Charitable Planning

Creative charitable giving ideas for donors who want to give more.

By Eva Stark, JD, LL.M.

Americans are generous. In fact, the United States is consistently ranked at or near the top of lists of the most charitable countries. When giving to charity, most Americans write a check or provide credit card information, try to remember to retain necessary records, and hope for the best come tax time.

However, by utilizing more creative charitable giving strategies, some of which are described below, donors could not only enjoy greater tax savings but also could make even more impactful gifts.

General tax treatment of cash contributions to public charities

The most basic form of charitable contribution is the gifting of cash. From an income tax perspective, cash contributions to qualifying charities are generally deductible as an itemized deduction up to a certain percentage of the donor's adjusted gross income (AGI). Prior to the enactment of temporary, pandemic-related changes, cash gifts to public charities could be deducted in an amount up to 60% of AGI (limitations are more stringent for gifts to charities that are not public charities and for non-cash donations). Qualifying gifts in excess of the AGI limitation could be carried over for up to five years. For 2020 and 2021 only, pandemic-related legislation suspended the AGI limitation on cash gifts to certain public charities. As a result, for 2020 and 2021, cash gifts to certain public charities may be deductible up to 100% of the donor's AGI.[1] In addition, pandemic-related legislation created an above-the-line deduction for cash gifts to qualifying charities of up to $300 (or $600 for married taxpayers who file jointly) for tax years 2020 and 2021.[2]

Donating long-term appreciated publicly traded securities

While many cash donors also own highly appreciated, publicly traded securities (e.g., stocks, bonds, mutual funds) that are held for over a year, few think about donating such long-term appreciated securities instead of cash. The potential benefit of donating appreciated securities is twofold:

- There is generally no income recognition to the donor when the appreciated security is transferred to the charity, and
- Generally, the donor is entitled to a charitable deduction equal to the full fair market value of the security.

As shown in example 1, below, by gifting long-term appreciated stock instead of selling the stock and gifting cash, Michael and Roberta have lowered their tax bill and could choose to utilize the savings for additional charitable gifting.

As a bonus, they have reduced their concentrated position in the

1 For cash gifts to donor advised funds, a 60% limitation generally applies and the 100% AGI limitation does not apply. A 30% AGI limitation generally applies to cash gifts to private foundations.

2 As a result, individuals who do not itemize deductions may still be able to realize a small tax benefit from charitable gifts.

EXAMPLE 1. Michael and Roberta own various securities in their brokerage account. Their holding in a high-growth technology stock appreciated substantially over the past few years and has become an outsized portion of the portfolio. Michael and Roberta wish to make a $10,000 gift to charity.

	Security is sold and net proceeds donated	Security is donated
Value of securities needed for contribution:	$12,811	$10,000
Basis:	$1,000	$1,000
Income tax rate:	23.8%	0%
Tax due:	$2,811	$0
Net gift to charity:	**$10,000**	**$10,000**

technology stock without realizing any capital gains and can now reinvest in other securities or even the same stock at a higher cost basis. Avoidance of the additional $12,811 of income might additionally help them qualify for other deductions and credits, depending on their specific circumstances.

Note that the AGI limitation for long-term appreciated securities is 30% if donated to a public charity.

Funding a Donor Advised Fund (DAF)

A DAF may be thought of as a charitable checking account and/or brokerage account. Contributions to the account are generally deductible for the donor in the year of the contribution (subject to AGI limitations and itemization), the account may be invested and generally grows tax free, and the donor may make nonbinding recommendations for gifts from the account to qualifying charities for years. Many community foundations, financial institutions and public charities offer donor advised funds. Account minimums, fees, grant size minimums, assets accepted, etc., vary widely.

The key benefits of this tool are that a DAF may:

- Allow donors to time charitable contributions in a more tax-efficient manner, and
- Contributions grow tax-free for greater future giving.

A large donation to a DAF might be advantageous in a year where the donor has unusually high income or if "bunching" or "accelerating" multiple years' donations into a single year's contribution creates tax advantages in the client's particular circumstances.

Utilizing the Qualified Charitable Distribution (QCD)

Unlike the gifting of appreciated securities or funding of a donor advised fund, the QCD is only available to taxpayers over the age of 70½, but it can be a useful tool for those who qualify.

A QCD is a direct transfer of pre-tax IRA funds from the custodian to a qualifying charity (funds distributed to the IRA owner generally do not qualify for QCD treatment). Qualifying charities for QCD purposes generally do not include private foundations, supporting organizations, or donor advised funds. The strategy's main benefits are that the qualifying distribution:

- Generally does not count as taxable income, and
- Generally will count towards the account owner's required minimum distribution for the year.

The maximum distribution that can qualify is $100,000 per year, and married couples may each make a QCD from their own IRA of up to $100,000 per year.

As shown in example 2, below, by donating IRA funds directly to

EXAMPLE 2. Angela is 76 years old, single, and RMDs from her IRAs total $20,000 in 2021. She can live comfortably without the RMDs and she would like to donate the full amount of her RMD to her favorite charity. She is in the 22% income tax bracket and lives in a state with no state income tax.

Impact of cash donation vs. QCD	RMD withdrawal and subsequent donation of net proceeds	QCD
Distribution from IRA:	$20,000	$20,000
RMD satisfied:	Yes	Yes
Income tax rate:	22%	0%
Tax due:	$4,400	$0
Net gift to charity:	**$15,600**	**$20,000**

charity, Angela was able to avoid realizing $20,000 of additional income, which may in turn impact the extent to which Social Security retirement benefits are taxed and/or her eligibility for other credits and deductions that are income based, including Medicare premiums, etc.

In addition, while Angela is likely to itemize deductions which may offset some of the additional tax due, a QCD may produce additional tax savings or allow for larger charitable gifts in many cases, especially for those who do not itemize deductions.

Creating a Charitable Remainder Trust (CRT)

A CRT entails the transfer of cash or other property to an irrevocable trust that provides an income stream back to the donor (or other beneficiaries). The income stream may be for a term of up to 20 years or for the life of the donor and may begin immediately or at some future time. Assets remaining at the termination of the CRT pass to the charity designated in the trust instrument. The donor can generally receive an immediate income tax deduction for the present value of the charitable gift, subject to certain limitations. Taxes on the income stream produced by the CRT are generally payable as payments are made from the CRT, under a tiered system (first ordinary income, then capital gains, then other income, and finally, principal). Real estate or low-basis securities may be attractive assets for funding a CRT as these may produce little income but might trigger substantial taxes upon liquidation. A CRT can generally liquidate assets income-tax free as a tax-exempt entity and reinvest the proceeds in more desirable, income-producing assets to fund the income stream to the donor. Note that it is important that assets are transferred to a CRT in advance of any agreement to sell such assets to a third party.

Funding a Wealth Replacement Trust

In addition to the strategies briefly touched on above, charitable giving ability may be leveraged even further by utilizing life insurance. Some donors may be hesitant to give to charity for fear that the legacy they desire to leave to their heirs will be diminished. In such situations, a "wealth replacement trust" may be considered. The technique involves the purchase of a life insurance policy on the donor, in an amount sufficient to replace or exceed the value of property gifted to charity. The policy is generally held in an irrevocable trust designed for creditor protection and to avoid inclusion of the death benefit in the donor's taxable estate. The donor might utilize, in part, the income stream from a charitable remainder trust or potential tax savings to make gifts to the irrevocable life insurance trust to fund policy premiums. At the donor's death, policy death benefits are collected by the trustee, generally income-tax free, and can remain protected from potential creditors or beneficiaries' mismanagement for generations.

Conclusion

Charitably inclined individuals may wish to further explore these and other charitable giving tools with their professional advisors.

Tax consequences for charitable giving strategies vary widely depending on particular circumstances, so clients should thoroughly assess their objectives and chosen strategies with their CPAs or other tax advisors.

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