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ATTORNEYS AT LAW

OPTIONS FOR CHARITABLE GIVING

With careful planning, a donor's charitable gifts can reduce his or her potential income tax, gift tax, and/or estate tax liabilities. This article summarizes the rules and tax implications for some of the most common alternatives for making charitable gifts both during life and at death.

- **LIFETIME GIFTS VS. TESTAMENTARY GIFTS** – Charitable gifts made during life usually result in a deduction to the donor's income tax liability for the year of the gift. However, the donor's deduction in any one taxable year is generally limited to a specific percentage of the donor's adjusted gross income (AGI). The maximum amount of a donor's charitable deductions in any one year ranges from 20% to 50% of the donor's AGI, depending on several factors (*e.g.*, the type of charitable recipient, the type of property donated, etc.). Further, a deduction is only available if deductions are itemized on the income tax return. In contrast to a lifetime charitable gift, there are no limitations on the amount of the deduction for testamentary charitable gifts. However, testamentary gifts usually result in a deduction to the donor's estate tax liability, if any, and not a deduction to the donor's income tax liability.

- **PUBLIC CHARITIES** - The primary benefit of making a lifetime charitable gift to a public charity is that there are higher percentage limitations available for income tax deductions. Organizations that are classified as public charities are generally those that:

  1. are churches, hospitals, schools, colleges and universities;
  2. have an active program of fundraising and receive contributions from many sources, including the general public; or
  3. actively function in a supporting relationship to one or more existing public charities.

- **PRIVATE FOUNDATIONS** - In contrast to a public charity, gifts to a private foundation can provide a higher degree of long-term control and flexibility to a donor in terms of how the charitable gift will be applied to charitable purposes. Also, the donor can involve future generations of his or her family in the ongoing operation of the foundation. However, in addition to the lower percentage limitations available for income tax deductions on lifetime gifts to a private foundation, other drawbacks include potentially higher administrative costs, more restrictions on the expenditure of funds, and the constant exposure to excise taxes (which can be imposed on both the foundation and its manager) if the foundation fails to stay within the strict private foundation rules.

- **DONOR ADVISED FUNDS** - A donor advised fund is a charitable plan where the donor makes the gift directly to a qualifying charity (*e.g.*, a community foundation categorized as a public charity for purposes of the donor's income tax deduction percentage limitations), and the donor can make recommendations of grants to be paid from that fund to selected eligible charitable beneficiaries. In general, gifts to a donor advised fund allow the donor to obtain some of advantages of control similar to those of a private foundation without the regulatory hassles, expense, lower deduction limitations and increased compliance rules.

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- **CHARITABLE REMAINDER TRUSTS (CRTS)** - The basic premise behind a charitable remainder trust (CRT) is that the donor makes an irrevocable gift of property to a trust which provides a current benefit to a named individual or individuals (collectively the "income beneficiary") for a certain term of years or for life, with the remainder of the trust assets passing to one or more charities at the end of the trust term.

  With a typical lifetime CRT, the donor would be the sole income beneficiary. In such situations, no estate or gift tax would be due on the assets passing to the CRT and the donor could take an immediate income tax charitable deduction for the present value of the remainder interest passing to the charity.

  With a testamentary CRT, the donor would name someone else as the income beneficiary, and the donor's estate would receive an estate tax charitable deduction for the actuarial value of the remainder interest passing to the charity, but the value of the interest passing to the income beneficiary would be subject to estate tax at the donor's death.

  Because a CRT generally pays no income taxes, this type of trust is especially good for a donor's gift of low-basis property (which can be sold by the CRT without recognizing any gain, while continuing to be used to generate payments to the income beneficiary).

- **CHARITABLE LEAD TRUSTS (CLTS)** - In some respects a charitable lead trust (CLT) is the opposite of a CRT. A charity is named as the beneficiary of the trust for a certain number of years, with the remainder passing to one or more individuals. Lifetime CLTs are not commonly used due to the fact that an income tax deduction is generally not available for transfers to a CLT. However, an estate tax charitable deduction (for testamentary CLTs) is available for the actuarial value of the charity's "lead" interest.

Stover & Spitz LLC can assist you with most facets of charitable planning. If you wish to discuss our potential representation, please call us at 303-682-0433 to set an appointment.