

Charitable Giving 101

By: **Richard J. Shapiro, J.D.**

When preparing their estate plan, most people want to leave their assets to family – spouses, children and grandchildren. However, people often overlook the many rewards – both psychic and financial -- of giving to charities, both during lifetime and after death.

Besides the personal satisfaction inherent in charitable giving, the government provides significant incentives in the form of income, gift and estate tax benefits to those who make charitable gifts. For some people, the tax incentives provide the sole reason a person makes a charitable gift; for others, the gift would have been made in any event, and the tax break is simply the icing on the cake.

Here are the main mechanisms for charitable giving, and some of the accompanying tax benefits:

1. **Outright gifts** – the simplest form of charitable giving. A gift of cash provides a deduction on your federal income tax return (and in most states), but only for taxpayers who itemize. The deduction is dollar-for-dollar against taxable income (up to a maximum of 50% AGI), subject to adjustment for those in higher brackets. Gifts of appreciated securities allow the deduction for the fair market value of the asset, rather than its cost basis, but only up to 30% of adjusted gross income. This can provide a nice benefit for those looking to avoid capital gains taxes. Outright gifts also remove the asset (and all appreciation) from the donor's estate, potentially reducing estate tax liability.
2. **Gifts of Life Insurance** – Allows the leveraging of a gift, since the death benefit often far exceeds the premiums paid by the donor. **CAVEAT:** there is a loss of all income, gift and estate tax charitable deductions if the charity lacks an “insurable interest” in the donor under state law.
3. **Charitable Gift Annuities** – The donor irrevocably transfers money or property to a qualified organization in return for its promise to pay the donor, another person, or both, fixed and guaranteed payments for life. In substance, the transfer is part charitable gift and part purchase of an annuity. The older the annuitant, the larger the annual payments. The charitable contribution is the difference between the amount of money (or fair market value of securities or other property transferred) and the value of the annuity. A percentage of each annuity payment (determined by government tables) is income tax free.

4. Split Interest Gift Trust – An agreement where one party receives income for a term, and another party receives the remainder. These vehicles provide significant income tax, gift tax and estate tax benefits.
 - a. Charitable Remainder Trust (“CRT”) – The donor transfers assets to a trust. The donor (and often a spouse or children) receives a stream of income for a term of years, or for life. Upon the death of the last remaining income beneficiary, the assets remaining in the trust pass to a qualified charitable remainder beneficiary. These trusts work well when the donor contributes appreciated assets to the trust; since a CRT is a “tax free” trust, the trustee can sell the appreciated assets without incurring a capital gains tax upon sale; the full value of the assets is then available for investment and production of income. Income payable to the donor will be taxable; BUT, the donor will also receive a significant income tax deduction which, if it cannot be fully utilized in the year of the gift, can be carried over for up to five additional years.

Since the remainder interest passes to a charity and not to family members, the “lost” assets can be replaced through use of a “wealth replacement trust” – simply, a life insurance trust which will pass all of the death benefit estate tax and income tax free to the children or other beneficiaries.

- b. Charitable Lead Trust (“CLT”) – Essentially, the opposite of the CRT; with a CLT, the *charity* receives the income for a term of years, with the remainder then passing to the donor’s family (usually children or grandchildren). A CLT can be an excellent vehicle for “zeroing out” estate taxes; that is, the donor’s will or revocable trust can include a CLT that is funded after the donor’s death *only if* there would be an estate tax payable at that time. The will or revocable trust would include a formula to fund the CLT with those assets necessary to reduce the donor’s taxable estate to zero. If there is no estate tax due at the donor’s death, the CLT would not be formed (unless, of course, the donor wished to make the charitable gift regardless of the estate tax issues).

A CLT also provides the donor with significant income tax, gift tax and estate tax benefits.

This article provides but a brief summary of the most popular charitable giving tools. Contact an estate planning attorney to learn how any of these techniques may meet your personal needs.

Richard J. Shapiro is a partner with the Middletown law firm of Blustein, Shapiro & Rich, LLP. Mr. Shapiro is a member of the National Network of Estate Planning Attorneys, the National Academy of Elder Law Attorneys, the New York State Bar Association (Trusts and Estates and Elder Law Sections), and the Hudson Valley Estate Planning Council. He can be reached at (845) 692-0011 or at rshapiro@mid-hudsonlaw.com. The information in this article is for general information purposes only and is not, nor is it intended to be, legal advice.