American Bar Association
Law School Development Conference

The Tax Cuts and Jobs Act
*Is This The End of the Charitable Deduction (Giving)??*

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May 30, 2018
Three Charitable Tax Deductions

1. Income Tax (1917)
2. Estate Tax (1921 retroactive to 1917)
3. Gift Tax (1932)
A Little Background

*Private Giving for the Public Good*

Deduction for Value of Cash or Property Given to “Qualified Charity”

Qualified Charity: IRC Sec. 501(c)(3)

Private v Public

All 501(c) Exempt from Income Tax

Only 501(c)(3) Offer Tax Deductions
A Little Background

Private Giving for the Public Good

Tax Exempt v Not for Profit

Tax Exempt/Federal

Not for Profit/State

All tax exempts are not for profit, but not all not for profits are tax exempt
A Little Background

...Private Giving for the Public Good

What’s in a name?

• A not for profit can have profits
• Not all grantmakers are private foundations
• Not all foundations are private
• A “charitable purpose” does not make an organization a “charity”
A Little Background
...Private Giving for the Public Good

Deductibility of Charitable Gifts

Lifetime: 1. Limitations Based Upon AGI
          2. FMV or Basis
          3. Public or Private

Testamentary: 1. Unlimited
               2. FMV
               3. Public and Private
### A Little Background

**...Private Giving for the Public Good**

#### Deductibility of Lifetime Charitable Gifts

<table>
<thead>
<tr>
<th>Type</th>
<th>Gifts</th>
<th>Deduction LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Public:</strong></td>
<td>1. Cash</td>
<td>50% <em>(now 60%)</em> AGI</td>
</tr>
<tr>
<td></td>
<td>2. LTCGP</td>
<td>30% AGI/FMV</td>
</tr>
<tr>
<td></td>
<td></td>
<td>50% AGI/Basis</td>
</tr>
<tr>
<td></td>
<td>3. STCGP</td>
<td>30% AGI/Basis</td>
</tr>
<tr>
<td><strong>Private:</strong></td>
<td>1. Cash</td>
<td>30% AGI</td>
</tr>
<tr>
<td></td>
<td>2. L&amp;STCGP</td>
<td>20% AGI/Basis <em>(Unless “Qualified Appreciated Stock”, then FMV)</em></td>
</tr>
</tbody>
</table>

**Either: Excess Over AGI Carried Over 5 Years**
Deductibility of Lifetime Charitable Gifts

Rick (AGI of $60,000) donates $25,000 to the Hahn Community Hospital.

How much can Rick deduct as a charitable gift?

What if Rick gives $25,000 to the Hahn Family Foundation?

What if Rick gives $25,000 to the Hahn Donor Advised Fund?
Deductibility of Lifetime Charitable Gifts

Yoan (AGI of $60,000) donates shares of Apple, Inc. (FMV $25,000) to Moncada University.

How much can Yoan deduct as a charitable gift?

Is there anything else you need to know?

What if he donates the stock to the Moncada Family Foundation?

What if, instead, he donates shares of his family business to the University...to his Foundation?
That was Then... and This in Now

Tax Cuts and Jobs Act

Income Tax: Raises Standard Deduction

Single: $6,350 to $12,000
Joint: $12,700 to $24,000

Impact: Expected to reduce itemizers from 30% of taxpayers to 5%
That was Then... and This in Now

Tax Cuts and Jobs Act

Estate Tax: Raises Exemption Amount
$5.49M to $11.18M
(Married Couples
$10.98M to $22.36 M)

Impact: Expected to reduce taxable estates from 0.2% of decedents to 0.05%
That was Then... and This in Now

Tax Cuts and Jobs Act

“2 Million Taxpayers Will Stop Taking Charitable Deductions Under the New Tax Law”

Forbes

“Charitable giving to decline $12-20 billion in 2018.”

Tax Policy Center

“The reports of my death...”

Mark Twain
“The reports of my death...”

Most give for reasons other than taxes
• Mission/needs of organization
• How much can afford to give

Act designed to put more money in taxpayer pockets
• Lower taxes
• Higher wages
• Increased value of investments
Act eliminates or limits other income tax deductions

Charitable income tax deduction expanded and enhanced

• Raise ceiling on cash gifts to public charities
• Other AGI limits on charitable gifts unchanged
• Pease Limitation eliminated
“The reports of my death...”

No Changes
• Charitable Gifts of Appreciated Property
• Charitable Gift Annuities
• Charitable Remainder Trusts
• Charitable Lead Trusts
• Charitable Remainder Interest Residence or Farm

These Allow Donor
• Larger Gift
• Lower Cost
• Exceed Standard Deduction Threshold
• Increase Income
“The reports of my death…”

Act Maintains Benefits

**Donor Advised Funds**
- Deduct Gift to Sponsoring Organization
- Distribute to Public Charity at Later Date
- Prefund Annual Support

**IRA Qualified Charitable Rollover**
- Donor Aged 70.5 Years
- Direct Up to $100,000 of RMD to Public Charity
- No Charitable Deduction, but
- Not Included in Donor’s Income
<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2017</th>
<th>2018</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>$10,000,000</td>
<td>$10,000,000</td>
<td>$10,000,000</td>
</tr>
<tr>
<td></td>
<td>&lt;$5,490,000&gt;</td>
<td>&lt;$1,000,000&gt;</td>
<td>&lt;$1,000,000&gt;</td>
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<tr>
<td></td>
<td>$4,510,000</td>
<td>$9,000,000</td>
<td>$9,000,000</td>
</tr>
<tr>
<td></td>
<td>x40%</td>
<td>&lt;$5,490,000&gt;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$1,804,000</td>
<td>$3,510,000</td>
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</tr>
<tr>
<td></td>
<td>x40%</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$10,000,000</td>
<td>$1,404,000</td>
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<td></td>
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<tr>
<td></td>
<td>$8,196,000</td>
<td>$9,000,000</td>
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<tr>
<td></td>
<td></td>
<td>&lt;$1,404,000&gt;</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>$7,596,000</td>
<td></td>
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</tbody>
</table>
Tax Efficient Charitable Giving

Appreciated Property (LTCGP)

A gift of $10,000 of cash gives the same deduction as a gift of LTCG property with a FMV of $10,000, but costs the donor less

• Cost of Gift of Cash = Amount Out of Pocket
• Cost of Gift of LTCGP = Basis

No/Minimize Capital Gain Tax
## Tax Efficient Charitable Giving

<table>
<thead>
<tr>
<th>Cash: $10,000</th>
<th>FMV: $10,000</th>
<th>Gain: $3,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basis: $10,000</td>
<td>Basis: &lt;$7,000&gt;</td>
<td>Rate: 20%</td>
</tr>
<tr>
<td>Gain: -0-</td>
<td>Gain: $3,000</td>
<td>Tax: $600</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FMV: $12,000</th>
<th>FMV: $12,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basis: &lt;$10,000&gt;</td>
<td>Basis: &lt;$7,000&gt;</td>
</tr>
<tr>
<td>Gain: $2,000</td>
<td>Gain: $5,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FMV: $8,000</th>
<th>FMV: $8,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basis: &lt;$10,000&gt;</td>
<td>Basis: &lt;$7,000&gt;</td>
</tr>
<tr>
<td>Loss: &lt;$2,000&gt;</td>
<td>Gain: $1,000</td>
</tr>
</tbody>
</table>
Tax Efficient Charitable Giving

Income in Respect of Decedent (IRD)

*Income earned during lifetime, but not paid until after death*

Subject to
Income, Estate, and Generation Skipping Tax
Tax Efficient Charitable Giving

IRD Assets

• Individual Retirement Accounts
• Qualified Retirement Plans
• Savings Bonds
• Commercial Annuities
IRD Assets

Mary’s Estate

<table>
<thead>
<tr>
<th>Asset</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>IRA</td>
<td>$300,000</td>
</tr>
<tr>
<td>Life Insurance</td>
<td>$100,000</td>
</tr>
<tr>
<td>Personal Residence</td>
<td>$150,000</td>
</tr>
<tr>
<td>Stocks/Bonds/CDs</td>
<td>$50,000</td>
</tr>
<tr>
<td><strong>Total Estate</strong></td>
<td><strong>$600,000</strong></td>
</tr>
</tbody>
</table>
IRD Assets

No Federal (or Illinois) Estate Tax

BUT

$300,000 IRA x 24% = $72,000

Income Tax

12% of Estate
IRD Assets

Mary wants to leave 10% of her estate to charity

If use other assets, does not eliminate income tax

Net to Heirs: $468,000
IRD Assets

10% of Mary’s estate is 20% of her IRA

Direct 20% of IRA Directly to Charity

Reduces Income Tax to $57,600

Increases Net to Heirs to $482,400

…but be careful to track values
Charitable Split Interest Gifts

Non Charitable and Charitable Beneficiaries

Charitable Gift Annuity
Pooled Income Fund
Charitable Remainder Trust
Charitable Lead Trust
Remainder Interest in Personal Residence or Farm
Charitable Split Interest Gifts

*Gifts of Partial Interest*

FMV of Amount Transferred

<Present Value of Non Charitable Interest>

Charitable Gift
Charitable Split Interest Gifts

Present Value
Value Today of Amount Received in Future

Determined by
Period of Time
Frequency of Payments
IRC Sec. 7520 Rate
The value of any annuity, interest for life or term of years, or remainder or reversionary interest shall be determined by tables using an interest rate equal to 120% of the applicable federal mid-term rate rounded to the nearest 0.20% for the month when the valuation occurs.
IRC Sec. 7520

Introduced May 1, 1989

Previously Rate Fixed
10% (12/1/1983-4/30/1989)
6% (1971-11/30/1983)

Rate Now Published Monthly
IRC Sec. 7520

IRS Assumption
Reasonable Rate of Return
Current Economic Environment

Based Upon
Average Market Yield
Outstanding Treasury Obligations
>3 years and <9 years
IRC Sec. 7520

Rates Announced 18th of Preceding Month

Charitable Gifts Choice Month of Gift or Two Preceding or...

Rates have Ranged from
1.0% (January 2013)
11.6% (May 1989)

Biggest 4 month spread: 1.6% (1989)
Biggest 1 year spread: 3.0% (1994)
YTD spread: 1.0% (2.2% 7&10/17 – 3.2% 4&5/18)
Mary, age 75, uses $25,000 of her stocks, bonds, and CDs to purchase a charitable gift annuity.

Based upon her age and using ACGA current rates, Mary will receive an annual annuity from her charity of $1,450 (5.8%).

Using May 2018 7520 Rate (3.2%), the present value of Mary’s annuity is $12,852, resulting in a current charitable deduction of $12,148.
In addition, during Mary’s life expectancy a portion of her annual annuity will be treated as ordinary income (28%), capital gain (18%), and return of principal (54%).

Thereafter, all of Mary’s annuity will be taxed as ordinary income.
IRC Sec. 7520

Use Higher Rate

- Charitable Remainder Trust
- Charitable Gift Annuity (for Charitable Deduction)
- Life Estate in Personal Residence of Farm

Use Lower Rate

- Charitable Lead Trust
- Charitable Gift Annuity (for Income Tax Free Payment)
- Remainder in Personal Residence or Farm
IRC Sec. 7520

Caution: Taxable gift if non charitable beneficiary is not donor or spouse.

Alternatives

• Avoid Gift Tax, Make Interest Revocable by Will
  o Annual Exclusion/Exemption Amount
  o Subject to Estate Tax Upon Death

• Pay Gift Tax, Remove from Estate
  o Amount of Gift Tax
  o Post Gift Appreciation

• Beware of Generation Skipping
Substantiation Requirements

No Charitable Deduction without Qualified Receipt

• Contemporaneous Written Acknowledgement
  o No Later than Filing of Return

• From Charity
  o Name
  o Date
  o Amount
Substantiation Requirements

Gifts of $250>

Qualified Receipt Also Includes

• Description of Property Given
• Statement Whether Charity Provided Goods or Services in Return for Gift
• Good Faith Estimate of Value of Goods or Services Provided
• “Intangible Religious Benefit”
Substantiation Requirements

Quid Quo Pro Gift
Goods or Services Received for Charitable Gifts of $75>

Qualified Receipt Also Includes

• Statement of Value of Goods/Services Received
• Statement Only Portion of Gift Exceeding Value of Goods/Services Received is Deductible
  o Solicitation
  o Receipt
Substantiation Requirements

Tim and Yolmer buy a table at the Sanchez Hospital Annual Gala for $10,000.

The event is generously underwritten by the Anderson Glove Company (100% of the tickets sold will benefit the hospital).

How much can Tim and Yolmer deduct as a charitable contribution?
Substantiation Requirements

Tim and Yolmer have the winning bid of $5,000 for a one week stay at Ricky’s condo in Miami Beach.

During that time of year, Ricky gets $3,000 a week as rental.

How much, if any, of Tim and Yolmer’s winning bid is deductible as a charitable deduction?

How much, if any, does Ricky get as a charitable deduction for his donation of the week at his condo?
Substantiation Requirements

Contribution Fully Deductible if Goods or Services Received of “Insubstantial Value”

2018 “Insubstantial Value

• Lesser of
  o Not >2% of Donor’s Payment
  o $109

• However if Donor’s Payment is $54.50>
  o “Low Cost Articles”
  o Not >$10.90 Aggregate
Substantiation Requirements

To celebrate its 2005 World Series Championship, White Sox Charities gives a commemorative t-shirt ($13 cost) for every gift of $50.

How much of my $50 gift is deductible?

What if for a $100 gift, I get a t-shirt and a World Series Championship lapel pin ($5 cost)?
Substantiation Requirements

Qualified Appraisal Required for Property >$5,000 (Excluding Cash and Publicly Traded Stock)

• Completed by Qualified Appraiser
• Appraisal Summary (IRS Form 8283)
  o Attached to IRS Form 1040
  o Signed by Charity
    ➢ Acknowledge Receipt
    ➢ Will File IRS Form 8282
    ➢ if Dispose Within 3 Years
      ✓ Date Received
      ✓ Date Disposed
      ✓ Amount Received
Substantiation Requirements

Qualified Appraisal Required for Property >$5,000 (Excluding Cash and Publicly Traded Stock)

• Value of Gift is Donor’s Obligation, but
• Cost of Appraisal Not Charitable Deduction
• Charity Can Pay, but
  o Now Quid Quo Pro Gift and
  o Charity Cannot be
    ➢ Donor Advised Fund
    ➢ Supporting Organization
1. Thank you for your generous gift of $50. We are grateful for your support.

2. Thank you for your generous gift of $500. We are grateful for your support.

3. Thank you for your generous gift of $500 to our church. No goods or services were received in return for your donation.

4. Thank you for your generous gift of $500. We are pleased to add you as a member of our...
Gifts of Tangible Personal Property

• Related Use
  o FMV
  o 30% Limitation

• Non-Related Use
  o Lesser of FMV or Basis
  o 50% Limitation
Gifts of Tangible Personal Property

Matt donates a painting with a FMV of $500,000 that he purchased for $300,000 to the Davidson Hospital.

What is Matt’s deduction?

What if Matt donated the same painting to the Reinsdorf Art Museum?

What if Matt is the artist of the painting, rather than a collector?
“Planes, (Trains) and Automobiles”
...and Boats and Yachts

Deduction Limited to Amount
Charity Sells for
Unless
Related Use, then FMV
Whither the Charitable Deduction?

Proponents

• Rewards Payments Made for the Benefits of Others
• Benefits Exceed Taxes Foregone by Government
• If Services Provided by
  o Government, Higher Taxes
  o For Profit, Higher Charges
• Reflects/Promotes Pluralism
• Validates Individual Choice

Yet
Whither the Charitable Deduction?

Opponents (?)

- Those with Similar Incomes Should Pay Similar Taxes
- Tax Code Too Complicated
- Gives Wealthier Disproportionate Say
- Does It Really Promote Charitable Giving?
- At What Cost?
  - Lobby
  - Political Contributions
  - Support Political Candidates
  - Contribute to PAC
  - Encourage Voter Registration Unless Bipartisan
But, More Immediately, Impact of Tax Act on Charitable Giving?

“It’s tough to make predictions, especially about the future.”

Yogi Berra

Remember Dire Forecasts
• 1980’s Top Income Tax Rate from 70% to 50%
• Recession of 2008
“Now, I said all that, so I can just say this…”

“Taxes may get you in the door, but they won’t keep you in the house.”

An Early Mentor
Questions?

Thank you.

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