

money is earned and spent early in a child's life has long lasting implications on how that child will view wealth over a lifetime. To begin, a child should understand how your family earns its money. If wealth is inherited, make sure the family story of the ancestor's hard work that was required to create the wealth is preserved and retold to establish the real connection between effort and wealth. If you are creating the wealth, discuss the value of your education, experience, and determination. And don't forget to preserve the story of the important role that one or more mentors probably played in your life. Once the groundwork is laid – the child begins to understand that money is not simply produced by an ATM – you can begin to explore the three basic ways to use money: you can spend it, you can save it, and you can give it away. By kindergarten, a child can be given simple tasks to perform to help the family and by which to earn an allowance. But don't stop there, talk about how the child will use the allowance. What is the difference between a short-term goal (buying a cupcake at a favorite bakery) and a long-term goal (saving to contribute to the purchase of a bike)? Who needs help in your community? Is there a food bank that needs support? Is there an animal shelter, or a veterinarian who takes donations to support abandoned pets? A local park that needs sprucing up? Help the child establish and meet a local charitable goal, and if others in the family can share the goal so that the family philanthropy becomes collaborative, the more the entire family will gain by the giving.



Doing Good By Doing Your Homework: You just received a solicitation from an organization that looks as if it is doing good work that you would like to support. But how do you know your contribution will be used as intended? Here is a simple two-part due diligence checklist to help answer this question:

- Review the non-profit's public filings: Most charities file an annual tax return to the IRS (Form 990 or a variation thereof) and, if operating in Massachusetts, an annual information return to the Attorney General's Division of Non-Profits & Public Charities (Form PC). Use www.mass.gov or guidestar.org as your entry portals. These public documents will help you review the charity's financial health, its administrative costs (including salaries of key employees), and the distributions out of the charity to those it seeks to assist. If you don't find any public filings, this may be a red flag that nonprofit status has been terminated.
- Contact the Local Community Foundation: Your local community foundation often is a great resource regarding the relative health and effectiveness of the various charities operating within its jurisdiction. And if the charity you are investigating turns out to be marginal, the community foundation may have a recommendation for a more robust group doing similar work that you might support. Depending upon the level of giving you are contemplating, a visit to the charity itself is often a good idea, and you may call the charity directly, or often the community foundation is willing to arrange the visit.



Tax Efficient Charitable Planning with Retirement Assets: A question that we are often asked is whether retirement assets can be donated to a charitable organization. Generally, the answer is yes, but usually an individual who wants to use retirement assets to make a lifetime charitable donation, first has to withdraw funds from the retirement plan, report the withdrawn amount as income, and then take a charitable deduction in order to offset the income (assuming the individual's charitable deduction limitation has not been exceeded for that year). However, the more

tax efficient manner to donate retirement assets to a charitable organization is to designate a qualified charity as the beneficiary of some or all of your retirement plan assets upon death. Since a qualified charity is exempt from income taxes, the qualified charity receives the full value of the retirement plan assets, not reduced by income taxes, and best of all - your estate receives an estate tax charitable deduction for the full value of the retirement plan assets. There has been hope that lifetime donations of retirement assets will be authorized by Congress, as they were for the period from 2006 through 2009, when individuals age 70 ½ or older, were able to make a direct distribution of up to \$100,000 per year from an IRA (except a SEP or SIMPLE IRA) to a public charity, without income tax consequences. This provision had the additional benefit that although the charitable distribution was not included in income, and therefore there was no offsetting charitable income tax deduction, it counted toward an individual's required minimum distribution. Although the provision expired in 2009, legislation has been filed to extend the provision for 2010, with the desire that it will become permanent. Hopefully, Congress will act this year and we will let you know in a future report.



Retiring With A Big Heart And Some Steady Income: Believe it or not, there are some individuals who hold property (e.g., securities or real estate) that has appreciated in value but pays out little or no income. They are reluctant to sell the asset for fear of incurring a “big” capital gains tax. If the individual is interested in sharing the asset with a charity, the charitable gift annuity (“gift annuity”) may provide the perfect solution.

A gift annuity is a contract between a qualified charity and a donor, where the donor transfers the appreciated asset to the charity in return for an annuity, and the donor is entitled to a tax deduction for a portion of the asset's value. In its basic form, an annuity is a regular, periodic payment for a person's lifetime, though it can take other forms, as explained later. The charity would make the annuity payments to an “annuitant” (the donor or the person named by the donor), and the amount of the annuity payment is calculated based on special tables used by most charities. The table is designed so that on the annuitant's death, there will be a remainder that will pass to the charity. (This is the “gift” concept, and dictates the amount of the donor's tax deduction.) In other words, a gift annuity will pay the annuitant less than a commercial insurance company would, using the same initial value.

But there is one major and important difference between a commercial annuity and a gift annuity: you cannot use appreciated assets to purchase a commercial annuity. You would have to sell the assets and make the purchase with cash (after you pay the capital gains tax).

The annuitant can be the donor, herself, or some other person named by her, but in this case that would constitute a gift to the other person, or it could be a joint annuity for the lives of the donor and her spouse. Unfortunately, the younger the annuitant(s), the less the charitable deduction, since the charity would likely have to pay for a longer time.

Each payment to the annuitant would be broken down into three parts for tax purposes, calculated on the cost basis of the asset, the appreciated value at the time of transfer, and an interest factor, all proportioned over the predictable term of the annuity, which in turn is based on the life expectancy of the annuitant(s). This calculation (which will be provided by the charity) will tell you which part of each year's payment is tax-free, capital gain, and interest.

Payments can begin immediately, or they may be deferred until a future date (such as a “retirement” date) and then paid out for the life of the annuitant or for a specified term. Deferring the start date will increase the payments but generally decrease the charitable deduction.

On the death of the annuitant, the payments will stop (unless a specific term is guaranteed and the person dies before the end of the term), and any remainder passes to the charity tax-free. If the donor had not recovered her cost of the asset before death, her estate will be entitled to an income tax deduction for the unrecovered balance.



An Ode To Uncle Olaf: You have always wanted to leave a charitable remembrance gift in the name of your favorite uncle – Uncle Olaf. As a condition of your gift, you want to ensure something at the recipient charity is named after Uncle Olaf – which is referred to as a “naming opportunity.” Maybe Uncle Olaf was an amateur artist, and you want to make a gift to the Museum of Fine Arts in his name with the condition that a seat in Alfund Auditorium is named after him. Maybe he passed away after a long battle with cancer and you want to make a gift in his name to the Cancer Center of the hospital that cared for him with the condition that a room be named in his remembrance. In any event, there are a few ways to go about this. You can choose to make a lifetime gift or a gift upon death. If you choose to make a lifetime charitable gift, you can negotiate the terms of the naming opportunity directly with the charity at that time. However, if you choose to make such a gift at death as part of your estate plan, you have two options. You can choose to let the charity know about the gift during your lifetime and enter into a “pledge agreement” with the charity under which you irrevocably promise to make the gift upon death and the charity irrevocably promises to name the agreed upon chair or hospital room after Uncle Olaf upon receipt of the gift. [Note that such a pledge is legally binding on you and your estate.] Your other option is to give no notice and make no commitment to the charity during your lifetime and have your estate plan documents state that a gift is to be made in remembrance of Uncle Olaf on the condition that a naming opportunity is available. If you choose the latter, it will be important that you and/or your estate planning attorney research the naming opportunities available from your chosen charity at the time you create (or revise) your estate planning documents, to ensure the size of your gift will still be appropriate years down the road when you pass away. If you are at all interested in making a gift subject to a naming opportunity, we recommend that you inquire with your favorite charity – you will most likely find that it is quite affordable. Especially if you think outside the box. The Museum of Fine Arts is fine (pun intended), but your local arts council might have some creative ideas of its own.



Ensuring Your Gift Can Be Used As Envisioned: Most likely, you have some charities that are near and dear to your heart. In some cases, you may even have specific programs at your favorite charity that you prefer to support over others. When incorporating gifts to these charities into your estate plan, it is important that you not be too restrictive in your giving. If you are too restrictive, the gift could “fail,” meaning the charity may reject or be unable to use the gift because of the restrictions you placed on it – which is most likely not your intent. For example, let’s say you make provisions in your estate plan for a charitable gift to be made upon your death to an animal shelter and restrict the charity’s use of the gift to only support the care of cats. But, at the time you pass away, the animal shelter no longer provides any care for cats. Or, the charitable gift is to be made only if there is a naming opportunity available. But, at the time you pass away, there are no naming

opportunities available with that charity. Then the gift to the animal shelter would fail, and the property that was to be gifted will likely pass to your other beneficiaries (presumably family members), or worse, your estate ends up in court to decide what happens to the gift. To ensure your goals are met, we often recommend that your gift be as restrictive as you wish initially, but that the document also states that if the restricted purpose no longer exists, then either (1) the charity can use the gift for any purposes it sees fit; (2) the charity can use the gift for any purpose it sees fit other than, say, helping birds (you never got over that Hitchcock movie!); or (3) your trustee can choose a replacement charity that has the type of program you were interested in helping.



Boats, Planes, And Automobiles - Family “Treasures” That Keep On

Giving: Are you tired of that old car or boat in the backyard, or has the cost of fuel made it too expensive to fly your plane? Maybe you inherited your grandfather’s old Boston Whaler or Piper Cherokee, but prefer to remain on firm ground. Most everyone is aware that any automobile (even ones that no longer run) can be donated to qualified charities, but were you aware that old boats and planes can also be donated to a qualified charity? The same rules apply to donations of motor vehicles, boats, and airplanes (i.e. “qualified vehicles”) which can be found in IRS Publication 4303, *A Donor’s Guide to Vehicle Donations*. Let’s take that Boston Whaler. In general, if a deduction for the donation of a boat is claimed for more than \$500, the deduction is limited to the smaller of the gross proceeds from the sale of the boat by the charity, or the boat’s fair market value on the date of the contribution. There are several forms that must be filed with the IRS to claim the deduction, which include a Form 1098-C (or equivalent) that must be provided by the charity. Although just turning over the keys to a charity seems like a great way to get rid of an old tub, it is advisable to make sure the title is transferred to ensure termination of liability and that you cancel any insurance on the boat. Anchor’s Away!



Give Your Artwork A Vacation While You Are On Vacation: Though our primary focus in this Report is to show how local, small philanthropy is still possible in challenging economic times, it may be that some of you are lucky enough to have significant pieces of artwork, and you might not know how to share that work with the world. Have you considered donating such a work of art to a museum but aren’t ready to give it away just yet? Are you away from your primary residence for the winter or summer and are concerned no one is home to enjoy your work of art? You may have considered loaning it for the period of time you are away to a qualifying charitable organization, such as the Isabella Stewart Gardner Museum or your local historical society (it needn’t be a large museum), to which you one day intend to permanently donate the work of art. Rather than loaning the work of art, you might consider making a contribution of a fractional interest in it to the museum (for example, a 25% fractional interest to show the work of art for 3 months each year) and thereby obtain a charitable deduction equal to the value of the fractional interest given to the museum. In order to qualify for the deduction, you must own all interests in the work of art before making the initial contribution, the museum must take physical possession of the work of art for the period of time equal to its fractional ownership interest, and you must contribute the balance of your interest to the museum on or before the earlier of the date that is ten years after the date of the initial contribution, or the date of your death. You may make additional fractional interest contributions of the work of art, but the fair market value of the future contributions will be based on the lesser of the fair market value of the work of art at the time of the initial contribution, or the later additional contribution. It is

important to note that for any work of art with a value greater than \$20,000, you must obtain a qualified appraisal and provide it to the IRS when reporting the charitable deduction. Also, even though little Johnny believes he is a budding Picasso, if Johnny donates his art work to a museum as the artist, he is only entitled to deduct his cost for materials to produce the masterpiece.



There Is No Place Like Home For A Charitable Deduction: A special provision in the Internal Revenue Code allows a person to donate her home (actually, any “personal residence”) to a charity, but keep the right to live in the home for her lifetime. When the gift is made, the homeowner is entitled to a charitable deduction, even though the charity may not actually receive the property for years. The amount of the deduction is the present value (based on certain IRS tables) of what the charity will receive when you pass away (or when the term expires), based on the fair market value of the home when the deed is completed.

For example, Julia, a single woman with no children, owns a home which she would like to leave to her church when she passes away. Julia is 86 and the home is presently worth \$400,000. Julia can deed the home to the church now and retain the right to remain there for the rest of her life. Based on her life expectancy and the value of the home, Julia will be entitled to a charitable deduction of about \$335,000. If she cannot use the deduction all in one year, she can carry it forward for the next five years.

If Julia were married, she could reserve life estates for both herself and her husband, but the added life estate will, of course, reduce the amount expected to pass to charity, so her deduction will be less. For instance, if Julia’s husband were age 78, the present value of the remainder after the death of both spouses (and therefore, the amount of the deduction), would be about \$288,000.

It must be remembered that once the deed is completed, there is no taking back or changing the gift. If more flexibility is desired, the gift may be made by a Will (so there is actually no gift until the homeowner’s death), leaving a life estate to a spouse and the remainder to a charity, but here there would only be an estate tax deduction and no income tax deduction.

There are two other points of interest here. First, the gift of the remainder can be in any property that is used as a personal residence. This could include, for instance, a mobile home, or even a boat. Second, it is possible to sell the property and acquire another, so long as the charity’s interest continues in the new property. If no new property is purchased or there is cash left over from the sale and/or the new purchase, the charity must receive its proportionate share of the proceeds.



Donor Advised Funds: In lieu of making lump sum gifts to specific charities during your lifetime or upon your death, you may want to consider establishing a “donor advised fund” or “DAF.” A DAF is a charitable fund that is created and named by you with a sponsoring organization (similar to an investment company – but one that focuses on charitable giving). You establish the fund with an initial contribution of as little as \$10,000 and charitable gifts may be made from the fund throughout the year. The DAF can be funded with a one-time lump sum contribution or you can contribute to the fund on an ongoing basis. You and your family would serve as the initial advisors to the DAF, and additional and successor advisors could be appointed by you while you are living and

your family after you have passed away. The fund advisors are involved in choosing recipient beneficiaries from a variety of the types of organizations that you (the fund creator) hold dear in accordance with the guidelines that you create when the fund is established. The advisors can choose specific charities or can choose specific charitable goals they would like to meet and then ask the sponsoring organization to make distributions to any charity which meets those goals. Distributions can be made anonymously or in the name of the fund. While the sponsoring organization has the final say in where distributions are ultimately sent, in practice they often follow the direction of the advisors unless the donee charity's purpose or ideals are against public policy, or the donee charity does not appear to be financially stable and a gift will only work to prolong the inevitable termination of the charity. A DAF is a nice way to involve your family in your lifetime and posthumous charitable giving without burdening them with the administrative tasks of a private foundation.



Building A Solid Foundation: For families with larger estates (and charitable inclinations), it often makes sense to consider proportionately larger gifts to charity. One concern that many families have, however, is specifying the exact charity or charities with little room to change or add to the charities without going to some trouble and expense. While a Donor Advised Fund, discussed above, is certainly an alternative, if the charitable set-aside in question is a large amount, the donor may want to consider a family private foundation.

A private (charitable) foundation is typically established as a corporation or a trust and qualified by the Internal Revenue Service as “exempt” from taxes. The exemption is obtained by submitting a certain form and supporting information to the IRS, including the purposes and objectives of the foundation and some financial and personal data. Once the exemption is granted, the foundation must meet certain operating and annual filing requirements (federal and state). There are other regulations to be aware of, outside the scope of this report, but one requirement we will mention is that a private foundation must distribute at least five percent of its value each year (some carryovers are allowed).

One distinct advantage of the private family foundation is that it can be completely administered by family members for generations to come, and those members will have the direct opportunity, benefit, and responsibility of distributing the required amount to charities they select and which they believe are within the stated charitable purposes and objectives originally expressed by the founder/donor. In addition, as directors, managers, or trustees of the foundation, the participating family members may be reasonably compensated. As a general rule, because of the reporting, accounting, and record-keeping requirements, it is usually agreed that it may be uneconomical to establish and operate a private foundation if the foundation is funded with much less than \$1 million.

Another charitable giving opportunity can arise where there is a sale of a family business, especially if the proceeds are substantial. Prior to the sale negotiations, the owner could gift a portion of the business to his family foundation and obtain a tax deduction (within certain limits) for the contribution. When the sale later occurs (there are time limits within which the foundation must dispose of the business interest), the foundation would receive its share of the proceeds tax-free. In most cases, this is more advantageous than a sale by the owner and a later gift of cash to the foundation. Note that competent legal/tax counsel is essential to properly orchestrate the foregoing option.



The Technical Stuff – Substantiation And Disclosure Requirements:

In order to claim a charitable deduction, the IRS imposes recordkeeping and substantiation rules which are set forth in IRS Publication 1771, *Charitable Contributions – Substantiation and Disclosure Requirements*, and IRS Publication 526, *Charitable Contributions*. In general, a donor must have a bank record or written communication from a charity for any monetary contribution and must file Form 8283, *Noncash Charitable Contributions*, if the deduction claimed for noncash contributions exceeds \$500. It is also advisable to review IRS Publication 78, *Cumulative List of Organizations*, which lists most qualified organizations, other than religious organizations and government entities, to confirm that the organization is a qualified charity.

GIVING CAN BE FUN

As we hope you can see from our Report, giving can be fun. It can also save taxes, benefit the less fortunate, and offer the family of the donor the opportunity and benefits of giving back to society. This Report focused exclusively on selected techniques that you may use if you wish to accomplish any or all of the foregoing objectives. Please note that our list is not exhaustive, nor does it encompass all of the specific requirements that must be followed. Nevertheless, we have attempted to explain enough of the details to enable you to decide if you would like to further investigate a particular option. In addition, you will note that most of the options we discussed offer you the opportunity to “have your cake and eat it too.” That is to say, options which not only allow you a charitable (tax) deduction, but at the same time those which give something (money) back to you. It has been said that charitable donors fall into two basic groups: those who want to give and those who do not want to give. These “get something back” options have been known to help move many donors from the latter group to the former group. We trust that you found this Report helpful, informative, and “moving.”

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