Charitable Planning in a New Era

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NEGASC, June, 2017
Why Give?
(And Why Planned Giving?)

- What Motivates?
  - Relationships
  - Connections
  - Special Programs / Naming Opportunities
  - “Impact Gifts”

- Doing Well While Doing Good
  - Achieve philanthropic goals
  - Achieve personal & family goals
  - Reduce or eliminate taxes
Taxing Times: Income Tax

- **Federal Rates – 10% to 39.6% (2016)**
  - Max rate = single filers over $415k & joint filers over $467k
  - 28% rate = single filers over $91k & joint filers over $152k

- **Net Investment Income Tax – 3.8% (2016)**
  - Applies only to certain passive income only
  - Single filers with MAGI over $200k & joint filers over $250k

- **Connecticut Rates – 3% to 6.99% (2016)**
  - Max rate = single filers over $500k & joint filers over $1m
  - 6% rate = single filers over $100k & joint filers over $200k
Taxing Times: Income Tax Deductions

- Deductions for charitable contributions generally limited to 50% of the donor's adjusted gross income (AGI)
- Excess deductions can be carried forward up to 5 years
- Different rules generally apply to:
  - Gifts to certain types of charities (e.g. private foundations)
  - Gifts of property other than cash
  - Gifts from trusts
  - Deductibility for state & local income tax
  - Deductibility by nonresidents & dual citizens
Taxing Times: Wealth Transfer Tax

- **Federal Estate & Gift Tax - $5.49 million exemption**
  - Tax base includes transfers made after 1/1/1976
  - Maximum 40% rate

- **Federal GST Tax - $5.49 million exemption (2017)**
  - Tax base includes transfers made after 10/22/1986
  - Maximum 40% rate

- **Connecticut Estate & Gift Tax - $2 million exemption**
  - Tax base includes CT taxable transfers after 1/1/2005
  - Maximum 12% rate
  - Be aware of other relevant states

- **Other States**
  - Rates, exemptions, and property subject to tax will vary
  - Exemptions $1m-$4m & maximum rate of 12-16% common
Taxing Times: Gift Tax Exclusions

- **Annual Exclusion – § 2503(b)**
  - $14,000 per person
  - Indexed but no increase in 2017
  - Not counted as a taxable gift

- **Education Exclusion – § 2503(e)**
  - Excludes gift of tuition payments only
  - Must be paid directly to the school
Planned Giving Techniques

- Appreciated Stock Gifts
- IRA / Qualified Retirement Plan Gifts
- Charitable Trusts
- Life Insurance Planning
- Estate Planning
“Triple dip” treatment on gifts of publically traded securities held >1 year
- Avoids capital gains tax
- Avoids net investment income (NII) / Medicare surtax
- Generates full fair market value charitable deduction up to 30% of AGI

Assume a donor with an AGI of $1M gives stock with a $40,000 basis

<table>
<thead>
<tr>
<th></th>
<th>Donate Stock</th>
<th>Donate Proceeds</th>
</tr>
</thead>
<tbody>
<tr>
<td>FMV of Stock</td>
<td>$100,000</td>
<td>$100,000</td>
</tr>
<tr>
<td>Income Tax Deduction</td>
<td>$39,600</td>
<td>$39,600</td>
</tr>
<tr>
<td>Capital Gains Avoided</td>
<td>$12,000</td>
<td>$0</td>
</tr>
<tr>
<td>NII Surtax Avoided</td>
<td>$2,280</td>
<td>$0</td>
</tr>
<tr>
<td>Total Tax Savings</td>
<td>$53,880</td>
<td>$39,600</td>
</tr>
</tbody>
</table>
IRA
Qualified Charitable Distribution

- Donors over 70 ½ should consider the IRA QCD:
  - Sometimes called a “charitable rollover”
  - Can be any amount up to $100,000 per year
  - Distribution goes directly from the IRA to Charity
  - Counts towards donor’s required minimum distribution (RMD)
  - Does not affect AGI

- Ideal Candidates:
  - Need to take RMD but don’t necessarily need the $
  - Maxed out on charitable giving & facing AGI limitations
  - Living in state without a charitable deduction & likes saving $
## Retirement Plan
### Naming Charity as Beneficiary

<table>
<thead>
<tr>
<th></th>
<th>Non-Charity Beneficiary</th>
<th>Charity Beneficiary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gift Amount</td>
<td>$1 million</td>
<td>$1 million</td>
</tr>
<tr>
<td>Fed/CT Income Tax</td>
<td>~43.77%</td>
<td>0%</td>
</tr>
<tr>
<td>Fed/CT Estate Tax</td>
<td>~47.20%</td>
<td>0%</td>
</tr>
<tr>
<td>Total Tax</td>
<td>~$703k</td>
<td>$0</td>
</tr>
</tbody>
</table>

**Less Tax, More Benefit**

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**WIN WIN WIN WIN**
Charitable Trusts
CRTs & CLTs

- “Split Interest Trust” – the beneficial interests in the trust are divided into charitable and non-charitable interests

- Charitable interest may be “lead” or “remainder”
- Donor may retain an interest or give it to other beneficiaries
- Planning may be “inter-vivos” or “testamentary”
- Potential for substantial savings in income, estate & gift taxes
Charitable Lead Trusts
CLUTs & CLATs

- initial term of years
  (or measuring life)
- income interest & remainder interest
- payments to charity
  (fixed % or fixed $)
- balance to family

after the initial term ends
Charitable Lead Annuity Trusts
Grantor or Non-Grantor

<table>
<thead>
<tr>
<th></th>
<th>Grantor CLAT</th>
<th>Nongrantor CLAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who pays income tax?</td>
<td>donor</td>
<td>trust</td>
</tr>
<tr>
<td>Who gets a deduction?</td>
<td>donor</td>
<td>trust</td>
</tr>
<tr>
<td>When is that deduction?</td>
<td>when trust is created</td>
<td>when income is paid to charity</td>
</tr>
<tr>
<td>How much deduction?</td>
<td>present value of payments to charity</td>
<td>amount actually paid to charity</td>
</tr>
</tbody>
</table>
Charitable Lead Annuity Trust
Example: The Jackie O Plan

- One or more CLATs established at donor’s death
- Each pays an annuity to charities during the term
- Each CLAT is “zeroed out” so entire original value plus interest goes to charities
- Remainder passes in trust to family beneficiaries
- Entire trust passes estate tax free
CLAT Example

How Big is the Annuity?

- Annuity % depends on trust term and interest rate
- Uses government interest rate (“7520 rate”) in effect at death
  - @20 yrs & 2.4% → annuity is ~6.35%
  - @10 yrs & 2.4% → annuity is ~11.38%
  - @ 5 yrs & 2.4% → annuity is ~21.46%
- If actual growth exceeds 2.4% the family “wins”
- If the CLAT makes 8% the family will get:
  - over 20% of the initial value of a 5 year CLAT
  - over 50% of the initial value of a 10 year CLAT
  - over 175% of the initial value of a 20 year CLAT
CLAT Example
How Big is that Annuity Again?

- Annuity % can also be designed to increase
- Total $ passing to charity may increase up to 20% per year
  - @20 yrs & 2.4% → initial annuity is ~0.77%
  - @10 yrs & 2.4% → initial annuity is ~4.53%
  - @ 5 yrs & 2.4% → initial annuity is ~14.54%

- Again, if actual growth exceeds 1.4% the family “wins”
- But this time if the CLAT makes 8% the family will get:
  - about 23% of the initial value of a 5 year CLAT
  - about 63% of the initial value of a 10 year CLAT
  - about 250% of the initial value of a 20 year CLAT
Charitable Remainder Trusts
CRUTs & CRATs

- income interest & remainder interest
- payments to donor (fixed % or fixed $)
- balance to charities

initial term of years (or measuring life)

after the initial term ends
Charitable Remainder Trusts
CRUTs & CRATs

- Donor gets payments for a defined term
- Charity gets $ remaining at the end of the term
- Donor gets a deduction
  - deduction ≈ present value of charitable remainder
- CRT is tax exempt
  - sale of appreciated assets does not cause current tax
  - trust income is not taxed unless distributed
  - defers income tax on undistributed income & gains
  - tax-deferred reinvestment drives further growth
Charitable Remainder Trusts
CRUTs vs CRATs

**Charitable Remainder Unitrust (CRUT)**
- payment is fixed % of trust value (≥5%)
- revalued each year
- best for:
  - assets with high return
  - participation in investment return
  - hedge against inflation
  - potential for additional gifts
  - many payout options

**Charitable Remainder Annuity Trust (CRAT)**
- payment is fixed $
- not revalued
- best for:
  - steady payments
  - safer in deflationary period
  - lower administrative costs
  - less recordkeeping required
Charitable Remainder Trust

Example

- Donor retains right to ~11% unitrust payment
- Payments continue for life of donor & spouse
- Charity gets entire trust fund at the end of the term
- Donor gets a deduction ≈ 10% of initial value
- Assume:
  - Donor and spouse are age 65 and 64
  - Federal 7520 rate is 2.4% (June 2017)
  - CRUT is funded with $5 million
  - CRUT earns 8% (3% ordinary income & 5% capital gain)
- Result is a Win-Win:
  - Donor receives $9 million over 23 years
  - Charity receives $2.3 million after 23 years
Charitable Remainder Trust
But What If…Example

- Donor retains right to 8.5% unitrust payment
- Payments continue until donor & spouse’s death
- Charity gets entire trust fund at the end of the term
- Donor gets a deduction ≈ 16.18% of initial value
- Same assumptions but an even better Win-Win result:
  - Donor receives $9.1 million over 23 years
  - Charity receives $4.2 million after 23 year
  - Why? Tax deferred reinvestment grows the pie!
Life Insurance

- Donor makes a charity the beneficiary of his life insurance
- Donor transfers ownership of his paid-up life insurance policy to the charity
  - gifted policies should generally be paid up
  - allows the charity access to cash value, exercise policy rights
  - charity must monitor policy health & maturity
- Benefits:
  - simple & effective
  - little/ no administrative cost to donor
  - minimal impact on current assets & cash flow
  - death benefit may exceed premium payments
Estate Planning

- Donor includes charitable organizations in a Will or Revocable Trust
  - simple & effective
  - little/ no additional administrative cost to donor
  - minimal impact on current assets & cash flow
  - charitable estate tax deduction available

- Sample language:
  - **Trust Gift**: Property equal in value to *X* Dollars ($X), shall be distributed to the University of XYZ, for its general purposes, provided that it is then a charitable organization described in Section 2055(a) of the Internal Revenue Code of 1986, or corresponding successor sections.

  - **General Bequest**: I hereby bequeath to the University of XYZ, a tax-exempt organization, located at __________, the sum of ____ dollars (or, alternatively, ___% of my residuary estate, or include a description of property that you wish to bequeath) for its general purposes.

  - **Specific Bequest**: I hereby bequeath to the University of XYZ, a tax-exempt organization, located at __________, the sum of ____ dollars (or, alternatively, ___% of my residuary estate, or include a description of property, assets, etc. that you wish to bequeath). It is my wish that this gift be specifically used to support [describe specific intent here - scholarships, athletics, student services, etc.]. If it becomes inappropriate or impossible to accomplish the purpose of the gift as described herein, then the Board of Governors may designate this bequest to be used for the benefit of a substantially similar purpose.
Karen E. Yates

Background
• Cornell Law School, J.D., 1996
• American University, B.A., Political Science, 1993, magna cum laude
• Admitted in Connecticut, Massachusetts, New York, Pennsylvania, Washington DC, and US Tax Court

Practice
Karen’s practice is focused on wealth planning. She works with individuals, families and family offices providing legal advice on wealth transfer tax planning and fiduciary administration. As part of the wealth planning process, Karen regularly advises on business succession, charitable giving, and income tax planning for individuals, estates, trusts and business entities.

A significant portion of Karen’s practice involves restructuring trusts to increase efficiency, address changed circumstances and better suit the needs of the families they benefit.

Memberships and Distinctions
• American College of Trusts and Estate Counsel (ACTEC)
• Society of Trust and Estate Practitioners (STEP)
• Connecticut Estate and Tax Planning Council
• AV-Preeminent rated by Martindale-Hubbell
• Connecticut Bar Association, Estates and Probate Section (Executive Committee, Decanting Subcommittee); Tax Section
• American Bar Association, Real Property, Probate and Trust Law Section, Taxation Section

Selected Publications and Speaking Engagements
• “Mismatch Rematch: Realigning the Estate Plan to Avoid Unexpected Pitfalls,” Federal Tax Institute of New England, October 30, 2015
• “Enhancing Your Client’s Estate Planning Using Trusts Created by Their Parents,” 41st Annual Notre Dame Tax & Estate Planning Institute, September 27-28, 2015
• ”Better Not Pout - Like it or Not, U.S. Citizens Owe U.S. Taxes,” Trusts & Estates, wealthmanagement.com, December 2014
• “IRS Attacks Common Estate Planning Technique in Estate of Woelbing,” CBA Estates & Probate Newsletter, June 2014.
• "IRS Blesses Decanting?" wealthmanagement.com, May 2014
• "Disregarded But Not Forgotten," Trusts and Estates, October 2009
• "Charitable Lead Annuity Trusts - A Primer," Taxation of Exempts, Volume 19/Issue 1, July/August 2007
Constance Shields

Background
• Lawrence University, B.A.
• Pace University School of Law, cum laude, J.D.
• Admitted in Connecticut and New York

Memberships
• New York State Bar Association, Trust & Estates Section
• Connecticut Bar Association

Practice
Constance's practice focuses on trusts and estates, and business succession matters for wealthy individuals and their families. She works with trusts and related business structures to preserve, protect and grow family wealth for multiple generations in a tax efficient manner.

Selected Publications and Speaking Engagements:
• Co-Author of "Why the Granite State Rocks at Trust Administration Estate Planning," Estate Planning, June 2016.
• Co-Presenter, “The Probate Process From Start to Finish,” IPE Seminar, April 2013
• Co-Presenter, "Drafting Effective Wills and Trusts," NBI Seminar, June 2012
• Author of “Dynasty Trusts Pass Wealth Tax-Free to Heirs,” The Commercial Record, May 2012
• Co-Author of "Changes to Connecticut's Estate and Gift Taxes," Withers Bergman LLP Briefing Notes, May 2011.
• Co-Author of “Promises Broken," Withers Bergman LLP Briefing Notes, November 2008.