



**Charitable Planning
(2022FTINE-P3)**

Thursday, April 28, 2022

3:55 p.m. to 4:55 p.m.

**St. Clements Castle
Portland, CT
And Virtual**

CT Bar Institute, Inc.

CT: 1.0 CLE Credits (General)

NY: 1.0 CLE Credits (AOP)

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LAWYERS' PRINCIPLES OF PROFESSIONALISM

As a lawyer, I have dedicated myself to making our system of justice work fairly and efficiently for all. I am an officer of this Court and recognize the obligation I have to advance the rule of law and preserve and foster the integrity of the legal system. To this end, I commit myself not only to observe the Connecticut Rules of Professional Conduct, but also conduct myself in accordance with the following Principles of Professionalism when dealing with my clients, opposing parties, fellow counsel, self-represented parties, the Courts, and the general public.

Civility:

Civility and courtesy are the hallmarks of professionalism. As such,

- I will be courteous, polite, respectful, and civil, both in oral and in written communications;
- I will refrain from using litigation or any other legal procedure to harass an opposing party;
- I will not impute improper motives to my adversary unless clearly justified by the facts and essential to resolution of the issue;
- I will treat the representation of a client as the client's transaction or dispute and not as a dispute with my adversary;
- I will respond to all communications timely and respectfully and allow my adversary a reasonable time to respond;
- I will avoid making groundless objections in the discovery process and work cooperatively to resolve those that are asserted with merit;
- I will agree to reasonable requests for extensions of time and for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
- I will try to consult with my adversary before scheduling depositions, meetings, or hearings, and I will cooperate with her when schedule changes are requested;
- When scheduled meetings, hearings, or depositions have to be canceled, I will notify my adversary and, if appropriate, the Court (or other tribunal) as early as possible and enlist their involvement in rescheduling; and
- I will not serve motions and pleadings at such time or in such manner as will unfairly limit the other party's opportunity to respond.

Honesty:

Honesty and truthfulness are critical to the integrity of the legal profession – they are core values that must be observed at all times and they go hand in hand with my fiduciary duty. As such,

- I will not knowingly make untrue statements of fact or of law to my client, adversary or the Court;
- I will honor my word;
- I will not maintain or assist in maintaining any cause of action or advancing any position that is false or unlawful;

- I will withdraw voluntarily claims, defenses, or arguments when it becomes apparent that they do not have merit or are superfluous;
- I will not file frivolous motions or advance frivolous positions;
- When engaged in a transaction, I will make sure all involved are aware of changes I make to documents and not conceal changes.

Competency:

Having the necessary ability, knowledge, and skill to effectively advise and advocate for a client's interests is critical to the lawyer's function in their community. As such,

- I will keep myself current in the areas in which I practice, and, will associate with, or refer my client to, counsel knowledgeable in another field of practice when necessary;
- I will maintain proficiency in those technological advances that are necessary for me to competently represent my clients.
- I will seek mentoring and guidance throughout my career in order to ensure that I act with diligence and competency.

Responsibility:

I recognize that my client's interests and the administration of justice in general are best served when I work responsibly, effectively, and cooperatively with those with whom I interact. As such,

- Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the Court (or other tribunal) and my adversary of any likely problem;
- I will make every effort to agree with my adversary, as early as possible, on a voluntary exchange of information and on a plan for discovery;
- I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
- I will be punctual in attending Court hearings, conferences, meetings, and depositions;
- I will refrain from excessive and abusive discovery, and I will comply with all reasonable discovery requests;
- In civil matters, I will stipulate to facts as to which there is no genuine dispute;
- I will refrain from causing unreasonable delays;
- Where consistent with my client's interests, I will communicate with my adversary in an effort to avoid needless controversial litigation and to resolve litigation that has actually commenced;
- While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

Mentoring:

I owe a duty to the legal profession to counsel less experienced lawyers on the practice of the law and these Principles, and to seek mentoring myself. As such:

- I will exemplify through my behavior and teach through my words the importance of collegiality and ethical and civil behavior;
- I will emphasize the importance of providing clients with a high standard of representation through competency and the exercise of sound judgment;
- I will stress the role of our profession as a public service, to building and fostering the rule of law;
- I will welcome requests for guidance and advice.

Honor:

I recognize the honor of the legal profession and will always act in a manner consistent with the respect, courtesy, and weight that it deserves. As such,

- I will be guided by what is best for my client and the interests of justice, not what advances my own financial interests;
- I will be a vigorous and zealous advocate on behalf of my client, but I recognize that, as an officer of the Court, excessive zeal may be detrimental to the interests of a properly functioning system of justice;
- I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;
- I will, as a member of a self-regulating profession, report violations of the Rules of Professional Conduct as required by those rules;
- I will protect the image of the legal profession in my daily activities and in the ways I communicate with the public;
- I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance; and
- I will support and advocate for fair and equal treatment under the law for all persons, regardless of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, gender identity, gender expression or marital status, sexual orientation, or creed and will always conduct myself in such a way as to promote equality and justice for all.

Nothing in these Principles shall supersede, supplement, or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which a lawyer's conduct might be judged, or become a basis for the imposition of any civil, criminal, or professional liability.

Faculty Biography

Brad Bedingfield

Brad Bedingfield is Chair of the Nonprofit Practice Group at Hemenway & Barnes LLP. His practice concentrates on representing tax-exempt organizations. Brad assists private foundations and public charities with navigating complex tax regulations and procedures, including receipt and disposition of complex charitable gifts and participation in innovative forms of impactful philanthropy. Advising on governance matters, Brad guides charities and other nonprofits through formation, reorganizations, mergers, affiliations, and dissolutions. Brad also counsels high-net worth individuals and families on charitable giving, estate planning and lifetime gifting strategies. Brad was recognized as a Notable Practitioner assisting US and international high net worth families with philanthropy and trusts and estates planning in Chamber's 2018, 2019, and 2020 High Net Worth guides. He has more than 15 years of experience in private practice with national firms and previously worked as a tax law specialist with the Exempt Organizations Division of the IRS in Washington, D.C. Brad received his JD from Columbia Law School. He can be reached at 617-557-9704 or bbedingfield@hembar.com.

Agenda

Charitable Planning Strategies in 2022

Federal Tax Institute of New England

April 28, 2022

St. Clements Castle, Portland, CT

3:55 p.m. to 4:55 p.m.

Brad Bedingfield, Hemenway & Barnes LLP, Boston, MA

3:55 p.m. to 4:05 p.m.: Charitable Giving in 2022

4:05 p.m. to 4:15 p.m.: DAF Trends

4:15 p.m. to 4:25 p.m.: Types of Gifts Received by Institutions

4:25 p.m. to 4:35 p.m.: Trends in Split Interest Vehicles

4:35 p.m. to 4:45 p.m.: Trends in Gift Agreements

4:45 p.m. to 4:55 p.m.: Questions

Charitable Planning Strategies in 2022

Federal Tax Institute of New England
April 28, 2022



Overview



Charitable Giving in 2022



DAF Trends



Types of Gifts Received by Institutions



Trends in Split Interest Vehicles



Trends in Gift Agreements

Part I – Charitable Giving in 2022

Certain charitable incentives provided as part of 2020 and 2021 COVID-relief bills have expired, including:

The highest available AGI limit currently is back to 60%, for cash gifts to public charities.

IRA account owners may continue to make up to \$100,000 per year in qualified charitable distributions from IRAs to public charities (other than DAFs and supporting organizations).

The Massachusetts income tax charitable deduction (which was set to return in 2022) has been delayed until at least 2023.

Deduction Limitations for Charitable Gifts (2022)

| Public Charity / POF | | | Private Foundation | |
|---|--------------------------|---|--------------------------|--|
| | Maximum Annual Deduction | Value That Can Be Deducted | Maximum Annual Deduction | Value That Can Be Deducted |
| Gift of cash | 60% of AGI ¹ | 100% | 30% of AGI | 100% |
| Gift of publicly traded stock | 30% of AGI | Fair market value at date of gift ² | 20% of AGI | Fair market value at date of gift ¹ |
| Gift of property other than cash or publicly traded stock | 30% of AGI | Fair market value at date of gift ^{2, 3} | 20% of AGI | Basis |

60% AGI Limitation

| | PC/PF | Cash | STCG (cost basis only) | LTCG (no cost basis election) |
|-----------------|--|--|--|---|
| Sub. G | PC | 60% | N/A | N/A |
| Sub. A | PC | 50% minus Sub. G gifts | 50% minus Sub. G gifts | 50% minus Sub. G gifts subject to Sub. C max |
| Sub. C | PC | N/A | N/A | Limited to 30% max (see Sub A) |
| Sub. B | PF | Lesser of (i) 30% and (ii) 50% minus Sub. G gifts minus Sub. A gifts | Lesser of (i) 30% and (ii) 50% minus Sub. G gifts minus Sub. A gifts | Lesser of (i) 30% and (ii) 50% minus Sub. G gifts minus Sub. A gifts subject to Sub. D max |
| Sub. D | PF | N/A | N/A | Limited to max of lesser of (i) 20% and (ii) 30% minus Sub. C gifts |
| Sub. E | 50% (100% if qualified rancher/farmer) minus all other gifts under IRC 170 (to “qualified organization”) | | | |
| Disaster | Cash gifts up to 100% (stacks) to PCs for qualified disaster relief (special legislation) | | | |

Qualified Charitable Distributions from IRAs

- Direct payment to charity required
- Must be a public charity (but not a donor-advised fund or supporting organization)
- Up to \$100k/year
- Beneficiary must be age 70 ½ or older (even for inherited IRA)
- Must receive no benefits from charity in return

Effect

- Treated as direct payment to charity – no income inclusion
- Satisfies Required Minimum Distribution
- Not subject to the AGI deduction limits

Gifts at Death

- Receive estate tax deduction and avoid income tax

Biden Administration FY 2023 Revenue Proposals (Green Book)

- Increase corporate income tax rate to 28 percent
- Increase highest individual / trust income tax rate to 39.6% (and compress brackets)
- Minimum 20% income tax on income and unrealized gain if wealth of \$100 million or more
- LTCG and dividends taxed at ordinary income rates to the extent income exceeds \$1M (indexed after 2023)
- Transfers of appreciated property treated as realization events (also, realization every 90 years in non-corporate entities, including trusts)
 - \$5M exclusion (indexed, portable)
 - Charities / split-interest trusts

Biden Administration FY 2023 Revenue Proposals (Green Book)

- Elimination of zeroed out GRATs (25% minimum remainder value, no decreasing annuity payments, no tax-free asset swap to freeze gain, minimum and maximum terms)
- Taxation of transactions with non-revocable grantor trusts
- Gift treatment for payment of grantor trust's income tax
- Limitation on GST exemption

- Disallow treatment of grants from private foundations to DAFs as qualifying distributions for purposes of the 5% distribution requirement of IRC 4942
 - Except to the extent DAFs re-distribute funds by end of following year (like private foundation “passthrough” grants)

Part II – Trends in DAFs

DAF Overview

- “Separately identified” by reference to donor contributions
- Donor or designee has or reasonably expects to have advisory privileges regarding distributions or investments by virtue of his or her status as a donor
- Single organization DAF
- Certain scholarship funds
- Employer-sponsored disaster relief funds (IRS Notice 2006-109)

DAF Overview

- *IRC 4966* - Taxable Expenditure Rules
 - *IRC 4967* - Prohibited Benefits
 - *IRC 4958(c)(2)* - Automatic excess benefit transactions
 - *IRC 4943(e)* - Excess business holdings
-
- MAY be used to fulfill donor pledges (conditions apply)
 - MAY NOT be used to pay for gala tickets
 - Considering treating DAF grants as not public support
 - Considering not allowing DAF grants to satisfy IRC 4942 distribution requirement for private foundations

DAFs – Exclusions from Legislative Tax Benefits

2020/2021 COVID-relief tax provisions

- 100% AGI limit
- Deduction for non-itemizers

Disaster-specific tax benefits

- Example, 2018 Bipartisan Budget Act (California Wildfires)

IRA Rollovers

- Excluded from receiving qualified charitable distributions from IRAs – IRC 408(d)(B)

Accelerating Charitable Efforts (“ACE”) Act

Status

- Filed in the Senate on June 9, 2021 (King and Grassley)
- Filed in the House on February 3, 2022 (Pingree, Reed, Khanna, Porter)
- March 7, 2022 – 11 members of House Ways and Means sent a “dear colleague” letter in opposition

No tax deduction upon contribution to a DAF unless it is a “qualified DAF” or a “qualified community foundation DAF”

- *Qualified DAF*: Requires termination of advisory privileges after 15 years (must designate charity to receive assets as period expires)
- *Qualified Community Foundation DAF*:
 - ✓ No advisory privileges over more than \$1M
 - ✓ DAF distributes at least 5% per year
 - ✓ Community foundation serves needs of a particular geographic area (no larger than four states) and holds substantial assets (no less than 25%) outside of DAFs

Accelerating Charitable Efforts (“ACE”) Act

Qualified DAFs / Qualified Community Foundation DAFs:

Amount of deduction equals sale proceeds credited to DAF account, not FMV (except for assets with readily available market quotations on established securities market)

Non-Qualified DAFs:

- No charitable deduction unless property liquidated AND until distributions made from DAF
- All DAF assets must be distributed within 50 years (50% tax on DAF sponsor for failure to distribute)

Special Acknowledgement Requirements:

Information regarding net sale proceeds and qualifying distributions (for non-qualified DAFs) sent to taxpayer and to Treasury

Accelerating Charitable Efforts (“ACE”) Act

Private Foundations:

- IRC 4940 – No net investment income tax for
 - PFs that make qualifying distributions of 7% or more
 - “Limited duration” PFs (limited to no more than 25 years, with no distributions to related PFs)
- IRC 4942
 - Administrative expenses paid to disqualified persons (other than non-family foundation managers) not qualifying distributions
 - Distributions to DAFs not qualifying distributions

Public Support Test:

- All amounts received from DAF sponsor treated as support received from one person except to the extent the donor is identified

DAFs – Institutional Perspective

White Label DAFs

- Institutional DAFs tend to have more limited flexibility than commercial or community foundation DAFs
 - 50% devoted to institution (or separate institution and non-institution DAFs)

Single entity DAFs

Meant to be additive, not replacing annual giving, etc.

Increasing flexibility in practice

- International giving
- Scholarship funds
- Impact investing

Part III - Types of Gifts Received by Institutions

- Appreciated assets
- Tangible personal property
- Gifts of complex assets
 - Private company stock
 - S Corporations
 - Private equity
 - Real estate
 - Cybercurrency

Giving Appreciated Assets

Property: \$100,000 of stock,
\$50,000 cost basis (held for more than one year)

- \$100,000 income tax deduction
- **\$10,000 capital gain tax due (at 20% rate)**

Option 2: Gift of \$100,000 stock, charity sells

- \$100,000 income tax deduction
- **No tax due** on sale by charity

Gifts of Tangible Personal Property

Gifts of tangible personal property

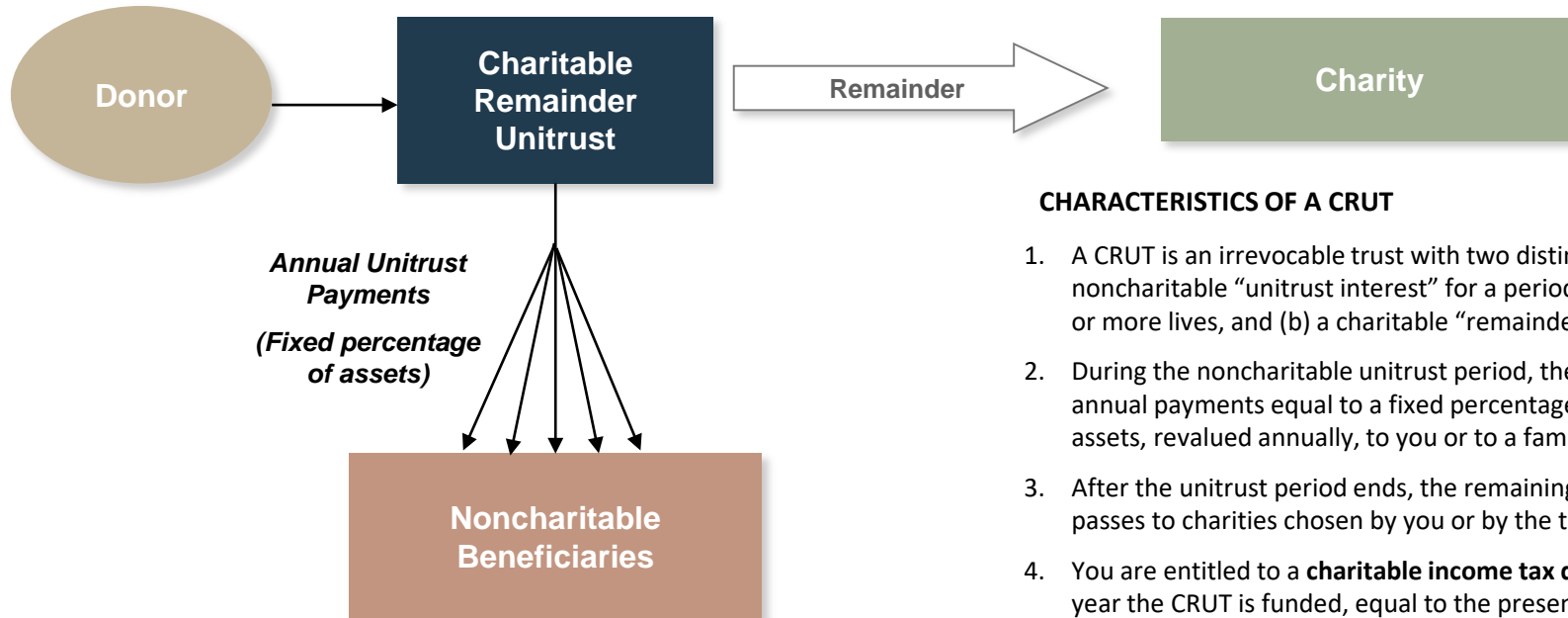
- Limited to cost basis unless used by recipient for exempt purposes (limited to cost basis regardless if to private foundation)
 - If sold by charity in same year, limited to cost basis
 - If within three years, must recapture portion of deduction relating to capital gain
 - In either case, no reduction/limitation if charity certifies related use
 - Special rules for gifts of partial interests

Other **special rules** for gifts of intellectual property, food or pharmaceutical inventory, scientific research property, taxidermy property, books to public schools, etc. (IRC 170(e) through (p))

Part IV - Trends in Split Interest Vehicles

- Charitable Remainder Trusts
- Charitable Gift Annuities (Quid Pro Quo Gift)
- Charitable Lead Trusts
- Pooled Income Funds
- Remainder in Personal Residence or Farm

Charitable Remainder Trusts



ADVANTAGES

- *Charitable income tax deduction* – You receive an immediate income tax deduction equal to the present value of the charitable remainder interest.
- *Capital Gains Tax Deferral* – You may use a CRUT to sell appreciated securities, deferring the capital gains tax liability over many years.
- *Estate tax savings* – As long as the noncharitable unitrust interest ends at your death, or passes to your surviving U.S. citizen spouse, the CRUT assets will not be taxed in your estate.

LIMITATIONS

- *Continuing income tax liability* – Some portion of the annual unitrust distributions will be taxable income to the noncharitable beneficiary.

CHARACTERISTICS OF A CRUT

1. A CRUT is an irrevocable trust with two distinct interests – (a) a noncharitable “unitrust interest” for a period of years or for one or more lives, and (b) a charitable “remainder interest.”
2. During the noncharitable unitrust period, the CRUT makes annual payments equal to a fixed percentage of the trust’s assets, revalued annually, to you or to a family member.
3. After the unitrust period ends, the remaining CRUT property passes to charities chosen by you or by the trustees.
4. You are entitled to a **charitable income tax deduction** in the year the CRUT is funded, equal to the present value of the remainder interest passing to charity. You will not be subject to gift tax on funding the CRUT unless the noncharitable unitrust payments are made to someone other than you or a U.S. citizen spouse.
5. The CRUT is not subject to income taxes (including capital gains taxes). As such, you may contribute highly appreciated securities to the CRUT, and the CRUT may sell those securities without incurring any present gains taxes. **This makes a CRUT a useful vehicle for diversification.** The noncharitable unitrust beneficiary will pay the capital gains taxes over time, as unitrust distributions are made.

Charitable Gift Annuities

- Bargain sale treatment – “gift” portion treated as gift to charity
- Annuity as general obligation of the charity
- Annual annuity payments are treated as mix of
 - (1) ordinary income,
 - (2) capital gain, and
 - (3) return of capital
- Capital gain spread out over life of annuity if donor is an annuitant
- Single Life, Dual Life, Deferred, Flexible

CGAs vs CRTs in Philanthropy

CGAs predominate

- Simpler (one-page agreements)
- Flexible re timing
 - Deferred and flexible annuities
 - “College” Annuities
- Less flexible re beneficiaries (donor and perhaps one other)
- Capital gains deferral (if donor is an annuitant)
- Certainty (predictable income stream)
- Some regulatory compliance obligations
- Concerns about “underwater” CGAs

CGAs vs CRTs in Philanthropy

CRTs

- CRTs are separate vehicles, requiring trustees, tax reporting, separate management, etc.
- Unitrusts vs. annuities – Interest limited to assets
- More flexibility re beneficiaries (one or more lives or 20 years)
- Can effectively spread out capital gain in wider variety of scenarios

“Endowment” CRTs

- Universities offering “packaged” CRTs
 - Universities have documents prepared, serve as trustee (often for no fee), take care of administration, and invest in university endowment
 - Way for donors to participate in university endowment performance
 - Less regulatory infrastructure for institutions than CGAs
 - In exchange, donor gives up right to change charitable beneficiary

CGAs vs CRTs in Philanthropy

- *Example:* \$1,000,000 funding, ages 72 and 65

| | Deduction | Annual Payment | Notes |
|-------------|-----------|-----------------------|--|
| CGA | \$357,510 | \$40,000 | Tax free until corpus on “sale” portion recaptured |
| CRUT | \$380,870 | 5% (\$50,000 initial) | Realized income in trust flows out with unitrust payment |
| CRAT | \$218,460 | \$50,000 | Fails 5% exhaustion test unless terminates if trust falls below 10% of initial value plus 7520 rate (Rev. Proc. 2016-42) |

Effect of Interest Rates on CRATs vs. CRUTs

Higher Interest Rates

- Better income tax deduction for donor
 - Gift = IV (Initial Value) – PVA (Present Value of Annuity)
 - Higher interest rate = lower PVA (less needs to be invested at assumed interest rate to get same amount at end of period)
 - Lower PVA = higher gift portion
 - Higher charitable deduction, or more annuity for same charitable deduction
- Easier to meet 5% chance of exhaustion test (note Rev. Proc. 2016-42, alternative 10% of initial principal termination option)
- Less likely to have UBTI (gift portion must be at least 10% of value of property)

CRUTs

- Largely unaffected

Higher Interest Rate Charitable Giving

Worse for Donors

- Gifts of remainder interests in real estate
- CLATs
- Gifts of annuity or unitrust interests
- CGAs (Lower tax-free return of principal)

Better for Donors

- CRATs (CRUTs largely unaffected by interest rates)
- CGAs (Higher charitable deductions)

Stretching with Charitable Remainder Trusts?

Mechanics

- Percentage interest typically 5%
- Must ensure that charitable remainder worth at least 10% of funding amount
- Annual distributions carry out taxable income

Effect

- Converts lump sum or 10 year IRA interests to lifetime payments
- Spreads out income tax consequences over beneficiary's lifetime
- Creates partial estate tax charitable deduction

Stretching with CRTs – Example

Assumptions: \$1M IRA, 40-year-old beneficiary, 1.2% Section 7520 rate, 35% income tax rate, est. 7% tax-free growth in IRA or CRT, 5% growth net of taxes outside of IRA or CRT, child lives to age 70

To Child After 10 Years

- Estimated tax of \$350,000, net bequest of \$650,000
- *After 30 years: \$2.8 million*

- 10 years in IRA -> \$2 million less \$700,000 tax = \$1.3 million
- *After 30 years: \$3.45 million*

To CRUT

- \$1M CRUT initial value, 5% annual payout
- Aggregate cash paid out over 30 years (not weighted, before tax): \$2 million
- *Total after 30 years* (35% tax on distribution of first \$1M; blended 25% tax on remainder)
- Value with distributions invested: **\$3.03 million**
- Remainder to Charity: **\$1.8 million**

Stretching with CRTs

Benefits

- Spreading out payments (income stream; potentially lower tax brackets)
- Spreading out income tax consequences
- Partial estate tax deduction
- Trust protections (creditors, spendthrift, etc.)

Additional Considerations

- Less benefit for family if CRT beneficiary dies early
- Must establish and maintain trust

Part V – Trends in Charitable Vehicles

- Public Charities
 - Supporting Organizations

- Private Foundations

- Donor-Advised Funds

- 501(c)(4) Social Welfare Organizations

- “Zuckerberg” LLCs

Public Support Test – 509(a)(1) – 33 1/3% Test

| Public Support | Total, Not Public Support | Excluded Entirely |
|---|--|--------------------------|
| Government grants | Grants above 2% limitation | Unusual grants |
| Grants from publicly supported organizations* | Unrelated business income | Capital gain income |
| Part of other grants (up to 2% limitation) | Investment income (other than capital gains) | Program service income** |

Public Support Test – 509(a)(1) – Facts and Circumstances

Public Support Ratio between 10% and 33 1/3%

Factors

Supporting Organizations

- Type I Supporting Organizations
- Type II Supporting Organizations
- Type III Supporting Organizations
 - Functionally integrated
 - Non-functionally integrated

Private Foundations

| | |
|-------------------|---|
| - Negative | <p>Extra Rules</p> <ul style="list-style-type: none">• IRC 4940 – Excise Tax on Net Investment Income (1.39%)• IRC 4941 – Self-Dealing• IRC 4942 – Minimum Distribution Requirements<ul style="list-style-type: none">○ Private Operating Foundations• IRC 4943 – Excess Business Holdings Limitations• IRC 4944 – Jeopardizing Investments• IRC 4945 – Taxable Expenditures |
| - Negative | More limited tax benefits (AGI limitations, less deduction for gifts of complex assets) |
| + Positive | No need for broad, independent board of directors |
| + Positive | No need to worry about “public support test” |

501(c)(4)s

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare

- Exclusively public benefit; no private inurement or more than incidental private benefit
- No public support test
- No private foundation rules
- Lobbying and some political activity okay

Gift tax does not apply, but estate tax does

- IRC 2501(a)(6) – Partial interest rules, etc. don't apply
- Beware IRC 2036

“Zuckerberg” LLCs

- ✓ Anonymity
- ✓ Coordination of philanthropic vehicles
- ✓ Perpetual contracting entity
- ✓ Family succession
- ✓ Employment of G2 and G3

Comparing Charitable Vehicles

| | Pros | Cons |
|---------------------------|--|--|
| Public Charity | <ul style="list-style-type: none"> - Best tax results for gifts - No private foundation rules | <ul style="list-style-type: none"> - Loss of control - Public support test |
| Donor-Advised Fund | <ul style="list-style-type: none"> - Mostly best tax results for gifts - Fewer administration hassles/risks | <ul style="list-style-type: none"> - No 100% AGI; no QCDs - Can't give to individuals - Can't freely give to non public charities |
| Private Foundation | <ul style="list-style-type: none"> - Control and flexibility | <ul style="list-style-type: none"> - Restrictive rules - Less favorable tax benefits |
| 4947(a)(1) Trust | <ul style="list-style-type: none"> - No need for Form 1023 | <ul style="list-style-type: none"> - Private foundation rules apply - Must file 1041s, pay tax if not all distributed out |
| 501(c)(4) | <ul style="list-style-type: none"> - No Form 1023/1024 required - No public support test - No private foundation rules - No gift tax | <ul style="list-style-type: none"> - No income tax deduction - Estate tax concerns |
| LLC | <ul style="list-style-type: none"> - Contracting vehicle for personal / family philanthropy | <ul style="list-style-type: none"> - It's just an LLC – you haven't done anything tax-wise |

Part V – Trends in Gift Agreements

- Ethics of Gift Acceptance
- Gift Policy Statements
- Gift Agreements
- Naming Rights and Variance Clauses
- Addressing Tainted Money

Ethics of Gift Acceptance



Directly Tainted Assets

- Unenlightened business practices
- Stolen property
- Proceeds of illegal activity

Personal Character Concerns

- Receipt of money in general
- Naming rights

Mission Dissonance

- Strings/restrictions contrary to mission
- Public perception undermining mission

Gift Policy Statements and Agreements

Having and
Following a Policy

Vetting and
Acceptance



Asset-focused

- Source of funds? Untraceability of sources?

Person-focused

- Legal issues?
- Allegations or rumors?

Mission-focused

- Weighing of anticipated positive and negative impacts on mission?
 - *Transactional*: where acceptance of gift may result in reduced gifts from others, loss of staff or volunteers resulting in financial loss, etc.
 - *Moral*: Undercutting effectiveness of mission
 - Complicity in “whitewashing”

Gift Policy Statements and Agreements

Typical Features



Wariness of Restrictions

- Funds can be limited in use, but not in a way that may negatively impact mission

Wariness of Strings/Influence

- Unless donor-advised fund, no ongoing rights or privileges, including advisory
 - Hiring decisions, curriculum/programming, investments

Gift Policy Statements and Agreements

Typical Features



Limitation on Naming Rights

- Time-limited?
- Express morality clauses – may remove name if:
 - Charity feels it is in its best interests to do so?
 - Convicted of felony?
 - Engages in behaviors that are counter to the values of the charity?
- Retention of name has a materially adverse effect on charity's mission?

Variance Powers

- *Cy pres* clauses (mission-based)
- *Gift Agreements* – express dominant charitable purpose, frame other restrictions as subservient/incidental

Addressing Tainted Money



Return to Donor

- Cosby / Spelman College
- Silent Sam
- Power to do so? Breach of fiduciary duty to charitable public?

Give to Another Charity

- Power to do so without court approval?
- Express gift restrictions
- Limitations on charitable purposes
- *Beede* doctrine (Massachusetts)

Addressing Tainted Money



Keep it, But Remove Problematic Restrictions

- Self-help *cy pres*
- Petition for *cy pres* / reasonable deviation
- Intentional breach of restrictions
- Standing to challenge
 - *Maffei* case
- Charitable gift vs. contract
 - Confederate Memorial Hall
- Reversionary rights?
- Gift-over?

Keep it as is

- Kenneth Lay Chair of Economics, University of Missouri

Bonus Slides

- Partial Interest Gifts
- Charitable Remainder Trusts
- Charitable Lead Trusts
- Charitable Gift Annuities
- Donor-Advised Funds

Income Tax Deductions

Gifts of Partial Interests

- Must give **entire interest** in property or **fraction of “each and every substantial interest or right”**
- No **“unbundling”** of rights, with some retained or transferred (other than for FMV) to noncharitable recipients.
 - No **temporal** unbundling (e.g., gift for seasons or periods of time)
 - No gifts of **partial use** (e.g., right to harvest timber on land if donor retains other rights) unless insubstantial (ex., certain easement rights)
 - No gifts of **economic rights** in stock while retaining voting rights
 - Rev. Rul. 81-282; but see PLR 201129033 (Class A and B shares are separate property interests) and PLR 200108012 (voting rights transferred many years previously for independent business purposes not split interest under 170)
- Special rules for **fractional interest** gifts of **tangible personal property** (IRC 170(o))

Income Tax Deductions

Gifts of Partial Interests

- Ok if giving all (or equal %) interests in **all rights that taxpayer has**
- If donor received a partial interest from someone else, she can give that to charity, as long as she's giving everything she has
- However, cannot split interest for purpose of creating separate property

Reg. 1.170A-7(a)(2) ("If, however, the property in which such partial interest exists was divided in order to create such interest and thus avoid section 170(f)(3)(A), the deduction will not be allowed")

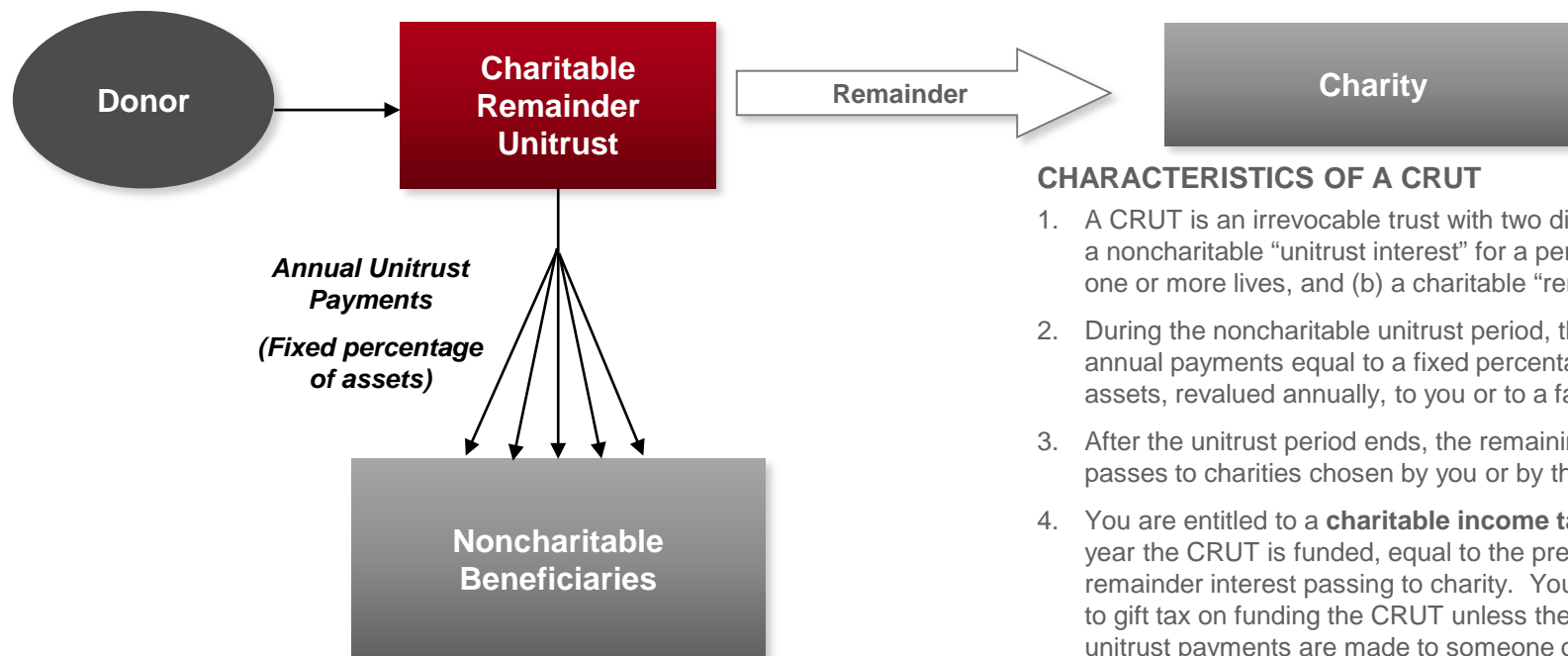
See also Reg. 25.2522(c)-3(c)(1)(i) (disallowing gift tax deduction where "an interest in the same property is retained by the donor, or is transferred or has been transferred for private purposes" for less than FMV)

Income Tax Deductions

Gifts of Partial Interests – Key Exceptions (see IRC 170(f))

- Charitable Remainder Trusts
- Charitable Lead Trusts
- Pooled Income Funds
- Remainder in Personal Residence or Farm
- Qualified Conservation Easements

Charitable Remainder Trusts



CHARACTERISTICS OF A CRUT

1. A CRUT is an irrevocable trust with two distinct interests – (a) a noncharitable “unitrust interest” for a period of years or for one or more lives, and (b) a charitable “remainder interest.”
2. During the noncharitable unitrust period, the CRUT makes annual payments equal to a fixed percentage of the trust’s assets, revalued annually, to you or to a family member.
3. After the unitrust period ends, the remaining CRUT property passes to charities chosen by you or by the trustees.
4. You are entitled to a **charitable income tax deduction** in the year the CRUT is funded, equal to the present value of the remainder interest passing to charity. You will not be subject to gift tax on funding the CRUT unless the noncharitable unitrust payments are made to someone other than you or a U.S. citizen spouse.
5. The CRUT is not subject to income taxes (including capital gains taxes). As such, you may contribute highly appreciated securities to the CRUT, and the CRUT may sell those securities without incurring any present gains taxes. **This makes a CRUT a useful vehicle for diversification.** The noncharitable unitrust beneficiary will pay the capital gains taxes over time, as unitrust distributions are made.

ADVANTAGES

- *Charitable income tax deduction* – You receive an immediate income tax deduction equal to the present value of the charitable remainder interest.
- *Capital Gains Tax Deferral* – You may use a CRUT to sell appreciated securities, deferring the capital gains tax liability over many years.
- *Estate tax savings* – As long as the noncharitable unitrust interest ends at your death, or passes to your surviving U.S. citizen spouse, the CRUT assets will not be taxed in your estate.

LIMITATIONS

- *Continuing income tax liability* – Some portion of the annual unitrust distributions will be taxable income to the noncharitable beneficiary.

Charitable Remainder Trusts

Exception to partial interest rules (IRC 170(f)(3), 2522(c)(2) and 2055(e)(2)) if meets the requirements of **IRC 664** (exempting CRTs from income tax)

Requirements **must be satisfied from inception**

- CRT may be reformed *nunc pro tunc* by way of qualified reformation per IRC 2055(e)(3) or 2522(c)(4)

Must operate exclusively as a CRT **throughout the trust's lifetime**

- See, e.g., *Estate of Atkinson v. Comm'r*, 115 TC 26 (2000), aff'd 309 F.3d 1290 (11th Cir. 2002); PLR 201714002

Exempt from tax under IRC 664, but any **UBTI** is taxed at a **100% rate**

Must report on calendar year

Cannot be a grantor trust

Charitable Remainder Trusts

Non-remainder interest must be a **qualified annuity** (IRC 664(d)(1)) or **unitrust** (IRC 664(d)(2)) interest paid **at least annually**

- *Annuity*: Must be a “sum certain” not less than 5% nor more than 50% of initial FMV
- *Unitrust*: Must be a fixed percentage not less than 5% nor more than 50% of FMV valued annually

CRUT may permit **future contributions** – CRAT may not (trust may provide that additional contributions create a new CRAT)

For **testamentary CRT**, obligation to pay must commence as of date of death, but initial payments may be deferred until the end of the year in which CRT funding occurs (with interest)

May be **funded by any “person”** (need not be an individual)

Charitable Remainder Trusts

10% Test

- Value of remainder interest must be at least 10% of initial FMV.
- Problem for CRATs in low-interest rate environment.

5% Test

- 5% probability of exhaustion test (Rev. Rul. 77-374) – CRAT will fail if more than 5% probability that trust assets will be exhausted before annuity interest terminates.
- But see Rev. Proc. 2016-42 (Ok if keep revaluing, terminate if payment of annuity would reduce corpus below 10% of initial value).

Charitable Remainder Trusts - Potential annuity/unitrust beneficiaries

- Joint or survivor interests (**individuals living at time of CRT creation**), **term of years** (no more than 20), or whichever is longer or shorter (but cannot tack 20 years onto one or more lives)
- A charity can receive some of the annuity/unitrust interest, as long as the interest of non-charitable recipients is substantial (ex., “cap” spillover distributions to charity)
- However, this non-remainder charitable interest will not affect the income tax deduction, which is only for the remainder interest
- An independent trustee may have the power to “**sprinkle**” an annuity or unitrust amount among permissible beneficiaries where the CRT is for joint individual beneficiaries or term of years (PLR 9052038)

Charitable Remainder Trusts - Charitable Remainder Recipients

- If **only public charities** may receive remainder, funding treated as gift “to”, not “for the benefit of” public charities
- If **private foundation** included as potential beneficiary, or if property held in continuing trust, less favorable AGI limitations and rules for gifts to private foundations apply
- Donor may retain **power to substitute** one charitable beneficiary for another (or may give that power to unitrust beneficiary)

Charitable Remainder Trusts

- Possibility that CRT may incur estate tax liability or be invaded per elective share laws in theory threatens qualification
 - Rev. Proc. 2005-24 – IRS attempted to impose spousal waiver requirements (suspending by IRS Notice 2006-15)
 - CRT forms commonly provide that donor will make alternative provisions for payment of estate taxes, that CRT will have a claim against the estate of a donor if estate taxes come due, and that a successor income beneficiary must pay any estate taxes that nonetheless become due or forfeit his or her interest (see Rev. Rul. 82-128)

Sample IRS CRT Forms

- Rev. Procs. 2003-53 to 2003-60 (CRATs); 2005-52 to 2005-59 (CRUTs)

Charitable Remainder Trusts – Variations – IRC 664(d)(3)

NICRUTs: Net income CRUTs

- Lesser of trust income and annuity/unitrust amount
- May not take UPIA “unitrust” approach to determining income and principal, as that could effectively allow a percentage interest of less than 5%
- Realized capital gain can be treated as income only to the extent that the property sold has appreciated in value between the time of funding and the time of sale

NIMCRUTs: Net income with make-up CRUTs

- Trust income in excess of annuity/unitrust amount may be paid out to make-up deficit in annuity/unitrust payments in prior years

Charitable Remainder Trusts – Variations – IRC 664(d)(3)

FLIPCRUTs:

- NICRUT or NIMCRUT may “flip” to a SCRUT on certain triggering dates or events
 - Date or event must be outside the control of the trustees or any other person
 - Marriage, divorce, death, birth of child, reaching certain age, and sale of **unmarketable** assets are treated as outside the control of the trustees or other person
 - Sale of **marketable** assets and request of beneficiary NOT permissible triggering events
- Commonly used for gifts of illiquid, non-income producing property
- Flip must be effective at beginning of taxable year immediately following taxable year in which triggering event occurred.
- Any “make-up” amount (if NIMCRUT) forfeited upon the flip

Charitable Remainder Trusts – Termination

- Allowed if annuity/unitrust payments will terminate earlier or at the same time (but not later)
 - Example, termination on surviving spouse's remarriage
 - In terrorem provisions

Gift of remaining annuity/unitrust interests

- Must be permitted under local law and CRT instrument
- Confirm doctrine of merger applies to terminate (otherwise, charity as sole annuitant would disqualify CRT)

Actuarial division (see, e.g., PLR 200127023, 200314021)

- Treated as sale of income interest to charitable remaindermen at zero cost basis
- Confirm no self-dealing concern if PF or DAF involved
- Valued as of month of termination
- Valuation of NICRUTs/NIMCRUTs – see PLR 200725044 (requiring valuation of unitrust interest as lower of % distribution rate and 7520 rate)

Charitable Remainder Trusts – Gift and Estate Tax

Annuity/unitrust interest will qualify for **gift tax marital deduction** if **spouse** is the only other (noncharitable) beneficiary and is a **U.S. citizen** (IRC 2523(g))

- Because deduction relies on special exception, not normal QTIP, general POA or “estate trust” qualification, CRTs can be established with terminable interests if within “qualified contingencies” of IRC 664(f), as long as only remainder charities will benefit from such a termination
- **If children take after spouses, no marital deduction**
 - However, if jointly funded, no gift tax between spouses except to the extent that **actuarial interests** differ in value – Rev. Rul. 76-157

Charitable Remainder Trusts – Gift and Estate Tax

Gifts of annuity/unitrust interests to non-charitable and non-U.S. citizen spouse beneficiaries will be subject to gift tax unless the donor retains a **testamentary right to revoke** that interest

- Normally, a gift of a CRT interest is not a gift of a “**present interest**”, and therefore is not eligible for the gift tax annual exclusion. However, if right of revocation is retained, the gift is complete as each distribution is made, and so the gift tax annual exclusion is available.

Charitable Remainder Trusts – Taxation of Distributions

- Ordinary income
- Capital gain
- Tax-exempt income
- Return of principal

- In each case, accrued income from previous years passes out before the next class applies
- If different tax rates within a class, subclass taxed at higher rate deemed to pass out before subclass taxed at lower rate
- Note complicated loss-netting rules

Charitable Remainder Trusts – Taxation of Distributions

Applicability of Chapter 42 Private Foundation Rules (IRC 4947(a)(2))

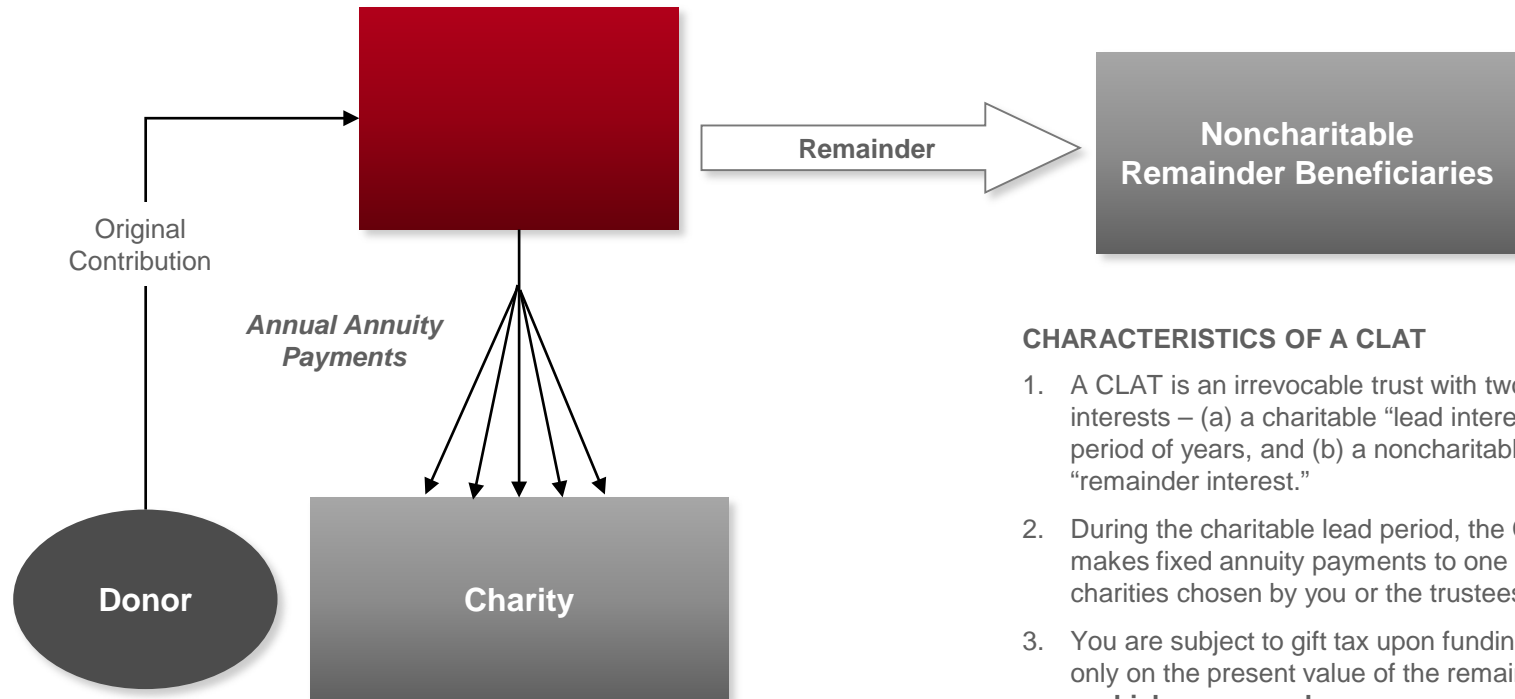
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|----------|--|
| IRC 4941 | (self-dealing) applies (other than regarding annuity/unitrust payment) |
| IRC 4943 | (excess business holdings) applies |
| IRC 4944 | (jeopardizing investments) applies |
| IRC 4945 | (taxable expenditures) applies (other than regarding annuity/unitrust payment) |

Charitable Remainder Trusts

Key Points

- Follow IRC 664 carefully – once it's blown, it's blown forever
- No UBTI property (100% tax)
- All CRUTs these days, not CRATs (low interest rates)
- Any “person” (IRC 7701) can fund a CRT
- Usually 5-7% payouts; 10% and 5% tests
- One or more lives, or term of years not to exceed 20 (can do longer or shorter, but can't tack 20 years onto one or more lives)
- Can do “sprinkle” trusts if independent trustee and limited to 20 years or joint individual beneficiaries
- Can retain testamentary power to revoke interests
- Can retain power to change remainder beneficiary (or give it to unitrust beneficiary)
- Limit remainder beneficiary to public charities to get higher AGI limit
- SCRUTs, NICRUTs, NIMCRUTs and FLIPCRUTs
- Beware marital deduction if non-spouse successor beneficiaries (IRC 2523(g))
- Income tax ordering rules – worst first
- Beware private foundation rules (especially self-dealing)

Charitable Lead Annuity Trust



ADVANTAGES

- *Gift tax cost* – Allows you to “leverage” your gift tax exemption and transfer significant assets to children and others at a reduced, or even zero, gift tax cost.
- *Estate tax savings* – The CLAT assets are out of your estate.
- *Limited risk* – If the CLAT assets do not perform well, you have not wasted any gift tax exemption.

LIMITATION

- Not advisable to allocate GST exemption to a CLAT.

CHARACTERISTICS OF A CLAT

1. A CLAT is an irrevocable trust with two distinct interests – (a) a charitable “lead interest” for a period of years, and (b) a noncharitable “remainder interest.”
2. During the charitable lead period, the CLAT makes fixed annuity payments to one or more charities chosen by you or the trustees.
3. You are subject to gift tax upon funding the CLAT only on the present value of the remainder interest – **which can go as low as zero.**
4. At the expiration of the charitable lead period, the CLAT pays the remaining trust property to one or more noncharitable beneficiaries named by you, free of gift tax.

Charitable Lead Trusts

- Charitable deduction up-front
- BUT, no 642(c) deduction thereafter (all future CLT income included on grantor's income tax return)
- May be some recapture of the income tax deduction

Non-Grantor CLAT

- No income tax charitable deduction up-front
- But, 642(c) deductions available each year
- Income tax due if 642(c) deduction not available (i.e., if UBTI, or if income not fully offset by deduction)
 - Note income ordering provisions of CLT may be disregarded if no economic effect independent of income tax consequences. See Reg. 1.642(c)-3 and -5.

See 2007 and 2008 IRS sample forms

Charitable Lead Trusts

- For life/lives (donor, spouse, ancestor of all remainder beneficiaries, or spouse of ancestor, living when CLT established), period of years (unlimited), or combination
- May vary from year to year (unclear by how much)
 - Amount must be “**determinable**,” in that the exact amount to be paid can be “ascertained” at the beginning (Treas. Reg. 25.2522(c)-3(c)(2)(vi))
 - See Rev. Proc. 2007-45 and 2007-46 (annuities may increase)
 - GRAT restrictions on more than 20% increases do not expressly apply to CLTs
 - See PLR 201216045 (blessing CLT that varies its annuity payments by 20% per year)
- “Shark-fin” CLATs

Remainder Interest

- Can pass to any person, but special GST rules apply (IRC 2642(e))
 - **GST inclusion ratio adjusted to capture appreciation** over section 7520 rate
 - “Applicable fraction” = “adjusted GST exemption” / CLT value at termination
 - Adjusted GST exemption = original GST exemption applied plus interest at 7520 rate for actual period of CLT

Charitable Lead Trusts

- IRC 4941 (self-dealing) applies
- IRC 4943 (excess business holdings) and IRC 4944 (jeopardizing investments) apply unless amounts for which tax deductions allowed = no more than 60% of FMV of trust
- IRC 4945 (taxable expenditures) applies

Charitable Gift Annuities

- Is the sole consideration in exchange for property and value of annuity is less than 90 percent of the value of the property received in exchange
- Is payable over the life of one or two (consecutively or concurrently) individuals in being when annuity is issued
- Is payable under a contract which does not guarantee a minimum amount of payments or specify a maximum amount of payments, and does not provide for adjustment of amount by reference to income received from transferred property (or other property)

Charitable Gift Annuities - Types

- **Single Life**
- **Dual Life** – Consecutive or Joint and Survivor
- **Deferred Gift Annuities**

- See, e.g., PLR 200449033, PLR 9743054
- Gift annuities cannot be for a term of years or guarantee a minimum number of payments
- However, the IRS has approved agreements that allow exchange of life payments for lump sum or installments (see PLR 200233023, 9042043), valued based on factors in effect at time of commutation

Charitable Gift Annuities - Taxation

Income Tax

- If funded with LTCG property, subject to lower 30 percent AGI limitation
- Basis must be allocated between “sale” portion and “gift” portion

Annual annuity payments are treated as mix of (1) ordinary income, (2) capital gain, and (3) return of capital

- *Capital Gain*: Normally, bargain sale would trigger capital gain on “sale” portion immediately.
- However, under a special rule, capital gain may be spread out over the donor’s lifetime if the donor is one of the annuitants (with part of each annuity payment “carrying out” capital gain to the donor)

Charitable Gift Annuities - Taxation

Estate and Gift Tax

Donor may retain testamentary right to revoke another annuitant's interest, making the gift incomplete

- Any annuity payments to the donee while that right is outstanding are gifts at the time of such payments (qualifying for the gift tax annual exclusion)
- The interest over which the right extended will be included in the donor's taxable estate


A **gift tax marital deduction** is available for a spouse's interest ONLY if (1) the spouse is the sole annuitant (Treas. Reg. 25.2523(b)-1(c)) or (2) the donor and spouse hold a joint and survivor annuity (IRC 2523(f)(6)) (the spouse must also be a U.S. citizen).

- A CGA to the donor for life and then the spouse may not qualify for the gift tax marital deduction (terminable interest, as the spouse may not survive the donor). However, the donor can retain the right to revoke the spouse's interest, making the gift incomplete until the donor dies (leaving the spouse as the sole annuitant at the time of the gift).

Donor-Advised Funds

- IRC 4966 (definition of DAF, taxable distributions)
- IRC 4967 and expansion of IRC 4958 (excess benefit transactions)
- IRC 4943(e) (excess business holdings)
- IRC 170(f)(18) (required contemporaneous written acknowledgement that sponsor has exclusive legal control; Type III NFI SO's)
- IRC 508(f) (Notice by sponsoring organizations)

Donor-Advised Funds – Defined in IRC 4966

- 
- Which is owned and controlled by a sponsoring organization
 - Which is **separately identified** by reference to contributions of a donor or donors
 - With respect to which a donor (or designee) has, or reasonably expects to have, **by virtue of his or her status as a donor, advisory privileges** with respect to **distributions or investments**

Donor-Advised Funds – What is NOT a DAF?

Fund established by **private foundation** (not necessary because of IRC 4941-4945)

Fund established by **government or political subdivision**

Fund which supports only a **single identified organization**

Certain **scholarship funds**

- Advisory privileges performed only as minority (with related persons) of committee appointed by sponsoring organization, following private foundation guidelines

Certain **employer-sponsored disaster relief assistance programs**

- Solely for relief from qualified disasters, large or indefinite charitable class, independent selection committee, objective determinations of need, no benefit to employer or insiders
- Exempted per Notice 2006-109

Advisory fund by Type III NFI SO is a DAF, but no income tax charitable deduction

Donor-Advised Funds – Why Does It Matter?

IRC 4966 –

20% tax on DAF sponsor

5% tax on fund manager

Taxable Expenditure Rules

Cannot distribute:

- For any non-charitable purpose (including political, lobbying, etc.)
- To any natural person (*Note*: qualifying scholarship fund not a DAF)
- To any organization other than a public charity, private operating foundation, or private pass-through foundation, unless expenditure responsibility procedures followed (IRC 4945(h))
- Distributions to DAF sponsor itself or to other DAFs permitted

Donor-Advised Funds – Why Does It Matter?

IRC 4967 –


125% tax on advisor/related party
potential **10% tax** on fund manager

Prohibited Benefit Rules

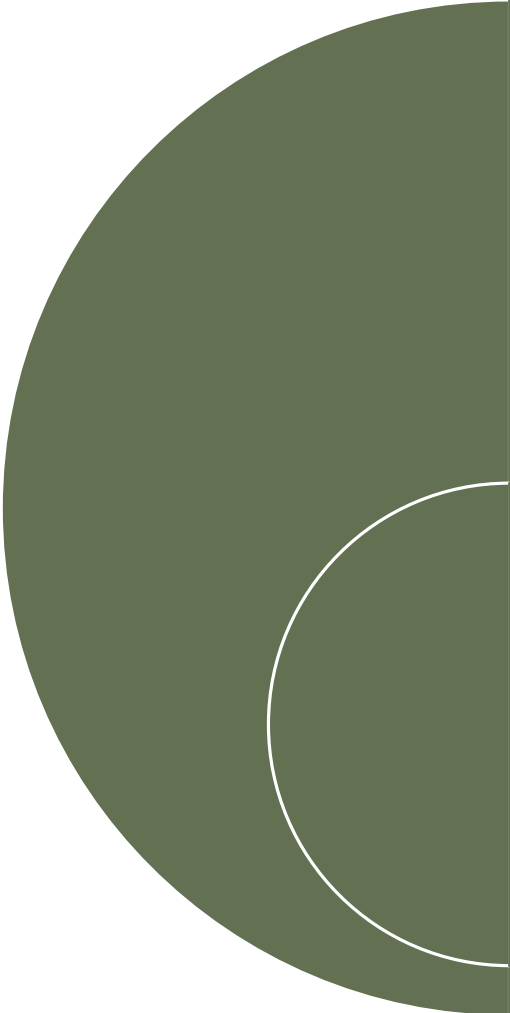
Tax on “more than incidental benefit”

- Not defined in IRC 4967
- IRC 4941 (private foundation self-dealing) guidance may be relevant, but unclear
- Credit / “reflected glory”
- Direct or indirect economic benefits
 - Tickets to charity-sponsored event, membership benefits, etc.
 - Fulfilling pledges?
 - Sports event ticket purchase rights?

DAFs – Impermissible Benefits – IRC 4967 and 4958

- 
- Taxes excess benefit to “disqualified persons,” which (since 2006) includes donor-advisors and related persons
 - Any grant, loan, compensation, etc. to donor / related party is automatically an excess benefit

DAF Distributions for Tickets

| | | |
|---|---|--|
|  | <p>Distributions to pay tax deductible portion of a ticket to charity-sponsored event or a membership fee (i.e., “split gifts”) – TAXABLE (per Notice 2017-73)</p> | <p>Example: \$1,000 tickets for event, \$100 FMV, \$900 tax deductible, seats not available at lower price</p> <ul style="list-style-type: none">• Individual gift• Private foundation gift• DAF gift |
| | <p>True severance of DAF and individual portions - NOT TAXABLE (probably)</p> | <p>Example: \$1,000 tickets for event, \$100 FMV, can buy seats at \$400 (remaining \$600 buys recognition only)</p> <ul style="list-style-type: none">• Pay \$400 individually• Pay \$600 from DAF (no benefit other than “reflected glory”) <p>No official IRS guidance to this effect, but should be correct</p> |

DAFs – Notice 2017-73 – Donor Pledges

Distributions in fulfillment of donor pledges – NOT TAXABLE

Contrary to private foundation rules – see Treas. Reg. 53.4941(d)-2(f)(1) (distributions in satisfaction of legal obligation)

IRS notes that DAF sponsors have a hard time determining whether a pledge is legally enforceable under state law

Non-taxable only if:

- DAF sponsor makes no reference to existence of pledge when making DAF distribution
- Donor/advisor receives no other benefit that is more than incidental
- Donor/advisor does not attempt to claim income tax deduction for DAF distribution

Notice indicates this guidance regarding pledges may be relied upon immediately

DAFs – Preferential Athletics Ticket Rights

- Not addressed expressly by IRS
- Based on IRS analysis regarding DAF distributions for tickets - TAXABLE (probably)
 - Value of benefit for purposes of DAF tax not just FMV of tickets, but also **ability to access**, which has value
 - Value of impermissible benefit may be full value of distribution

DAFs – Notice 2017-73 – Public Support Test

- Strong incentive to identify DAF advisors at the time of distribution.

EXCEPTION if DAF sponsor confirms distributions are not from DAFs or were made independently of donor advice.

Contact Information

