Charitable Giving and Estate Planning Strategies

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Basics of Estate Planning

- Last Will and Testament
- Power of Attorney
- Health Care Proxy
- Living Will
- Revocable Trust (?)

Using a Will to make Charitable Gifts

- Talking with your attorney.
- Be specific!
- Percentage Giving vs Specific Dollar Amount
- Bequests vs Residuary Gifts
- Be wary of old Wills containing specific formulas.
- If estate taxes are an issue, can offset the amount due.

Charitable Trusts

- Typically referring to Charitable Remainder Trusts or Charitable Lead Trusts.
- Excellent way to achieve philanthropic goals while maintaining ability to use property while reducing income or gift/estate taxes.
- Donor Advised Funds can make flexible.
- Will be able to take a deduction on income taxes or gift/estate taxes, depending on the structure.

Charitable Remainder Trusts

- A CRT is created by an individual who contributes property to the Trust. The donor receives an income tax deduction for the remainder interest in the year the CRT is funded
- The Trust makes payments to one or more *non-charitable* beneficiaries for life or for a predetermined number of years.
- Once the time period stated for payments expires, the Charity is the remainder beneficiary, receives the remaining assets of the Trust.

Charitable Remainder Trusts

- Example: Client donates a highly appreciated stock to a CRT and captures an immediate charitable income tax deduction. The Trustee of the Trust sells the stock (paying no capital gains tax) and reinvests into an income producing asset. Client receives income produced by the Trust for the rest of his life and achieves a deferral of the capital gains owed over the term of the CRT. At Client's death, the remaining assets go to the charity of the Client's choice.

Charitable Remainder Trusts

- If Client simply sold the stock and reinvested into an income producing asset, client would pay capital gains immediately on the initial sale.
- By using the CRT, there are no capital gains paid immediately from the sale of the stock, leaving more of the asset to invest for income producing purposes for income during lifetime.

Charitable Remainder Trusts

- Charitable Remainder Unitrust: Client chooses to receive a fixed percentage of the fair market value of the trust assets every year as their income. Income will fluctuate based on the success of investments of the CRT.
- Charitable Remainder Annuity Trust: Client chooses a fixed percentage of the fair market value of the asset at the time of the gift. Steady income stream achieved, at risk of losing out on potential gain in asset value.

Charitable Lead Trusts

- Irrevocable Trust created by an individual who contributes property to the Trust.
- Charity is the lead beneficiary of the Trust.
- The Trust makes income payments to a *charitable* beneficiary for a term of years (i.e. life of donor or a fixed term).
- Once the term expires, the Trust assets are distributed to the named beneficiary (creator, children of creator, etc.).

Charitable Lead Trusts

- Grantor CLTs: Useful for donors who wish to accelerate the deductions from a multi-year pledge. Likely used when there is a significant income event incurred by individual.
- Client wishes to pledge $50,000 over five years. Instead of getting the $50,000 deduction each of the five years, Client transfers assets sufficient to pay out $50,000 per year to the CLT and gets the deduction in the year of the gift. When the term ends the trust assets are returned to Client.

Charitable Lead Trusts

- Non-Grantor CLTs: Typically this structure is utilized to achieve a reduction or elimination in transfer tax (gift or estate tax) on the asset contributed to the trust when it transfers to non-charitable beneficiary at the end of the term.
- Since the remainder beneficiary is non-charitable, the gift to the CLT is subject to gift tax. The value of the gift to the remainder beneficiaries is reduced by the present value of the income stream passing to the charity.

Charitable Lead Trusts

- Non-Grantor can be used to transfer an asset the Client anticipates will quickly appreciate over the term of the CLT.
- By utilizing the present value deduction against the eventual gift made to the beneficiaries, this could have an extremely beneficial result in transferring a large asset to the next generation and avoiding gift/estate tax.

Charitable Lead Trusts

- Charitable Lead Unitrust: Client chooses to receive a fixed percentage of the fair market value of the trust assets every year as their income. Income will fluctuate based on the success of investments of the CLT.
- Charitable Lead Annuity Trust: Client chooses a fixed percentage of the fair market value of the asset at the time of the gift. Steady income stream to the charity.

Real Estate

- Ways to Gift Real Estate:
  - Outright transfer
  - Retained life estate
  - Bargain sale
  - Charitable Remainder Trust

Outright Gift

- Conceptually simple
- Allows for straightforward determination of deduction, fair market value
- Avoid the gains that have built up in property

Retained Life Estate

- Allows donor(s) to use property for remainder of life.
- Unique appraisal requirements for tax deduction, there will be a slight discount due to the retained life use.
- Can end by donating the retained life interest or charity and donor(s) agreeing to sell and split the proceeds according to the interests.

Bargain Sale

- Donor sells property to Charity at a discount.
- Allows for smaller gains realized by donor.
  - Cost basis is divided between portion of property sold and remainder that is donated.
- Gift piece of the sale is tax deductible.
- Potentially take portion of sale price back as an annuity from the Charity.

Charitable Remainder Trust

- Net income (if any) produced by real estate goes out to selected non-charitable beneficiary.
- When/if real estate is sold, Trust "flips" to a standard Unitrust to distribute fixed percentage of market value to non-charitable beneficiary.
- Remainder goes to charity

Conclusion

- Whether you have small or large philanthropic intent, planning is key to make sure your goals are met.
- Make sure that your intentions are known to your financial advisor, attorney, and accountant so everyone can help with planning.