Selecting Assets for Charitable Gifts – Outright and in Trust

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American Institute for Cancer Research®

Major Gifts, Trusts and Bequests to the American Institute for Cancer Research

The American Institute for Cancer Research is devoted to the task of conquering our nation's most dreaded illness. Each year, the Institute sponsors important research projects at universities and research facilities across America on the cause and prevention of cancer. And it has long been a leader in providing effective educational programs on the prevention of cancer – directed to both health care professionals and the general public.

The primary focus of the American Institute for Cancer Research – in both its research projects and its educational programs – has been the role of diet and nutrition in the development and prevention of cancer. (There is scientific evidence that estimates an average of 35% of all cancer deaths might be linked to diet and nutrition.)

We are winning the war against cancer. But there is still a great need for additional scientific research on the cause, prevention and treatment of cancer. And as we learn more about the role of nutrition in the cause and prevention of cancer, our educational programs become more and more important and rewarding.

Millions of Americans provide financial support to our programs – often through tax-planned gifts, trusts and bequests. To encourage, facilitate and recognize this very important financial support, the Institute has created the League of Willful Cancer Fighters. We will be pleased to enroll in the League any client who has made or intends to make a bequest to the Institute or to name the Institute as the beneficiary of a trust, a life insurance policy, a retirement death benefit or other form of estate gift. We invite you or your client to call us at your convenience.

To encourage generous gifts to the Institute and other charities, we have prepared this booklet to help attorneys and other financial advisors understand all the important tax and financial rewards Congress has provided. Our staff can provide the exact tax and financial consequences of any gift, trust or bequest your clients may want to consider. And because we are so active in this specialized field, we can provide whatever technical and practical information you may request for planning and drafting a charitable gift arrangement that will provide your clients both the greatest personal satisfaction and the greatest tax and financial rewards.

Please feel free to call the Gift Planning Department at any time. Our toll free telephone number is 1-800-843-8114. And please . . . if the opportunity presents itself, inform your clients about how a gift, trust or bequest to the American Institute for Cancer Research can further the fight against cancer and also enhance their personal tax, investment, retirement and estate plans.

PLANNING OUTRIGHT GIFTS OF LONG-TERM CAPITAL GAIN PROPERTY

Most Americans who give to charitable organizations simply write checks or charge gifts to credit cards. Such gifts have the highest deductibility: 50% of the donor's adjusted gross income, with a five-year carry-forward for excess deductions. But appreciated securities and other long-term capital property can afford enhanced deductions, enabling larger contributions – subject to a 30%-of-AGI ceiling (same five-year carryover for excess deductions).

Donors who give capital gain property held more than one year receive a double tax benefit: They save income taxes, just as they would with a gift of cash, but they "save" again by avoiding the capital gains tax they would have owed if they sold the property. They receive, in effect, a deduction based on an untaxed profit.

Clients should consider giving marketable securities, closely held stock, real estate and, under the right circumstances, tangible personal property such as paintings, antiques, coin collections, etc.

Publicly Traded Securities

Gifts of securities should be planned for maximum deduction value. Timing can be important. The tax deduction for a gift of actively traded securities is the average (mean) between the highest and lowest quoted sales prices on the date of the gift (not the value at the close). If clients have purchased stock of the same corporation at different times and different prices, they should contribute the shares for which they paid the lowest price, retaining those having the highest cost basis. For shares held in a brokerage account, clients should specify which shares they wish to transfer to charity; otherwise, the IRS will apply the "first-in-first-out" rule – which may mean transferring shares with a high basis. The broker should provide written confirmation that shares transferred were bought at the lowest price.

Contribution Deductions That Must Be Reduced

Deductions for certain contributions may have to be reduced:

• Contributions of "ordinary income property" must be reduced by the amount of ordinary income or short-term capital gain that would be realized if the property were sold at its fair market value [IRC §170(e)(1)(A)]. Examples include inventory, a work of art in the hands of the artist who created it, tangible personal property that has been depreciated, real property that has been subject to depreciation in excess of straight-line and short-term capital gain property.

• If an individual contributes tangible personal property to a charity, he or she must reduce the amount of the contribution by 100% of the long-term capital gain element in the property if the charity puts the property to a use unrelated to its charitable purposes [IRC §170(e)(1)(B)(i)]. So if Miss Smith gives a painting to her college and the college sells the painting, she can deduct only her cost basis. Donors must report income if the charity disposes of an item within three years of contribution, unless the organization certifies that the property was used to further its exempt purposes or that the related use could not be implemented [IRC §170(e)(7)(D)].

• Gifts of mortgaged property are treated as "bargain sales" to charity, with the mortgage debt being considered an amount realized by the donor. Two results: (1) The donor's contribution is reduced by the amount of the outstanding debt and (2) the donor must report a pro-rata share of the capital gain equal to the ratio the debt bears to the fair market value of the property [IRC §1011(b)].

• Capital loss property generally should be sold and the proceeds contributed, furnishing donors with both capital loss deductions and charitable contribution deductions.

Real Estate Gifts: Environmental Scrutiny

As noted above, real estate gifts present challenges if mortgages are in the picture. And while real property can be extremely valuable to the donee charity, caution also must be exercised as to future liability for cleanup of hazardous wastes. Gifts of real estate can subject charities to multi-million-dollar liability under the "Superfund" program that forces landowners to pay for cleanup of hazardous waste disposal sites. Charities that receive land containing hazardous waste may have to pay millions for cleanup, even though neither the charity nor the donor was responsible for the mess. Defenses that might save the charity are the "gap owner defense" and the "innocent landowner defense." Gap owners are those who owned contaminated property after the hazardous waste was created, but then got rid of the property – without ever knowing of the waste problem. "Innocent landowners" are persons who receive the property by will and who then take care to prevent any further environmental damage. Another category of innocent landowners is those who acquire title without knowledge of the contamination – so long as they made "all appropriate inquiry into the previous ownership and uses of the property" before taking ownership. **This means charities should undertake environmental "audits" before accepting most property.**

Contributions of Closely Held Stock

A majority shareholder of a closely held "C" corporation typically has a low basis in the shares, relative to their fair market value. Selling the shares to an individual or back to the corporation will trigger capital gains tax. However, a charitable contribution of the shares does not cause the realization of capital gain, and the donor can deduct the fair market value of the shares on the date of the gift.

Example: Suppose Miss Smith owns 90% of her corporation and decides to contribute to charity shares worth $10,000. The gift of stock leaves her in full control of the business, and costs her nothing personally. In her 35% tax bracket she saves $3,500 in income taxes and avoids all capital gains tax. Charity has no reason to keep the stock and turns it back to Smith's corporation for redemption. The corporation gives charity $10,000 cash and retires the stock.

The IRS has ruled that Miss Smith will not be considered to have received a dividend, even though she has realized a substantial benefit from her corporation, so long as charity is not required to turn back the shares of stock to the corporation (Rev. Rul. 78-197, 1978-1 C.B. 83).

A sale to family members or other shareholders is another possibility. The donor's children could buy back stock from the charity at fair market value and avoid gift tax (for the donor) and secure a stepped-up basis in the stock. Or children might agree with charity to purchase the stock at some future date (the donor's date of death, for example), using life insurance proceeds from a policy the children purchase on their parent's life.

Gifts of closely held stock require appraisals and filing of Form 8283 if the claimed value exceeds $10,000. If the value is between $5,000 and $10,000, the donor need not obtain a qualified appraisal, but a partial appraisal form must be attached to the tax or information return. There are specific IRS rules for appraising the value of closely held stock; however, there is often great uncertainty about the appraised value and opportunity for disputes with the IRS that may arise. Among the factors to be considered in valuing closely held stock are: corporate assets, corporate earnings and future earning power, dividend policy, prospects of the company, character of management and sales of stock near the contribution date (Rev. Rul. 59-60, 1959-1 C.B. 237). Donors should rely on expert opinion for valuation.

Buyer "Waiting in the Wings"

It may be risky for clients to transfer appreciated property to charity under circumstances in which the donor has already secured a purchaser for the property and all that is left for the charity to do is step into the donor's shoes and consummate the sale. The IRS in several cases has attributed the sale of the property to the donor and saddled him with reportable gain [*Martin v. Machiz*, 251 F. Supp. 381 (D.C. Md. 1966); *Magnolia Development Corp. v. Comm'r.*, TC Memo 1960-177, 19 TCM 394; *Ferguson v. Commissioner,* 108 T.C. 14]. Usually some tax evasion has been afoot in these situations, but even donors who are merely trying to be helpful to charity should be cautioned against lining up a future buyer.

On the other hand, there does not seem to be anything wrong with the charitable donee seeking out a buyer in anticipation of a gift of property. For charities that accept real estate or other property in exchange for a charitable gift annuity, the value must be predetermined with certainty before the gift.

Gifts of Unusual Assets Offer Opportunities

Clients sometimes own assets that, at first glance, seem unlikely candidates for charitable giving. Farmers, home owners and trust beneficiaries all have "hidden assets for giving" that may turn out to be the best choice for contributions.

• **Remainder Interest in a Personal Residence or Farm.** Perhaps the most attractive thing about giving a remainder interest in a personal residence or farm to charity is that, while carrying out their charitable intentions, donors need not change their style of living or that of their families. Deductions are available without having to transfer the property to a charitable remainder trust.

Note that the gift must be of a remainder interest in the property itself, not in the proceeds of its sale. Also, a gift of a remainder interest will not be effective as to any personal property (such as furnishings or equipment) included with the residence or farm. Personal property should either be bequeathed outright to charity or to the surviving spouse for him or her to bequeath to charity, if desired.

• **Remainder Interests in Family Trusts.** A person who has been given a remainder interest in a trust may have an actuarially valuable property right that has relatively small value in the marketplace. By giving the interest or an undivided portion of the entire interest to charity, he may be able to carry out his charitable intentions and, at the same time, derive maximum current financial benefit from the remainder interest.

For example, a 55-year-old man owns a remainder interest in a trust created by his father's will; his sister, age 50, was given the income interest for life. Assuming the trust corpus is currently $1,000,000 and a 4% §7520 rate is used, the remainder interest is $344,420, based on the remainder factor of .34442 from Table S. Depending on the financial situation of the donor and his family, the remainderman may derive the greatest benefit from his remainder interest by giving all or a percentage of it to charity. His gift would produce an immediate income tax deduction, yet it would not involve any immediate out-of-pocket expenditures.

• **Income Interests in Trusts.** The beneficiary of an income interest in a trust can assign a portion to charity, thereby reducing his or her income and qualifying for a substantial deduction. For example, a 45-year-old life income beneficiary of a $1 million trust would like to reduce taxes while also benefiting the American Institute for Cancer Research. So she assigns half of her income interest to the Institute.

The value of her life estate is $1,000,000 x .70600 (value of life estate from Table S at 4% §7520 rate), or $706,000. By assigning half of her income interest, the beneficiary has made a deductible gift valued at $353,000, while cutting her future taxable income from the trust in half.

• **Partial Interest in Property.** A charitable contribution of a partial interest is deductible if it consists of an undivided portion of the donor's entire interest in property – a fraction or percentage of each right or interest owned by the donor. The Regulations further provide that a deduction will be allowed for a contribution of property to an organization whereby the charity is given the right, as a tenant in common with the donor, to possession of the property for a portion of each year appropriate to its interest [Reg. §1.170A-7(b)(1)(i)].

If an individual, for example, contributes his or her vacation home to a charitable organization, reserving the free and exclusive use of the home from August 1 through September 15 of each year during his or her life, he or she will be allowed a deduction for the value of his or her gift [Rev. Rul. 75-420, 1975-2 C.B. 78]; the ruling did not discuss the question of valuation.

If a person gives a one-fourth undivided interest in an art work to a museum, with the donor having the right to possess the art work for nine months of each year, and the museum the other three months, the donor will be allowed a deduction for roughly one-fourth the value of the object. However, charity must receive the remaining portion within ten years or at the donor's death, if earlier [IRC §170(o)].

FEDERAL INCOME TAX CHARITABLE DEDUCTION

An income tax charitable deduction is allowed for charitable contributions made within a taxable year, subject to limitations based upon whether the donee is a 50% or 30% charity, whether the donor is an individual or corporation, and what type of property is contributed. The 50% charities generally include churches, educational institutions, hospitals, governmental units, organizations receiving substantial support from governmental units or the general public, and certain private foundations (operating foundations, distributing foundations and pooled fund foundations described in Code §170(6)(1)(D)). The 30% charities include other organizations (mostly private foundations) described in Code §170(c), but which do not qualify as 50% charities.

Ceiling on Charitable Deductions

	50% charity	30% charity
Individual Donor	Total deductions limited to 50% of donor's AGI with 5-year carryover. Gifts of trust income to 50% charity deductible up to 30% of AGI with 5-year carryover.	Total deductions limited to 30% of donor's AGI with 5-year carryover.
Corporate Donor	Deduction is limited to 10% of taxable income with 5-year carryover.	Deduction is limited to 10% of taxable income with 5-year carryover.

Additional Limitations Based upon Type of Property Contributed

	50% charity	30% charity
Cash	Amount of cash	Amount of cash
Ordinary Income Property – Property that produces any gain other than long-term capital gain if sold at fair market value.	Cost. 50%-of-AGI ceiling applies Examples include inventory of a business owner, a work of art in the hands of the artist who created it and tangible property that has been depreciated.	Cost. 30%-of-AGI ceiling applies.
Long-Term Capital Gain Property	Fair market value, not to exceed 30% of donor's AGI with 5-year carryover. Donors of long-term capital gain property can qualify for 50%-of-AGI ceiling by electing to reduce contribution deduction by 100% of the gain present in the property.	Fair market value, for gifts of publicly held stock for which market quotations are readily available, not to exceed 20% of donor's AGI with 5-year carryover. For all other gifts, reduce fair market value by 100% of long-term capital gain element if donee is private foundation.
Tangible Personal Property That Is Unrelated to Charity's Purposes	Fair market value, reduced by 100% of long-term capital gain element. 50%-of-AGI ceiling applies.	Fair market value, reduced by 100% of long-term capital gain element. 20%-of-AGI ceiling applies.

A Thumbnail View

For a summary of the tax results of various types of outright, inter vivos gifts, please turn to the chart on Page 10.

SELECTING ASSETS TO FUND CHARITABLE REMAINDER TRUSTS

A client desiring to create a charitable remainder trust should give careful thought to what kind of property to place in the trust. In general, highly appreciated, long-term capital gain property of any type is most appealing for funding CRTs.

A few caveats: Clients should not use property that (1) will cause the trust to have unrelated business taxable income, or (2) could result in a private foundation excise tax to be imposed. Transfers of debt-encumbered real estate will disqualify a charitable remainder trust (PLR 9015049), and clients should be aware that deductions for gifts of tangible personal property will be reduced and postponed until the item is sold from the trust. Transfer of S corporation stock to a charitable remainder trust will terminate the company's S status.

It is important to note that most charities have specific asset acceptance policies and investment guidelines. Your client should speak with the charity regarding its particular policies.

Real Estate Offers Multiple Advantages

Real estate that is not subject to a mortgage can be excellent for funding a unitrust or annuity trust. Office buildings and apartments that have been depreciated can be sold and reinvested within the trust without loss to capital gains taxes as high as 25% on the depreciation recapture portion.

A personal residence is suitable for transfer to a charitable remainder trust, but not if the grantor wishes to continue living in the house. The prohibition against self-dealing would be violated if the donor continued using the house rent free, and probably would be violated even if a reasonable rent were charged, because the regulations forbid a lease of property by a charitable remainder trust to a disqualified person [Reg. §53.4941(d)-2(b)].

Solving the Mortgaged Real Estate Riddle

The IRS ruled in 1990 that the donor/income beneficiary of a charitable remainder trust that was funded with mortgaged property was the owner of the trust under IRC §677 (PLR 9015049). The donor remained personally liable under the mortgage. The trust was to make future payments and that disqualified the trust. The IRS said the mortgage payments amounted to using trust income to discharge the donor's legal liability.

What can donors do to avoid this result?

• The donor could sell an undivided portion of the property to the charitable remainderman – enough to allow the donor to pay off the mortgage. Once the property is free and clear, the donor can transfer the remaining undivided interest to the trust. When the property is sold, charity will recoup its purchase price. To avoid self-dealing issues, the trustee should have management control over both the trust portion and the donor's retained interest.

• If the donor can persuade the mortgage lender to accept other collateral for the loan, the debt can be lifted from the gift property, allowing unencumbered transfer.

• The mortgage lender may agree to release part of the mortgaged property (one-half, for example). The donor keeps the mortgaged half, transferring the unencumbered portion to the trust.

• If the mortgage debt is small, the donor can simply pay it off.

Note that, in certain cases, the owner of real estate may not be personally liable on mortgage debt. That is, the mortgage lender may have recourse only against the real estate itself and not the grantor's personal assets. If the owner is not personally liable, it may be appropriate to transfer the mortgaged realty to the charitable remainder trust if the mortgage has been on the property more than five years and the donor has owned the land for more than five years.

Publicly Traded Securities Provide Double Tax Savings . . . and Simplicity

Publicly traded securities that have appreciated in value are ideal for funding a charitable remainder trust. Unlike closely held stock, these shares are freely transferable and generally pose no problems under the private foundation rules. Donors do not realize capital gain upon the transfer to the trust because the transfer is not considered a "sale or exchange." The trustee may sell the stock without causing the donor or the trust to incur current capital gains tax, enabling the trustee to construct a diversified portfolio or invest for higher yield or tax-favored income, such as qualified dividends. Income beneficiaries eventually may report capital gain income from the sale of appreciated assets by the trust, under the four-tier system of trust taxation. But such gains typically are taxed at low rates.

Closely Held Stock Needs Careful Planning

Closely held "C" corporation stock may be transferred to a charitable remainder trust, but practical problems may arise: Does the stock produce dividends that can be used to make the CRT payout? Is there a ready buyer for the shares? Is redemption of the stock from the corporation a possibility? Note that if charity is named to receive any portion of the trust income, the excess business holdings prohibition of IRC §4943 may apply.

Self-dealing would appear to be a problem with corporate redemption, because the trustee will be "doing business" with the donor's corporation when the stock is redeemed (the donor is a disqualified person). But self-dealing can be avoided if fair market value is paid for the stock and the corporation offers to redeem all other stock in the donor's corporation at the same price offered to the trustee [Reg. §53.4941(d)-3(d)(1)]. Of course, such an offer could turn out to be a "deal killer" if the donor does not want other stockholders cashing out their shares.

A donor could bequeath stock in her C corporation to a charitable remainder trust and entitle her estate to an estate tax charitable deduction. The bequest is a hedge against transfer taxes: If the IRS values her corporation at a high worth, her deduction will be correspondingly high.

Donors who establish unitrusts with closely held stock might consider a flip trust if immediate redemption or sale of stock is uncertain.

S corporation stock is not a suitable gift to fund a charitable remainder trust. Shareholders of S corporations are taxed directly on the income of the corporation, similar to a partnership. Transfer to a charity or charitable trust generally would cause the corporation to lose its "S" status and revert to classification as a "C" corporation.

Tax-Exempt Securities

The question frequently arises as to whether it is permissible to fund a charitable remainder trust with tax-exempt securities. The answer is yes, with certain qualifications. The IRS has stated that to require the trustee to invest in tax-exempt bonds or to keep tax-exempt bonds originally transferred to the trust will disqualify the trust as an annuity trust or unitrust. Why? Because such a requirement impermissibly interferes with the trustee's investment powers (PLR 7802037). Investing in tax-exempts also may violate state "Prudent Investor" rules that require diversified portfolios and even-handed treatment of both income and remainder beneficiaries. Having said that, tax-exempt securities seemingly could be part of the trust investments. It may make sense to ask the charitable remaindermen to grant written permission if the plan is to invest the trust largely in munis.

Funding CRTs for Favorably Taxed Income

A standard payout unitrust, invested to produce primarily long-term capital gains, can be extremely tax efficient for the donor/beneficiary who is in a 35% or 33% federal tax bracket (plus state income taxes). Trustees can sell capital gain property and reinvest in growth-oriented stocks, enabling beneficiaries to enjoy income taxed at long-term capital gains rates. (In a recent year, long-term gains accounted for 51% of all unitrust payments.) In some cases, part of the beneficiaries' payout may be tax-free return of corpus, reducing tax rates on the unitrust amount even further.

Suppose a donor, age 74, transfers a $1 million portfolio of stock with an aggregate basis of $500,000 to a 6% standard unitrust. The stocks pay 3% dividends ($30,000) annually. The trustee sells $30,000 of stock the first year to pay the donor the remaining $30,000 due him (completing the 6% payout amount of $60,000). The sale results in $15,000 of long-term gain and $15,000 tax-free return of corpus. So $45,000 of the payout will be taxed as capital gains and dividends, and the other $15,000 will be tax-free return of corpus . . . creating a very low effective tax rate. Finally, the donor also receives a charitable deduction of about $535,060.

Zero Coupon Bonds in a Net Income Unitrust

The IRS has issued a private ruling approving a net income with makeup unitrust funded with zero coupon bonds. Provisions in the trust called for the discount element of the bonds to be treated as trust income only in the year a bond is redeemed by the issuer or sold by the trust. The trust was to pay the grantor the lesser of trust income or 6% of the fair market value of the assets each year.

"Income" of a trust is defined by the terms of the government instrument and local law, noted the IRS [IRC §643(b)], but where the trust provisions depart substantially from local law, they will not be recognized. In this situation, state law (Tennessee) provided that the grantor could direct the manner for determining income and principal, but that in the absence of any trust language, the discount element of a bond purchased at a discount would be allocated to principal. The IRS ruled that the trust language was not in conflict with state law, and that the discount element in the bonds would be considered income only in the year the bonds were redeemed or sold (PLR 9018015).

Zero coupon bonds could be useful in a so-called retirement unitrust, in which the grantor wished to defer receiving income until some date in the future (retirement, for example). Interest would accumulate tax free within the trust until the bonds matured, after which the beneficiary would begin receiving payment plus makeups for past deficiencies in the unitrust payout.

Life Insurance Policies in a CRT

Life insurance policies that have a cash surrender value generally are suitable for transfer to a charitable remainder trust; however, the trust should not be obligated to pay any premiums unless a prior ruling has been obtained from the IRS stating that the payment of premiums will not violate the prohibition against "other payments" [see Reg. §§1.664-1(a)(4), 1.664-3(a)(4)]. See also PLR 9227017.

Cash Works

Cash is always suitable for transfer to a charitable remainder trust. Assuming that the charitable remainderman is a "public charity" (i.e., an IRC §170(b)(1)(A) organization), the donor's contribution is subject to the "50% limitation" and the five-year carryover rules [IRC §§170(b)(a)(A), 170(d)(1)(A)].

Gifts of Undivided Interests

The IRS has indicated that self-dealing would arise if donors transferred an undivided interest in real estate to a charitable remainder trust and retained a portion for their personal use. The donors were permitted, however, to escape the onus of self-dealing by creating a limited partnership, converting the real estate ownership interests to the partnership, then transferring the limited partnership interests to the trust, which would be administered by an independent trustee (PLR 9114025).

Foreign Securities

The IRS gave approval to the trustees of a unitrust to invest some of the trust assets in stocks and bonds of foreign corporations that are not controlled corporations. The IRS stated that the foreign source of income of the trust would be treated under tax rules set out in IRC §901, which provides, in general, for a pass-through of foreign taxes to the trust beneficiaries (PLR 9313018). Presumably, foreign securities could be part of the initial funding of a charitable remainder trust.

Gifts of Cash and Property	Charitable Deduction	Capital Gains Implications	Effective Date
Cash Contributions	Amount of cash transferred in year of gift, up to 50% of donor's adjusted gross income (AGI), for gifts to public (50%) charities; limitation is 30% of AGI for gifts to private foundations (30% charities). Five-year carryover allowed for deductions that exceed ceilings.	None	Date of unconditional delivery of cash, check, or electronic transfer of funds to charity or charity's agent. Gifts by check are considered made when they are mailed (postmark date governs); credit card gifts are completed on date charge is made. Pledges and promissory notes are deductible when paid.
Publicly Traded Securities	Current value of appreciated securities held long-term (more than one year) transferred to 50% charity, up to 30% of AGI with five-year carryover for excess deductions. Ceiling is 20% of AGI for 30% charities, with five-year carryover. Securities with short-term gain deductible at cost basis up to 50% of AGI (30% for private foundations).	No gain reportable when donors give appreciated securities, which is advantageous even for taxpayers who do not "itemize" deductions.	Date of delivery of certificates in negotiable form to charity or its agent (postmark date if certificates are mailed). If securities are held in "street name," date the transfer is noted on charity's account. If new certificate is issued in name of charity, date is when security is transferred on the books of the transfer agent.
Real Estate	Current value of appreciated real estate held long-term, less any indebtedness, transferred to 50% charity, up to 30% of AGI, with five-year carryover for excess deductions. Transfers to 30% charities deductible at cost basis only, up to 20% of AGI, with five-year carryover. Realty with short-term gain deductible at cost basis.	No gain reportable. Deduction is not reduced for prior depreciation deductions, unless the donor took accelerated depreciation that would have resulted in recapture of ordinary income upon a sale. Gain must be reported from any bargain sale, including gifts of mortgaged realty.	Gift is made on date an executed deed is delivered to charity or its agent. If deed is mailed, postmark determines the date of the gift. In some jurisdictions, date of gift may be when deed is recorded.
Closely Held Stock	Current value of appreciated closely held securities held long-term transferred to 50% charity, up to 30% of AGI with five-year carryover for excess deductions. Transfers to 30% charities deductible at cost basis only, up to 20% of AGI, with five-year carryover. Securities with short-term gain deductible at cost basis.	No gain reportable when donors give closely held securities, which is advantageous even for taxpayers who are unable to itemize deductions.	Date of gift is date of delivery of securities in negotiable form to charity or its agent. If certificates are transferred into charity's name, gift is made on date securities are transferred on books of transfer agent; normally the date of the certificate.
Life Insurance Policies	Fair market value of policy or donor's cost basis, whichever is less, when donor transfers all rights of ownership in policy; subject to 50%-of-AGI ceiling (30% for private foundations). Policy loans reduce deductions. No deductions where charity merely named death beneficiary.	Ordinary income property. Generally no recognition of gain unless policy is subject to a loan.	Generally, gift is complete on the date the policy is delivered to charity accompanied by an endorsement from the company.
Artworks and "Collectibles"	Fair market value of long-term capital gain property if transferred to a public charity that can put item to a use related to its purposes; 30%-of-AGI ceiling applies. Unrelated use limits deduction to cost basis, but 50% ceiling applies; same reduction if item is artwork transferred by artist who created it. Gifts to 30% charities limited to cost basis.	No gain reportable when donors give "collectibles" or other tangible personal property, which is advantageous even for taxpayers who cannot itemize deductions.	Date of gift is date of delivery of property to charity or agent.

Transfer Procedure	How Gifts Are Valued	Proof of Deduction	Planning Considerations
Checks or other cash equivalent, including credit card charges, electronic transfers, and physical delivery of cash.	Amount of cash	Gifts under $250, canceled check, or other bank record. Gifts of $250 or more, written receipt from charity describing gift and stating whether goods and services were received by donor (quid pro quo statement), issued prior to filing of donor's tax return.	Cash gifts are deducted first when donor gives both cash and noncash assets during the year; carried over deductions from cash gifts are considered before carryovers of property gifts. Gifts also may save gift and estate taxes.
Donors who hold certificates endorse securities or sign stock power and deliver to charity or its agent. Where securities are held in street name, transfer can be made to charity's account or be delivered to charity's agent in negotiable form.	Value is the mean between high and low or bid and ask on date of gift, based on published figures or quotes from securities dealers. Gifts of mutual funds are measured by "net asset value" or bid on date of delivery of certificates in negotiable form or date of transfer on books of transfer agent.	Securities worth $250 to $500, receipt from charity, with quid pro quo statement. Gift of securities worth more than $500 requires receipt from charity and completion of Section A of Form 8283.	Donors of appreciated securities can qualify for the 50%-of-AGI ceiling by electing to reduce their contribution deductions by 100% of the gain present in the property. Strategy may be attractive where long-term capital gain is insubstantial.
Transfer of title of contributed realty is generally made by a quitclaim deed, unless a warranty deed is deemed necessary by either of the parties.	Value is established by independent appraisal. Comparable selling prices for similar properties may be the best evidence of value. Indebtedness reduces value.	Receipt from charity with quid pro quo statement. For deductions exceeding $5,000, donors also need qualified appraisals and completed Sections A and B of Form 8283, including declaration of appraiser and donee acknowledgment.	Charities generally require Level 1 environmental assessment. Title should be checked for liens and defects. Charity may incur taxable income if mortgaged realty was owned by donor less than five years and mortgage is less than five years old.
Delivery of securities in negotiable form to charity or agent, or by transfer of certificates into charity's name.	Value is established by independent appraisal, applying IRS rules. Factors considered in valuing closely held stock include corporate assets, earnings and future earning power, dividend policy, prospects of company, and sales of stock near the contribution date.	Deductions of $5,000 or less, receipt from charity and Section A of Form 8283. From $5,001 to $10,000 of deduction, Section A and Parts I and II of Section B of Form 8283 are also required. Above $10,000, receipts, qualified appraisals, and completed Sections A and B of Form 8283.	Gifts of closely held securities are often negotiated with anticipation of corporate redemption of charity's stock. A new certificate of stock should be obtained. Gifts may also be attractive where sale of corporation is anticipated.
Ownership of policy is transferred to charity by an endorsement by the donor on forms supplied by the insurance company and accompanied by delivery of the insurance policy.	Value of a paid-up policy is its replacement cost; value of a non-paid-up policy is the interpolated terminal reserve plus any unearned premium and accrued dividends, less any policy loans as of the date of the gift.	Gifts under $250, canceled check, or other bank record. Gifts of $250 or more, written receipt from charity. Gifts over $500 require Section A of Form 8283, and some commentators suggest qualified appraisals are necessary where deduction claimed for a policy exceeds $5,000 (Section B of 8283).	Rather than contribute a policy or make charity the death beneficiary, donors may employ life insurance in a wealth replacement plan, often employing an irrevocable life insurance trust, to replace in their estates assets contributed to a charitable remainder trust or other gift arrangement.
Transfer is generally made by delivery of property. A deed of gift or bill of sale is advisable.	Appraisal is generally required. Donors must send photos of artworks to IRS advisory panels that value contributions of art over $20,000. Donors can request "Statement of Value" from IRS for artwork valued at more than $50,000.	Single item worth $250 to $500, receipt from charity. Single item worth $501 to $5,000, Section A, Form 8283 also required. Single item over $5,000 (or multiple "similar items" exceeding $5,000), Section B, Form 8283, required as well, with qualified appraisal.	Sale of tangible personal property by a charity is by itself an unrelated use, even where sale proceeds are used for the charity's programs. Gifts of future interests in tangible personal property are not deductible until any intervening interest ends.

Trusts and Other Deferred Gifts	Description of Gift Plan	Income Tax Charitable Deduction	Capital Gains Tax Results
Charitable Remainder Annuity Trust	Donor funds a qualifying trust under Code §664, providing a fixed annuity (minimum 5% of original value of principal, maximum 50%) for one or more individuals from the trust, which may last for the lifetimes of the beneficiaries or a term of years (maximum 20 years). When the trust ends, principal passes to one or more qualified charities. No additional contributions permitted to trust.	Present value of charity's remainder interest (10% minimum required) deductible, based on ages of income beneficiaries (or a fixed term up to 20 years), applicable federal rate (§7520 rate) and unvarying dollar amount to be paid each year. A 5% probability test limits maximum payouts.	No capital gains recognized upon transfer of appreciated assets to trust, or upon sale by trustee. Part of beneficiary's income may be taxed at low capital gains tax rates under four-tier tax reporting system.
Charitable Remainder Unitrust	Beneficiaries receive a fixed percentage (minimum 5%, maximum 50%) of the value of the trust assets as revalued every year (standard unitrust). Alternatively, trust may pay the lesser of the unitrust amount or the trust's actual income (a net-income unitrust); make-up provisions permitted. Additional contributions possible.	Present value of remainder interest (10% minimum), based on ages of income beneficiaries (or a fixed term up to 20 years), §7520 rate and percentage of trust value to be paid each year. Higher payout rates possible than annuity trust because 5% probability test does not apply.	Same capital gains result as annuity trust. Post-contribution long-term capital gain may be treated as "income" and paid out from net-income unitrusts, if trust instrument and state law permit.
Charitable Gift Annuity	Donor transfers cash or securities in exchange for charity's promise to pay a fixed annuity to one or two individuals for life. The present value of the annuity is less than the amount transferred, creating a gift to charity. Most charities pay annuities based on the rates recommended by the American Council on Gift Annuities.	Amount transferred to charity, less the present value of lifetime annuity retained for one or two persons. Deductions identical to those afforded by charitable remainder annuity trust, but much lower amounts needed to fund gift. Higher deductions if first payment deferred for several years.	Partial capital gains avoidance for gifts of appreciated assets. Remaining gain can be reported ratably over annuitant's life expectancy, if the donor is annuitant.
Pooled Income Fund	Donor irrevocably contributes cash or securities to an organization's pooled income fund, where it is invested and commingled with gifts made by other contributors. Participants receive pro-rata share of fund's annual earnings until death, when the charity removes donor's gift from the fund.	Present value of remainder interest in amount transferred, based on ages of beneficiaries and fund's highest payout rate for the last three years. Funds less than three years old assume payout rate tied to §7520 average rates for prior three years.	No capital gains recognized upon transfer of appreciated assets to pooled income fund. Capital gains allocated to principal are deductible by pooled income fund.
Charitable Lead Trust	Reverse of the charitable remainder trust. The lead trust pays either an annuity or a unitrust amount to one or more charities during the trust term, remainder to donor or named beneficiary. Lead trusts can be set up during life (either as grantor or nongrantor trusts) or at death.	Present value of income interest, if donor is considered owner of the trust under grantor trust rules, having retained reversionary interest or certain other powers. Deduction is based on length of trust term or age of measuring life, §7520 rate and annual payments, which can be an annuity or unitrust amount.	Trustee takes donor's basis and trust is taxable on net gains realized, unless structured as a grantor trust, in which case the donor is taxed. Testamentary lead trust receives stepped-up basis.
Remainder Interests in Residences and Farms	Donor deeds personal residence or agricultural property to charity and retains a life estate for one or more individuals or for a fixed term of years. A residence need not be the donor's primary residence. Transfer is not made in trust and may not include personal property.	Present value of charity's remainder interest in depreciable and nondepreciable portions of property, using remainder interest factor for one or two lives or term of years, based on §7520 rate, and taking into account estimated useful life of depreciable property and "salvage value."	Capital gains avoided unless property is subject to in-debtedness, which brings bargain sale rules into play. For principal residences, $250,000 exclusion may offset gain from bargain sale.
Charitable Bequests and Beneficiary Designations	Donor designates charity to receive specific, general, percentage, or residuary bequest from will or revocable living trust, or names charity to receive part or all of life insurance proceeds or remaining principal in retirement, brokerage or financial accounts.	None for donor, but estates and trusts may deduct income distributed to charities under Code §642(c), including income in respect of a decedent (IRD), if authorized under the donor's will or trust.	Capital gains taxes avoided 100%.

Taxation of Benefits	Required Tax Returns	Recommended Funding Assets	Planning Considerations
Charitable remainder trusts are tax-exempt except in years where trust has unrelated business taxable income. Payments are taxable to income beneficiaries under four-tier, worst-in-first-out system: (1) any current and accumulated ordinary income (qualified dividends considered last); (2) capital gains, beginning with short-term gain, then 28% gain (collectibles), 25% gain (recapture of depreciation), and finally regular long-term gain; (3) "other" (tax-exempt) income; (4) corpus (tax free).	Donors must file gift tax returns (Form 709) for all lifetime trusts, even where donor is sole income beneficiary [Code §6019(3)]. Form 8283 needed with donor's tax return except for cash transfers. Trustee files Form 5227 annually. Form 1041 is required if trust has unrelated business taxable income and Form 4720 if trust is liable for excise taxes.	Appreciated property, generally, and cash. Transfers of debt-encumbered real estate disqualify trust. Unproductive, hard-to-sell assets may be unsuitable for annuity trusts if trustee is unable to make required annuity payments. No S stock. Appreciated property and cash. Transfers of debt-encumbered real estate disqualify trust. Gifts of unproductive assets may be facilitated with "flip" unitrust. Deductions for gifts of tangible personal property are reduced and postponed until assets are sold by trustee. No S stock.	Annuity trusts are most appealing where income beneficiaries are in their mid-70s and older and prefer the security of a fixed income. Low §7520 rates (AFR) limit deductions and payouts for annuity trusts. Greater flexibility of the unitrust enables donors to arrange lifetime income with a hedge against inflation. Unitrusts can be structured to shift income to retirement years and to achieve other purposes, including college funds for grandchildren.
Annuity payments are part tax-free return of principal, during annuitant's life expectancy, the rest ordinary income. Capital gain is reportable in part where donor funds annuity with appreciated securities; donor/annuitant may spread such gain ratably over life expectancy.	Gift tax return required if non-spouse is named current or survivor annuitant and donor has not kept right to revoke. Charity reports annual payments to annuitants on Form 1099-R. Gifts of securities require Form 8283.	Cash gifts ensure maximum tax-free payments. Gifts of securities enable donors to convert stocks to annuities while minimizing capital gains taxes. Many charities do not accept gifts of real estate, closely held stock, or tangible personal property.	Donors are typically in their 70s or older, although deferred payment annuities may be attractive for younger individuals who wish to supplement retirement savings. Most charities accept contributions as low as $5,000 or $10,000.
Pooled income fund is a taxable trust but is not taxed on long-term capital gains added to principal. All income received by beneficiaries is reportable as ordinary income.	Donors must file gift tax returns in all cases and Form 8283 where gifts are funded with noncash assets. Trustees must file Forms 1041 and 5227 and 4720 if trust is liable for excise taxes.	Appreciated securities, generally, and cash. Tax-exempt securities may not be contributed, and most charities will not accept real estate gifts to their pooled income funds.	Pooled income funds also accept gifts as low as $5,000 and offer a hedge against inflation and capital gains tax avoidance that may appeal to younger donors or beneficiaries.
Trust income of a grantor lead trust is taxed to the donor; at death, trust becomes subject to tax as a complex trust. Nongrantor trusts, including testamentary trusts, are taxed as complex trusts but allowed deductions under Code §642(c) for amounts paid to charity.	Donors must file gift tax returns for lifetime trusts. Trustees file Forms 1041 and Form 5227 annually. Form 4720 must be filed if trust owes excise tax.	Appreciated property may be less suitable for inter vivos lead trusts, if sale and reinvestment by the trustee is anticipated, because trusts are not tax-exempt. Transfers of income-producing assets may be more manageable. Testamentary lead trusts receive a step-up in basis.	Lead trusts help donors who wish to stretch the protection of the gift or estate tax credits, or the exemption for GST tax. Intentionally defective grantor trusts can provide donors with both transfer tax and income tax charitable deductions.
No change in taxation of life tenant following contribution on income realized from property.	Donors file gift tax returns in all cases. Form 8283 must be filed with donor's tax return for year of gift.	Any residence occupied by the donor: principal residence, vacation property, condominium, etc. Farm property includes land and improvements used for the production of crops, fruits, or livestock. Donors may give remainders in undivided fractional interests.	If the owner of the life estate can no longer use the property, it can be sold to a third party, with a division of the proceeds between charity and the life tenant, or donor can give remaining life estate to charity outright or for charitable gift annuity.
No change in taxation of donor on income from assets revocably designated for charity. But bequests of income in respect of a decedent (IRD), such as US savings bonds and retirement accounts, avoid income taxes for donor's estate or heirs.	Form 706 for estates subject to federal estate tax.	Any assets, including cash or property, but ideally IRD assets such as IRAs and other retirement accounts, savings bonds, accounts receivable, renewal commissions of insurance agents, deferred compensation, stock options and installment obligations.	Testamentary transfers can be shared between charity and family members through any of the gift techniques described on this page. Partial estate tax deductions reduce taxes on the estate.

The War Against Cancer

When you have the occasion to draft a trust or a bequest for a client who wants part of his or her estate to support the war against cancer, our correct legal name is:

"The American Institute for Cancer Research, a not-for-profit corporation located in Washington, DC."

Please feel free to contact our Gift Planning Office for additional information about the mission and the future plans of the American Institute for Cancer Research.

Our Gift Planning Office will be pleased to help you plan a trust or bequest that will accomplish the specific objectives of your client. We can also provide the exact tax consequences of any trust arrangement a client may want to consider. There is no other obligation for this service.

New Estate Planner's Corner

www.aicr.org/estateplanner

A gift planning toolbox at your fingertips

We are excited to announce AICR's new website for advisors! Not only can you find the answers to your complex tax questions through the Charitable Giving Tax Service, but you can calculate and print personalized gift planning illustrations for your clients simply by clicking on the Gift Calculator found on the Estate Planner's Corner home page.

Information for the Attorney or Advisor

- AICR's official name:
  The American Institute for Cancer Research
- AICR's mailing address:
  1560 Wilson Blvd, Suite 1000,
  Arlington, VA 22209
- AICR's phone number:
  800-843-8114
- AICR's identification:
  A not-for-profit organization under Section 501(c)(3)
  of the Internal Revenue Service Code
- AICR's tax-exempt IRS number:
  52-1238026

The information and examples provided in this booklet are for information and discussion purposes only. The examples are hypothetical, and the facts and tax consequences of individual transactions may vary from person to person. Each estate planning professional must independently determine and evaluate the tax and financial consequences of each individual situation.

Gift Planning Office

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