requirement similar to private foundations.

X. Private Foundations

A. Tax Laws

1. 1969 Tax Reform Act. Before the 1969 Tax Reform Act, foundations were very often used because of their many tax planning possibilities. Donors could receive a current income tax deduction; deductions were available for contributions of closely-held stock; money could be borrowed by the donor from the foundation without adequate security; and foundations were not required to make ongoing distributions to charity. After the 1969 Tax Reform Act, initially there was a decline in the number of private foundations created because of increased regulation and decreased deductibility of gifts to private foundations. Also, there is the availability of other charitable alternatives, including community foundations, split interest trusts, and supporting organizations. Nevertheless, after 40 years private foundations have continued to grow with as much as $500 billion held for charitable activities.

2. Definition. A private foundation is a tax-exempt charitable organization described in IRC § 501(c)(3), which is not:

   a. So-called 50% organizations such as churches, schools, and hospitals, IRC § 509(a)(1);

   b. Publicly-supported organizations which meet the objective tests as to their support sources and which have limited endowment income, IRC § 509(a)(2); and

   c. Supporting organizations that exist solely to support one or more organizations that are public charities, IRC § 509(a)(3).

3. Charitable Contributions

   a. Cash Gifts. Generally, an individual donor can deduct a cash gift to a public charity provided the cash gift does not exceed 50% of the donor's adjusted gross income (AGI). IRC Section 170(b)(1)(A). However, for cash gifts to private foundations the limitation is 30% of the donor's AGI. IRC § 170(b)(1)(B).

   b. Gifts of Capital Gain Property. Capital gain property is any capital asset the sale of which at its fair market value at the time of gift would have resulted in long-term capital gain. IRC § 170(b)(1)(C)(iv). Long term capital gain is defined as an asset held more than one year. IRC § 1222. Generally a gift of such property to a public charity is limited to 30% of the donor's AGI. However, a deduction for contributions of capital gain property to a private foundation is limited to 20% of the donor's AGI. IRC § 170(b)(1)(D).

      (i) Special Rules for Private Foundations. Generally the contribution deduction is further limited to the donor's tax basis. IRC Section 170(e)(1)(B)(ii).

However, an exception applies for gifts of "qualified appreciated stock," stock for which market quotations are readily available on an established securities market. The value of such gifts for purposes of a charitable contribution deduction is the full fair market value of the stock, not just the donor's basis in the stock. IRC § 170(e)(5).

(ii) Limitations for Gifts of Ordinary Income Property. The amount of the charitable deduction for gifts of property, the sale or exchange of which would not be a long-term capital gain, is reduced by the amount of the non- long-term gain. IRC § 170(e). Ordinary income property includes inventory, crops, dealer property, and works created by the donor.

c. Hierarchy for Deductibility. A hierarchy is imposed when determining the application of the various contribution limitations as follows:

(i) Cash gifts to public charities.

(ii) Cash gifts to private foundations.

(iii) Gifts of 30% capital gain property.

(iv) Gifts of 20% capital gain property.

d. Five Year Carryover. For gifts that exceed these contributions limitations, there is a five year carryover period for future deductibility. Carryover gifts are only after the current year gifts. IRC § 170(d)(1).

e. Limitations on Corporate Gifts. Contributions by corporations are limited to 10% of the corporation's taxable income, computed without regard to its net operating loss carry back. IRC § 170(b)(2).

f. Transfer Tax Advantages. Unlike income taxes, there are no limitations on how much can be deducted for transfer tax purposes. An unlimited deduction makes it possible to avoid dilution of a family's wealth through estate taxes.

4. Reporting Rules. Private foundations file Form 990-PF, an extensive annual information return with the Internal Revenue Service (IRS). In addition, the annual return must be filed with the appropriate state officials and made available to the general public at the foundation's principal office.

a. Failure to file the Form 990-PF return may result in a penalty of $20 per day up to a maximum of $10,000. If the return is not filed, the IRS can make written demand upon the organization and a manager failing to comply with such a demand will incur a separate $10 per day penalty up to a maximum of $5,000. An additional $20 per day penalty up to a maximum of $10,000 can be assessed if the foundation fails to make its return available for public inspection.

b. In addition, there may be criminal liability applicable to a false or fraudulent private foundation return.

5. Excise Tax Rules. In addition to the limitations on deductibility, private foundations are subject to a series of excise taxes. Except for the tax on net investment income, each of the excise tax penalties provides for a two-level tax structure. An initial tax is imposed at a relatively low level, followed by a more severe second-level tax which applies if the foundation fails to "correct" the violation which gives rise to the initial liability. In addition, IRC Section 6684 imposes a penalty equal to the applicable tax if the person liable has previously been liable for such excise tax, or if the transgression is both willful and flagrant; effectively doubling the applicable penalty.

    a. Excise Tax on Acts of Self-Dealing. Self-dealings between the foundation and its substantial contributors, foundation officials, and related persons, all called "disqualified persons" are prohibited as provided in IRC § 4941.

        (i) The prohibition on self-dealing can create unexpected difficulties. The prohibition is absolute, and the IRS is without equitable authority to excuse harmless violations. Examples of prohibited transactions are selling or leasing of property or making of loans between the private foundation and a disqualified person.

        (ii) Initially the tax is 10% on the self-dealer and 5% on a foundation manager who knowingly participates in the self-dealing. If the self-dealing is not corrected within the taxable period the tax on the disqualified person increases to 200% of the amount.

    b. Excise Tax on Failures to Make Minimum Distributions. The minimum distribution is equal to 5 % of the value of the assets determined as of the previous year end. IRC § 4942. The excise tax penalty is 30% of the undistributed amount at the beginning of the next year and, if the distribution deficiency is not corrected within the taxable period, the penalty increases to 100%. However, a foundation can treat amounts set aside for a specified charitable project as having been distributed, even though payment is not made until a later year.

        (i) Advance IRS approval of the project is required. IRC § 4942(g)(2)(B).

        (ii) Set asides typically are used for construction projects and comparable undertakings of a magnitude requiring the accumulation of private foundation funds.

        (iii) Set asides allow donors and managers to undertake larger projects.

    c. Tax on Excess Business Holdings. The prohibition on excess business holdings is designed to restrict foundation involvement in the ownership and operation of businesses. While this prohibition may be simple in concept, IRC Section 4943 is an intricate statute. In general, it is best to avoid contributions of business interests.

(i) Generally, holdings are excess business holdings if disqualified persons own 20% or more of the voting stock of an incorporated business and the private foundation owns at least 2%.

(ii) There is a two-tier tax of 10% or if not corrected 200%.

d. Investment Jeopardizing Exempt Purpose. There is a tax on investments which jeopardize the foundation's exempt purpose under IRC Section 4944. Jeopardy investments include for example trading securities on margin, trading in commodity futures, short selling, and buying puts, calls, straddles, or warranties. The tax is 10% or if not corrected 25% on the foundation. The tax is 10% for a foundation manager who knowingly participates.

e. Lobbying and Other Prohibited Expenditures. The tax on expenditures for non-charitable purposes include expenditures for lobbying and propagandizing, influencing elections or conducting voter education, making grants to certain individuals unless approved by the IRS in advance, grants to organizations other than public charities unless the foundation monitors grantee's use, and making grants for non-charitable purposes under IRC Section 4945. The tax is 20% or if not corrected 100% on the foundation and 5% or if not corrected 50% on foundation manager who knowingly participates.

f. Tax on Investment Income. The tax on investment income is 2% under IRC § 4940. It can be reduced to 1%, but not if the foundation was liable for tax for failure to distribute income under IRC § 4942 during the 5 preceding tax years.

6. Tax on Termination of the Foundation. The tax equals the aggregate benefits of the foundation's exempt status or the net value of its assets under IRC Section 507(c) but can be avoided in several ways. If the foundation continues in existence, it may transform itself into a public charity and operate as such for at least five years. Alternatively, the foundation can terminate and transfer all of its net assets to any public charity which has been a public charity for at least five years. In addition, mergers or comparable combinations between private foundations are permitted.

B. Other Foundations

1. The Stand-By Foundation. A foundation can be created with only modest current funding and an expectancy that, if the foundation works as anticipated it will receive major testamentary transfers at a later date from one or more family members. On the other hand, lifetime funding can produce a “double” deduction. While the assets used to fund the foundation are removed from the donor’s taxable estate, they also may qualify for a current income tax deduction. The stand-by foundation also can be

planned as a taker in default in the event one or more beneficiaries disclaim part or all of their interests in an estate or trust.

2. Conduits. Organizations which pay out all of their contributions within 2-1/2 months after the year received, plus all of their income, are private foundations but are not subject to the income tax deduction limitations on gifts to private foundations. IRC § 170(b)(1)(F)(ii). This status is often used to help correct an unplanned situation.

3. Operating Foundations. Operating foundations are exempt from the income tax deduction limits. Typically, an operating foundation uses its funds in its own operations. IRC § 170(b)(1)(F)(i); 4942(j)(3).

   a. An operating foundation must use 85% or more of its adjusted net income each year for qualified charitable purposes, or use at least two-thirds of its minimum investment return directly for the active conduct of its exempt purpose; or

   b. Substantially all of its support, other than investment income, must come from 5 or more unrelated exempt organizations, with not more than 25% of its support from one or more such organizations, and not more than 50% from gross investment income.

   c. Uses.

      (i) Usually museums and similar institutions are set up as operating foundations, with a building to maintain and a collection to administer. Donors must separate themselves from the administration of the collection. Failure to do so is self-dealing.

      (ii) Operating foundations may serve as income beneficiary of charitable income trust, enabling donor's family to decide how to use the income. Such trust is exempt from the minimum distribution requirements of IRC § 4942.

Part 3 Charitable Contributions Other Than Cash

A. Publicly Traded Securities

Publicly traded securities that have been held for at least one year can be contributed to a charity, with the donor receiving a deduction for the fair market value. If the property has appreciated, the donor does not realize the gain.

Conversely, if the property has lost value, the donor does not realize a loss. Therefore, it makes sense to give appreciated property, but not depreciated property.

The deduction the donor may take in a given year is limited to 20 percent of the donor’s contribution base (in most cases, his adjusted gross income) for gifts to private foundations and 30 percent of his contribution base for gifts to public charities.

If the donor has not held stock for at least a year, the deduction will be limited to the lower of two figures: the fair market value of the stock or the donor's basis. In this case, the property is treated like cash for the purposes of determining which deduction limitations apply. So a donor contributing short-term-gain property will be limited to a deduction of 30 percent of contribution base for gifts to a private foundation and 50 percent of contribution base for gifts to a public charity. The donor does not recognize a gain or loss on the disposition.

Common and preferred stock that are traded on an exchange, open-end mutual funds, closed-end investment funds that are traded on an exchange, U.S. government bonds, and some exchange-traded corporate bonds are considered publicly traded securities for purposes of the charitable contribution rules. Given the right economics, all these are appropriate securities for charitable gifts.

Publicly traded securities not appropriate for donations include certain zero-coupon bonds as well as Section 1256 contracts such as commodity futures and options to which the mark-to-market rules apply. The contribution of such property to charity will be deemed to be a sale, so a donor cannot avoid recognition of appreciation in such property.

A donor of publicly traded stock is generally not required to obtain an independent appraisal of value. Instead, the donor may use the average of the high and low prices quoted on the exchange on the date of the gift.

For a donor to receive a tax deduction in a given year, a gift must be completed in that year. For publicly traded securities, that means the security must be delivered into the recipient's account by year end.

B. Non-publicly Traded Business Interests

Non-publicly traded business interests generally include limited partnerships, closely held C corporations and S corporations, and limited liability companies. There are a number of considerations involved, and a donor should seek specialized counsel. That said, here are some of the general considerations. For the most part, if an interest in a privately held business is donated to a public charity, it can be deducted at its fair market value, provided the interest has been held for at least one year. If the contribution is to a private foundation, it will be deductible only at the lesser of basis or fair market value and must be reviewed carefully in light of rules against prohibited transactions, self-dealing, and excess business holding.

C. Tangible Personal Properties

The general rule is that a donor may contribute tangible personal property and take a deduction for the fair market value at the time of the gift or for the donor's basis in the property, whichever is lower. The tax rules are different if the property is of a type normally used by the charity in its tax-exempt function as a related use. Then, if the donor has held the property for investment purposes for at least one year, the donation may qualify for a fair market value deduction. An example is an art investor who donates a painting to an art museum.

1. <u>Art</u>

   For art to be deductible at its appreciated fair market value, it must meet two tests. It must be held by a donor for investment purposes for at least one year. And it must be donated to a charity that expects to use it in a manner related to its charitable purpose. So, for example, a gift of art that the charity is expected to sell immediately will not qualify. Furthermore, an artist himself cannot get a fair market value deduction because he is deemed to be a dealer, and dealers are by definition not investors. An artist who donates his own art may deduct it only to the extent of his basis in the art. His time in creating it is not included in this basis.

2. <u>Agricultural Crops</u>

   The tax treatment of crops depends on whether the crops are sold with the land or are first harvested; whether the donor holds the cropland for investment purposes; how long the donor holds the land (but not the crops, which typically have a growing season of less than one year); and sometimes, whether the recipient puts the donated crops to a related use. To get a fair market value deduction, a donor must contribute land held for more than a year (with or without crops growing on it). If the land is sold with crops growing, the value of the land and crops is deductible at fair market value. If the crops are harvested, they become tangible personal property and are then deductible at fair market value only if given to a charity that uses them for a related purpose. Most often the crops are deductible to the extent of the donor's basis in the crops.

3. <u>Timber</u>

   The treatment of timer depends on a number of factors. If the donor owns land with standing trees for investment, has held that property for at least one year, and contributes it to charity, the donation is not considered tangible personal property, and the gift is deductible at fair market value. If the same owner cuts the trees, the resulting cut timer will be deemed tangible personal property. Whether the gift is deductible at basis or at fair market value depends now on whether the recipient is expected to put the timber to a related use. If so, the donor may still deduct it at fair market value. However, if the charitable recipient is expected to sell the timber, the donation deduction is limited to the donor's basis.

4. Livestock

Certain types of livestock can qualify for long-term-gain treatment, if they are held for breeding, dairy, or sporting purposes. Such livestock can be donated to charity for a fair market value deduction, even if the charity does not have a related use for the property.

D. Intangible Personal Property

1. Patents

Generally, donations of a patent to a public charity will qualify for a deduction at fair market value regardless of the holding period. This exception regarding the holding period is in IRC code § 1235. For patents that have been depreciated, the donor may face recapture of depreciation; that is, he will have to take as income some depreciation. This will reduce the donor's deduction by the amount of the recapture. The creator of a patent is entitled to a fair market value deduction for a contribution to a public charity.

2. Copyrights

Donation to a public charity of a copyright that has been held for at least one year will qualify as long-term capital gain property, deductible at fair market value by the donor. As with art, this rule does not apply if the donor is the creator of the copyright.

3. Royalties

Royalties for such things as copyrights, patents, and brand names are considered ordinary income assets, and as such are not deductible as capital-gain assets at fair market value, but instead at the donor's basis.

A gift of royalties without a gift of the property (such as a copyright) that produces them will be considered an assignment of income. When income is assigned, it is still taxable to the donor, even if it is received by a charity. For example, if a writer assigns the royalties from a book, but does not assign the copyright, the tax treatment for the donor is the same as if he was collecting the royalties and then giving them to charity.

Oil royalties have different rules, relating to "working interests" and to "operating interests." A working interest is an interest in oil and gas in place that bears the cost of development and operation of the property. Operating interests are generally considered to be real property interests, and as such can be long-term capital gain property if held for one year.

4. Life Insurance

A donor may contribute a cash-value life insurance contract to charity. The donor is entitled to a deduction equal to the lesser of his basis in the contract and the contract's fair market value, which will usually approximate its cash value. The gift of an annuity contract issued after April 22, 1987, will be considered a sale and will result in the owner being deemed to receive ordinary income equal to the fair market value of the annuity, less his basis in it.

5. Retirement Plans

Retirement plans, such as IRAs, 401(k)s, and Keogh plans are powerful wealth accumulation tools due to their tax-deferred status. So it is not uncommon for donors who have large qualified plans to seek to give all or part of such plans to charity. Under the current law, it rarely makes sense for a donor to give a plan to charity during his life. However, Congress has been changing the rules regarding contributions from IRAs to charity on a very frequent basis. For 2013, it is generally possible for donors over age 70 ½ to contribute up to $100,000 from their IRA without adverse tax consequences.

While lifetime gifts of qualified plans seldom make sense, testamentary gifts are often good choices. One of the major benefits of qualified plans is that they offer tax deferral. However, the death of an owner of such a plan often triggers income tax on the amount of income that has been deferred. If the amounts involved are large, this income tax will be at high marginal rates, and combined state and federal rates may approach 50 percent in some states. However, spousal rollovers and inherited IRAs allow for continued deferral.

In addition to income taxes, the plan value may be subject to federal and state estate tax, which is also on the order of 50 percent. Fortunately, these two taxes are not added together, or the plans would be completely wiped out. However, the combined effect of income taxes and estate taxes can still devastate the value of such plans. The combined tax bite can be upwards of 75 percent of the pre-death value of the plan.

When a donor gives a qualified plan to charity, both the income tax and the estate tax are avoided. This allows 100 percent of the plan value to go to charity. If the decedent contributes the plan to a private foundation, his or her heirs can continue to control 100 percent of the plan value. Often the best way to make sure that a charity, such as the foundation, receives the assets without tax is to name the charity as the beneficiary of the plan.

E. Real Estate

Gifts of real estate to charity can be complex with the number of ownership structures, the variety of tax rules, and bargain-sale rules which apply to gifts of debt-financed real estate.

In general, contributions of real estate to public charities are deductible up to 50 percent of contribution base for contributions valued at basis, and up to 30 percent if contributions are of appreciated long-term gain property held for at least one year. If the contribution is to a private foundation, the deduction will be limited to the donor's basis and will be deductible up to 30 percent of contribution basis.

Although contributions of appreciated property to public charities normally qualify for deduction at fair market value, there are several important exceptions. They include donor's dealer status, a donor's short-term holding period of less than one year, or depreciation recapture period. If the property is subject to depreciation recapture upon disposition, the charitable deduction will be reduced by the amount of the recapture.

Many times donors own real estate limited partnership interests that they consider contributing to charity. Since partnerships often have debt financing on their property and are pass-through entities for tax purposes, the limited partner in such a case is considered to own a debt-financed interest in the property. Thus any charitable contribution will trigger the bargain-sale rules. In addition, limited partners may have very complicated basis situations that include some amount of potential depreciation recapture.