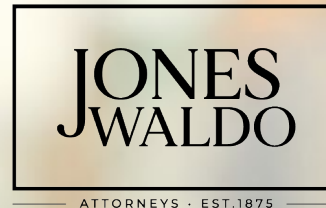


Gift Planning Conference

*Doug Flake, CPA
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November 18-19, 2021

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Charitable Planned Giving with Retirement Accounts

Options:

At Death

Pre-death planning

Post-death advising

During Lifetime



Parties Involved

1. Parties affected by a charitable gift and donor's likely objectives for each
 - a) Donor
 - i. Maximize retained assets
 - b) Donor's heirs
 - i. Maximize retained assets (future)
 - c) Charitable donee
 - i. Maximize received assets
 - d) Government/taxing authorities
 - i. Minimizing tax is an almost universal goal for donor
 - ii. Governments also qualify as charitable donation recipients
 - iii. Render unto Caesar as appropriate



Donations at Death

Comparative Effect

Assumes estate under lifetime exclusion limit, 37% federal income tax rate, and ignores state tax effect, not qualified for income tax deduction under estate/trust rules

Cash: Bequest to charity of \$1,000

- i. Donor – not really concerned
- ii. Charity - \$1,000 value received
- iii. Federal government – tax collection likely unchanged
- iv. Donor heirs – inheritance reduced by \$1,000

Donations at death, continued:

Appreciated Securities: Bequest worth \$1,000
(basis adjustment to FMV)

- i. Donor – not really concerned
- ii. Charity - \$1,000 value received
- iii. Federal government – tax collection likely unchanged
- iv. Donor heirs – inheritance reduced by \$1,000 (no inherent income tax after basis step-up)

Donations at death, continued:

Charity named as beneficiary of pre-tax qualified retirement account (IRA/401(k))

- i. Donor – not really concerned
- ii. Charity - \$1,000 value received
- iii. Federal government – future tax collection reduced by \$370
- iv. Donor heirs – loss of IRA asset worth \$630 after tax

Donations at death, continued:

Split interest Gifting at Death:

Most common: Charitable Remainder Unitrust Trust (CRUT) and Charitable Remainder Annuity Trust (CRAT)

Why: Stream of income to beneficiary. Remainder to charity. Allows income to be stretch over longer period of time.

- i. CRUT or CRAT named directly as the beneficiary. These subtrusts may be created under the revocable trust document.
- ii. Qualified Account goes to CRUT or CRAT at Death. No income tax due.
- iii. Income tax paid only on income distributed
- iv. Minimum and maximum distribution requirements (for example a CRUT must distribute at least 5% annually and not more than 50%). Must leave at least 10% of the actuarially project future value of the trust to qualified charity.
- v. Look at beneficiaries ages to determine if appropriate

Donations at death, continued:

Estate tax effect - If donor's estate is over lifetime exclusion, charitable bequest saves 40% of reduction to heirs under each scenario

- i. Cash and securities donations-estate tax savings of \$400, for net cost of \$600
- ii. IRA QCD- estate tax savings of \$400, but also consider reduction in income tax for IRD deduction



Donations at death, continued:

- e) Summary for bequests at death
 - i. Cash and securities donations are about equal for all parties
 - ii. Donation of IRA leaves heirs better off due to removal of tax liability on IRA distribution



Technical Requirements for Certain Charitable Deductions for Individuals

- a) Transfer to qualified charity
- b) Substantiation depending on amount and nature of donation-strict compliance required
- c) Cash donation
 - i. Contemporaneous written acknowledgment stating amount and whether any goods or services provided to donor
- d) Securities Donation
 - i. Publicly traded securities are exempt from appraisal requirement generally applicable to noncash donations
 - ii. For FMV deduction, must have long term (over 1 year) holding period
 - iii. For greatest benefit, must be appreciated (otherwise, better for donor to sell, then donate cash)
- e) Qualified Charitable Distribution
 - i. Distribution from IRA (traditional or Roth) made directly by IRA trustee to charitable organization
 - ii. \$100,000 limit per taxpayer per year
 - iii. Made after donor attains age 70 ½
 - iv. Cannot be made to Donor Advised Fund or certain Private Foundations



Lifetime Donations

Comparative Effect

Assumes estate under lifetime exclusion limit, 37% federal income tax rate, and ignores state tax effect

Cash donation of \$1,000

- i. Donor – net cost of $\$1,000 \times (1-37\%) = \630
- ii. Charity - \$1,000 value received
- iii. Federal government – tax collection reduced by \$370
- iv. Donor heirs – all other things being equal, inheritance reduced by \$630 (\$1,000 less \$370 donor tax savings)

Lifetime donations, continued

Appreciated securities donation worth \$1,000, basis of zero

- i. Donor
 1. If securities would have otherwise been sold
 - a. Tax on sale saved of \$230 (at LTCG rate)
 - b. Donation deduction saves \$370
 - c. Net cost \$400
 2. If securities would have otherwise been held until death
 - a. Net cost \$630, equal to cash donation
- ii. Charity - \$1,000 value received
- iii. Federal government – tax collection reduced by either \$600 or \$370
- iv. Donor heirs – inheritance reduced by either \$400 or \$630
 1. Loss of \$1,000 asset with no inherent tax after basis step-up
 2. Net of tax savings to donor of \$600 or \$370
- v. Security basis between 0 and current FMV-the higher the basis the less the benefit to donor and heirs



Lifetime donations, continued

Qualified Charitable Distribution of \$1,000 IRA Funds

- i. Donor
 1. No tax on IRA withdrawal, no incremental deduction, (but lower AGI could create other tax savings)
 2. Reduction of future tax liability associated with IRA balance of \$370, for net cost of \$630
 3. To the extent standard deduction keeps donor's deductions from being reduced, more benefit to IRA QCD (up to another \$370)
- ii. Charity - \$1,000 value received
- iii. Federal government – tax collection reduced by \$370, or more
- iv. Donor heirs - Loss of IRA asset worth \$630 after tax, possible benefit from donor cash saved

Lifetime donations, continued

Estate/ Tax Effect - If donor is over estate/gift tax lifetime exclusion, donations saves 40% of reduction to heirs under each scenario

- i. Cash donation-tax savings of \$252 (40% of \$630), for net cost of \$378
- ii. Securities donation-tax savings of 40% of net inheritance reduction
- iii. IRA QCD-tax savings of \$252 (40% of \$630) of net inheritance reduction, but consider reduction in income tax for IRD deduction

Lifetime donations, continued

Summary for lifetime donations-effect on donor and heirs

- i. Donation of securities that otherwise would be held until death has same cost analysis as cash donation. But may not be able to know future holding for certain.
- ii. Donation of appreciated securities is never worse than cash donation, and likely more favorable
- iii. IRA QCD is never worse than cash donation, but may not be better than a donation of highly appreciated securities
- iv. The higher the heirs' tax rate, the greater the benefit of donor making lifetime donations from IRA rather than cash or securities
- v. Makes a difference whether tax savings from any donation ends up going to heirs, as we have assumed

Donor ability to manage and control funds after donation

- a) Valuable only if it will be used
- b) Helpful to minimize administrative burdens
 - i. Annual 990 reporting
 - ii. Investment oversight (See UBIT below)
 - iii. Avoidance of prohibited transactions and self-dealing (can be complex and broadly restrictive)
 - iv. Manager compensation (caution needed)
- c) Management of a private foundation can lose its attraction
- d) Donor Advised Fund often a good balance between direction of donations and minimizing administrative burdens

Avoiding Unrelated Business Income Tax on Charitable Fund, can apply to:

- a) Income from regular business activity
- b) Income generated by debt-financed investments
- c) Direct or indirect pass-through holdings

Scenario

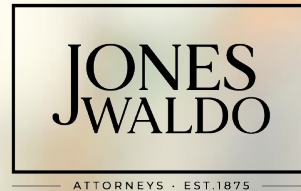
- Wallace Widower is 77 years old. He worked hard in a satisfying career for many years and is now retired. His wife passed away three years ago.
- His assets include a \$1,000,000 regular IRA, his home worth \$600,000, a condo worth \$300,000 in which his son lives, \$1,000,000 in securities investments in taxable accounts, \$200,000 in savings, his comfortable car, and his beloved old truck.
- He has four kids, ranging in age from 35 to 50. Two of the kids with their spouses are now wealthier than Wallace. The other ones live reasonably well, but still budget to pay mortgages and raise their own kids. Wallace is charitably inclined and would like to support two charities he has helped during his lifetime.
- Wallace has paid tithing his entire life, plus other contributions, and intends to continue doing so.
- What lifetime charitable gifts should he consider?
- What lifetime or testamentary trusts or bequests might he consider?
- What structures for charitable bequests at death could he consider?

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