



GIFT

for

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awyers who are generally accustomed to billing rather than soliciting their clients for contributions might well wonder why they need a working knowledge of charitable gift and estate planning. Last year more than \$180 billion was gifted to charity, much of it by sophisticated clients with myriad legal needs.

Given the size of today's philanthropic marketplace, your clients are probably among these donors. And if your client is a heavy-volume client, he or she is also probably a heavy-volume donor.

Charitable giving has become inextricably woven into the lifestyle of your clients, and into their legal needs. That means you can help not just in your clients' business planning, but in their family, personal, and philanthropic lives.

Charitable Lead Trusts and Other Wealth Preservation Techniques

If you are an estate planner, you probably counsel your clients on estate freezes and other wealth preservation techniques. You probably tell them about sophisticated planning techniques such as the grantor retained life income trust, the qualified personal residence trust, and the family limited partnership, which could enable them to transfer assets to children at significantly discounted gift or estate tax amounts. However, you should also counsel your clients on the benefits of the charitable lead trust, which allows for similar estate freeze transfers to children and a highly tax-efficient way to fund charitable projects.

How? If your client contributes appreciating assets to the family charitable lead trust having a term of, e.g., 20 years, when the trust term ends, the trust funds are distributed to the children, or, perhaps, grandchildren and every year a percentage of the asset, e.g., 4 percent, is distributed to charity. The 4 percent may come from trust capital or income. As with other typical estate freezes, the asset is valued for gift tax purposes when the trust is established. However, the valuation of the transfer to the children is significantly discounted by the present value of the annual distributions to the charity. Even more impressive, all of the asset appreciation following the trust term is ultimately distributed to the children completely free of gift or estate tax.

For an individual who is already considering a significant gift to charity, this can provide even greater bene-

fits. Assume that your client contributes \$1 million of non-dividend-producing stock expected to appreciate 10 percent annually and \$1 million of long-term bonds yielding 8 percent into a 20-year lead trust. Your client would also like to make a donation to Cardozo. You help her structure a charitable annuity lead trust that will distribute \$80,000 annually (4 percent) to Cardozo. In so doing, your client will receive a gift tax deduction of \$785,448 on the \$2 million transfer. The taxable gift, discounted by the annuity gift to charity over 20 years, is reduced from \$2,000,000 to \$1,214,552. Assuming a gift tax rate of 55 percent, this could result in cash savings of \$431,996 and, assuming the projected appreciation over 20 years, a distribution of \$6,327,755 to the children—free of all gift and estate taxes. In addition, the client has distributed \$1,600,000 to Cardozo in a notably tax-efficient manner. You have helped your philanthropic client succeed wonderfully in family and charitable planning.

Charitable Remainder Trusts

With over 500,000 recognized not-for-profit organizations in the United States, it's not surprising that the previously esoteric charitable remainder trust has entered the financial planning mainstream. There are more than 70,000 of them in existence.

General corporate lawyers and tax planners need to know how to use the charitable remainder trust as a planning tool to shield assets from capital gains taxes. If you've counseled your client on the tax-motivated benefits of options, like-kind exchanges, holding corps, and employer-held stock, you've probably also counseled him that sooner or later, whether upon death, sale, or other disposition, there will be a capital gains tax on these assets. However, you should not neglect to advise him that the tax-sheltered benefit of these assets can be maintained for his entire life (and even possibly the lives of his children) by contributing them to a charitable remainder trust, which, under certain circumstances, the individual himself may serve as trustee.

With a charitable remainder trust, an individual contributes highly appreciated assets that are then sold by the trust without imposition of any capital gains tax. The trust then invests the full proceeds to make annual annuity-like distributions to a beneficiary (or beneficiaries) selected by the donor. Often the beneficiary is the donor himself. The annuity may be for life or for a period of time not to exceed 20 years. At the end of the

term, the trust assets are distributed to charity.

If your client holds assets he wishes to liquidate, whether for portfolio, income, or investment needs, the charitable remainder trust can accept these assets, allowing him to have these assets sold by the trust without paying any capital gains tax. The trust allows him to invest the proceeds in a tax-exempt fund, while allowing him the opportunity of increasing his annual income although distributions from the trust are taxable to the beneficiary. The trust can be creatively structured to act as a "super tax exempt pension plan" without any of the attendant contribution limitations or penalties. The client receives a significant charitable deduction for his deferred gift and the establishment of a charitable legacy.

For example, assume that your client holds \$1 million of non-dividend producing stock he purchased 20 years ago for \$100,000. He would like to sell this asset, but is unhappy about the \$180,000 in capital gains taxes he will have to pay. Your client also wishes to help his favorite charity. You suggest, among other alternatives, that he contribute the stock to a charitable remainder annuity trust designed to distribute 5 percent a year to him and his wife, both age 65, for life. The trust will sell the stock and retain the full \$1 million (instead of \$820,000 had the client sold it and paid capital gains taxes) in a fund that will generate the lifetime annuity. Every year your client and his spouse will increase their total income by \$50,000. Over their actuarial lives, the trust will distribute \$1,250,000 to them. Your client will also receive a \$492,179 charitable income tax deduction. Upon their deaths, they will leave a legacy gift of \$1,000,000 to their favorite charity.

Your client looks to you for solutions. Charitable gifts and estate planning help you meet your clients' needs in new and creative ways. Your client will appreciate being given the opportunity to consider charitable lead trusts and charitable remainder trusts as well as the benefits of donor advised funds, private foundations and pension charitable remainder trusts. The best attorney treats a client as an individual. Charitable planning can add value to your services and satisfaction to your practice by helping your clients, their families, and the charitable organizations of their choice. ■

This fall, Cardozo's Office of Alumni Affairs will sponsor a series of seminars on charitable gift and estate planning. If you are interested in learning more, please call Debbie