



## 2011 Charitable Giving Review

With the end of the year approaching rapidly, we would like to take this opportunity to provide you with an overview of some of the common methods that individuals use to make charitable gifts, along with some important tips that you should keep in mind.

This newsletter is not intended to cover every available charitable giving strategy, nor to address every issue that may arise. However, it does provide a brief survey of the most common strategies and deals with the most common questions that we encounter.



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### Charitable Deductions In General

Many organizations may be referred to as “charities”, but there actually are five different types of organizations that are exempt from the federal income tax under section 501(c)(3) of the Internal Revenue Code. The first two categories generally are referred to as public charities; the third category generally is referred to as a supporting organization or quasi-public organization; the fourth consists of organizations that conduct tests for public safety; and the fifth is referred to as a “private charity,” a “private foundation,” “family foundation” or simply as a “foundation.”

Public charities generally consist of religious organizations, schools and colleges, hospitals and organizations that receive a substantial portion of their revenue from the general public. Supporting organizations and public safety organizations are generally treated in the manner as public charities for income tax deduction purposes. Private foundations, on the other hand, typically receive most – if not all – of their revenue from a small number of sources.

Under federal tax law, an individual may not offset his or her entire income in one tax year by utilizing the itemized deduction for charitable contributions. Instead, the charitable deduction for a charitable contribution made during any one tax year is

limited to a percentage of the individual's contribution base (essentially, his or her adjusted gross income). The individual may carry forward any charitable contributions for the year in excess of the percentage limitation for up to five succeeding calendar years.

The percentage limitation for a charitable contribution depends upon the type of charity to which the contribution is made. With respect to the type or organization, gifts to private foundations generally are subject to stricter limits on their deductibility than gifts to public charities. This means that donors seeking to make large deductible contributions to a charitable organization may be less inclined to make the gift to a private foundation, as the value of the gift may not be fully deductible in the year in which the gift is made.

Federal tax laws impose another important limit on the amount of the deduction for a charitable contribution, which is based upon the type of property contributed. For gifts of money, the amount of the deduction is based upon the amount of money being transferred. For gifts of property other than money, the amount of the deduction is based upon how the sale proceeds would be taxed if the property were sold. The federal tax laws essentially recognize three categories of property: long term capital

gain property, ordinary income property and short term capital gain property. Contributions of long term capital gain property generally are deductible up to the fair market value of that property, while contributions of ordinary income property and short term capital gain property generally are deductible only up to the donor's basis in the property.

The following chart summarizes the different charitable deduction limitations applicable to gifts to public charities and private foundations.

As shown below, one generally can claim a larger deduction by making a contribution to a public charity than to a private foundation. However, private foundations can offer donors

substantial benefits that in some cases will be more beneficial than making a gift to a public charity. For more information about this, please see the discussion of private foundations on page 9.

Type of Contribution	Contributions to Public Charities		Contributions to Private Foundations	
	Amount Deductible	Percentage Limitation	Amount Deductible	Percentage Limitation
Cash	Cost	50%	Cost	30%
Ordinary-income property, such as inventory, depreciable property, agricultural products, oil and gas property, Sec. 306 stock, collapsible corporation stock, original-issue discount debt instruments, market-discount bonds, artwork by its creator, and other property, the sale of which at fair market value would yield ordinary income	Cost	50%	Cost	30%
Short-term capital-gain property such as stocks, bonds and other capital assets, the sale of which at fair market value would yield short-term capital gain	Cost	50%	Cost	30%
Long-term capital-gain property, such as stocks, bonds and other capital assets, the sale of which at fair market value would yield long-term capital gain				
A. General Rule	Fair market value	30%	Cost	20%
B. If election is made to reduce the amount of the deduction	Cost	50%	N/A	
C. Qualified appreciated stock	N/A		Fair market	20%
Tangible personal property, if use of property by donee is unrelated to donee's exempt purpose or function	Cost	50%	Cost	20%

## SUBSTANTIATION AND VALUATION

A taxpayer who wishes to claim a charitable deduction must adequately substantiate and value his or her charitable contribution. Record-keeping therefore is critical to securing a deduction for a charitable gift. For a monetary gift, no deduction is allowed unless the donor maintains a record in the form of a bank record or a written communication

from the donee showing the name of the donee organization and the date of and amount of the contribution. Also, for any contribution of \$250 or more, including contributions of any kind of property, a contemporaneous written acknowledgment from the organization must be obtained before a deduction will be allowed. An appraisal by a qualified appraiser

generally must be done for any non-cash contribution worth more than \$5,000. A separate form must be attached to the donor's income tax return for most non cash contributions. Substantial tax penalties apply for certain overstatements of the value of donated property. Unfortunately, a donor cannot deduct appraisal fees.

## OUTRIGHT GIFTS

### Cash

Cash contributions are deductible on a dollar for dollar basis, if the substantiation requirements are satisfied.

### Marketable Securities

Publicly-traded marketable securities are deductible at their fair market value on the date of the gift. For these purposes, the fair market value of a stock or bond is the mean of its high and low prices on the date of the gift. Mutual funds generally are valued using their closing price for the date of the gift.

### Clothing, Used Items and Other Tangible Personal Property

Household goods and used clothing are usually worth far less than the original price paid when new. Deductions are permitted only for items in good used condition or better. Used items valued at \$500 or more require a qualified written appraisal. Deductions for gifts of paintings, antiques and other objects of art are subject to special rules and reporting requirements. Any art valued at \$5,000 or more must be supported by a qualified appraisal, and special rules apply to items worth \$20,000 or more. Items valued at \$50,000 or more may be pre-valued by the IRS. Generally, the creator of artwork can deduct only the cost of materials used in creating the work.

### Closely Held Stock, Limited Partnership Interests and Limited Liability Company Interests

Gifts of such interests must be supported by a qualified appraisal of their fair market value at the time of the gift. The appraisal should take into account a variety of factors, such as net worth, prospective earning power, dividend-paying capacity, goodwill, the nature and history of the business, the economic outlook for the particular industry, the

company's position in its industry, the company's competitors, the company's management and the value of securities of entities engaged in the same or a similar business. Any restrictions on transferring the securities – whether imposed by federal law, the entity's governing instrument or a shareholder agreement – also should be considered. Note that when gifts of this type of property are made to private foundations, the donor's charitable deduction is limited to his or her cost basis.

### Real Estate

Each piece of real estate is unique so the fair market value of a charitable contribution of real estate must be established by a qualified appraisal by a qualified appraiser. Generally one or more of three factors determine the approach to real estate valuation: comparable sales (with appropriate adjustments for differences in the properties), capitalization of income, and/or replacement cost (less depreciation). The weight given to these factors may depend upon whether the real estate is used for commercial or residential purposes. The deduction will be limited to cost if the gift is to a private foundation.

### Conservation Easements

Deductions are available for qualified conservation contributions to public charities and to governmental units. The contribution must be made for specified conservation purposes, such as preserving land areas for outdoor recreational use by the general public, preserving a relatively natural habitat or ecosystem, preserving open space, or preserving a historically important land area or a certified historic structure. The contribution generally consists of a restriction on the property owner's ability to use or change the property, rather than a gift of the donor's entire interest in the property. A donor may,

for example, give away his or her rights to build upon real estate or to change the façade of a historic building. The value of the contribution must be determined by written appraisal by a qualified appraiser.

### Life Insurance

The value of the gift of a life insurance policy is its replacement value, which is the amount that the insurance company would charge for a comparable contract. On request, life insurance companies normally will provide a written statement of such value. However, if the charitable donee reasonably may be expected to cash in the policy rather than hold it as an investment, the fair market value for deduction purposes is the cash surrender value of the policy rather than the replacement cost.

A donor will not receive a charitable deduction merely by naming the charity as a beneficiary of the policy. Instead, the donor must transfer full ownership of the policy to the charity. In many cases where a donor gives a policy to a charity, the donor will then make annual tax-deductible gifts to the charity to cover future premiums. Note, if the donor plans to make subsequent gifts to the charity to cover premium payments and wishes to deduct such future gifts, there may not be a binding obligation on the part of the charity to retain the policy.



## DEFERRED GIFTS AND GIFTS USING TRUSTS

### Pledges

#### Summary

A pledge is a promise to make a gift in the future.



#### Pros

The benefit to an individual of making a pledge is that the individual is not required to make the gift currently. Instead, the gift will not be made until some time in the future.

#### Cons

Since the gift is not being made currently, an individual making a pledge will receive no tax benefit from the pledge until the individual fulfills the pledge by actually making the gift. Also, personal pledges cannot be satisfied from a private foundation or a donor advised fund.

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### Pooled Income Funds

#### Summary

A pooled income fund (or “PIF”) is like a mutual fund that is administered by a public charity. Individuals make contributions to the PIF in exchange for units of participation. The number of units received is calculated based upon the value of the property contributed to the PIF and the value of the entire PIF at the time of the contribution. A contribution to a PIF is irrevocable, but an individual may make as many separate contributions as he or she wishes. Each owner of units in a PIF will receive a pro rata share of the PIF’s income, at least annually. Upon the death of the owner of the units, the charity maintaining the PIF receives the principal attributable to those units. A contribution to a PIF will result in a charitable income tax deduction for the actuarial value of the remainder interest passing to the charity. Sometimes the donor names another individual to receive the income from the PIF. If the donor names an individual other than his or her spouse, the value of the right to receive the income is a taxable gift for gift tax purposes.

#### Pros

A contribution to a PIF will provide the donor with a stream of income for his or her life. The contribution of appreciated property to a PIF generally will not cause the donor to recognize any gain or loss from the contribution. If, however, the property contributed is subject to liabilities (e.g., mortgage indebtedness), the donor may recognize gain or loss from the contribution.

#### Cons

Distributions received by the income beneficiaries of a PIF are taxable as ordinary income. A PIF cannot hold tax-exempt bonds.

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## Remainder Interest in a Residence

### Summary

A gift of a remainder interest in a person's personal residence is an irrevocable gift of the residence, subject to the donor's retained right to use the residence during his or her lifetime. In order to make this gift, the owner will typically sign a new deed to his or her residence, conveying the remainder interest to charity. The charity thus becomes the full owner of the property only at the donor's death. The donor and the charity often will execute a separate agreement that specifies who will be responsible for the costs of maintaining the residence (e.g., real estate taxes, maintenance, structural repairs and insurance). This separate agreement, however, is not required because local law normally will state who is responsible for these costs. In most cases, the donor will be responsible for the cost of maintenance, though the costs of structural repairs and capital improvements often are divided between the donor and the charity unless there is an agreement to the contrary.

### Pros

An individual can make an immediate charitable gift and receive a current deduction for the actuarial value of the remainder interest while still retaining the use and enjoyment of the residence for life. The donor does not have to move out of the house during life and cannot be forced to sell it by the charity.

### Cons

The gift is irrevocable once it is made. Thus, a donor cannot later change his or her mind. In addition, if the home is sold, in most circumstances the donor and the charity will divide the sale proceeds in proportion to the actuarial value of their interests. This means that the donor's share of the sale proceeds may not be sufficient for the donor to purchase a comparable replacement residence.

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## Charitable Gift Annuities

### Summary

Many charities offer charitable gift annuities. Donors transfer assets to the charity in exchange for a charitable gift annuity. Under the annuity's terms, the charity provides a fixed payment for the life of the donor (the "annuitant") and, if desired, up to one additional individual. Annuity rates are set at the time of the gift and are based on the age of the annuitant(s) at that time. The net amount remaining at the death of the annuitant(s) passes to the charity. A charitable gift annuity is a form of contract between the donor and the charity and is not a trust.

### Pros

Charitable annuity rates are often higher than the return on other kinds of investments and the annual payment is fixed at the creation of the annuity. The donor does not recognize any immediate capital gain when funding a charitable gift annuity with appreciated property. Rather, the gain is spread out over time as the annuity payments are received. A current charitable contribution income tax deduction is available to the annuitant for the actuarial value of the remainder interest that will pass to charity.

### Cons

The gift is irrevocable once made. Most organizations have a minimum gift size, such as \$10,000 or \$25,000. Charities also usually limit the minimum age of an individual creating a charitable gift annuity - such as a minimum age of 60 or even 70.

In addition, the amount of the annuity received by the annuitant is based upon a calculation that will theoretically result in the annuitant, if he or she lives to life expectancy, receiving an annuity benefit with an actuarial value equal to fifty percent of the amount contributed in exchange for the annuity. Thus, when compared with a commercial annuity, the amount received by the annuitant for a charitable gift annuity is substantially less. The fifty percent foregone is what the charity is expected to receive from the transaction. Charitable gift annuities therefore are appropriate only for those who are motivated by charitable desires, rather than the desire for market rate investment return.



## Lifetime Charitable Remainder Trusts

### Summary

A lifetime charitable remainder trust (or “CRT”) is a trust that grants a current right to annual payments to one or more non-charitable beneficiaries (the “income beneficiaries”) for the lives of those beneficiaries or for a term of years, and provides that the remaining trust property will pass to one or more charitable beneficiaries at the end of that period. The donor makes a completed gift to the trust when it is created, a portion of which is treated as charitable. The charitable component of the gift is equal to the difference between the fair market value of the property contributed to the trust and the value of the income beneficiaries’ interest in payments from the trust. The charitable and non-charitable interests are valued using actuarial tables published by the Internal Revenue Service. If the donor retains the current interest in the trust and/or designates his or her spouse, then there is no taxable gift for gift tax purposes, though a gift tax return may still need to be filed. The value of the gift to charity qualifies for an income tax deduction for the donor of the CRT, subject to the applicable percentage limitations discussed on the chart shown above on page 2.

There are many different types of CRTs, each providing different benefits (and detriments) to the creator of the trust. One type of CRT is a charitable remainder annuity trust, or a “CRAT” for short. A CRAT provides that the non-charitable beneficiaries will receive a fixed specific dollar amount from the trust each year (e.g., \$50,000 per year). A charitable remainder unitrust (or “CRUT”) is a trust in which the income beneficiaries receive an annual payment from the trust equal to a stated percentage of the fair market value of the trust as valued on a fixed date each year (e.g., distribute to the income beneficiary 5% of the fair market value of the trust as determined on the first day of each year). Thus, the amount of the payment from a CRUT may vary each year as the value of the trust assets changes.

There are several different variations on a basic fixed percentage CRUT that an individual may establish, each providing different benefits and detriments. Regardless of which type of CRT is established, the minimum payout percentage can never be less than five percent, nor more than fifty percent. In addition, the value of the charity’s actuarially-determined interest in the trust may not be less than ten percent of the value of the trust at the time the trust is established.

Given their different structures, CRATs and CRUTs may be appropriate for different types of donors. CRATs offer greater simplicity in administration. They also may be more attractive for donors and income beneficiaries who require a set payout, rather than one that fluctuates with market conditions. A CRUT is more appropriate for donors and income beneficiaries who are not risk averse, and who are willing and able to participate in the upside and downside of the trust’s investment performance. The possibility for rising payments also may be attractive for individuals who wish to use a CRUT as a hedge against anticipated future inflation.

### Pros

Charitable giving through the use of a CRT is a common strategy for an individual who is both philanthropic and who has highly-appreciated securities that he or she would like to sell without paying an immediate income tax. A distinct advantage of such a trust, to the extent that it is funded with highly appreciated securities, is that future income is based on the full value of the assets given undiminished by capital gains taxes, because such a trust is not subject to income taxes on gains from the sale of appreciated assets. This means that one can receive income from the full fair market value of the contributed assets, as opposed to income on only the net after-tax proceeds from the sale of the assets. A CRT thus allows an individual who owns highly appreciated assets to diversify his or her portfolio without reducing the size of the portfolio by the tax on the built-in gains. A CRT also can be created at death to obtain estate tax savings. The CRT would provide an income stream to one or more individuals starting at the death of the donor and benefit charity at termination of the CRT.

### Cons

Except for the income payments described above, assets contributed to a CRT eventually pass to the charitable beneficiaries when the trust ends. The “cost” to the heirs is partially offset by (a) the donor’s income tax charitable deduction, (b) the avoidance of capital gains taxes on the given assets when such assets are sold by the CRT, and (c) estate tax savings. This usually leaves a larger amount to produce income for the life income beneficiaries of the trust than if the assets were sold, the capital gains taxes were then paid and only the net after tax proceeds were reinvested.

Although a donor may make multiple contributions to a CRUT, a CRAT may not accept additional contributions after it is initially funded.

If the CRT’s investments fail to perform to expectation, it is possible that the trust may be depleted of assets before the end of the income beneficiary’s interest in the trust. In that case, the trust will terminate, the income beneficiaries will cease to receive any payments and no assets will pass to charity. (Note that, if a CRT does fail, it means that all of the assets have been paid to the income beneficiaries.) This possibility of depletion also is a way of differentiating a charitable gift annuity and a CRT. The payments due under a charitable gift annuity are a general obligation of the charity and generally may be satisfied out of the charity’s entire assets. The payments due from a CRT may be satisfied only from the trust property itself.

### Example of a Lifetime CRAT

#### Assumptions:

A 70 year old donor contributes assets to a CRAT valued at \$1,000,000 during August 2011. The CRAT will pay to the donor a fixed annuity of \$50,000 per year for the donor's life. Also assume that the donor funds the CRAT with marketable securities that were purchased for \$1, but which the CRAT will immediately sell and reinvest.

#### Results:

The donor is deemed to have made a charitable gift that will be eligible for the charitable income tax deduction for the year 2011. The actuarially-determined amount of the deduction is equal to \$445,700. Neither the donor nor the CRAT pays any income tax when the stock is sold. Each year, when the donor receives a distribution from the CRAT, the donor will have income equal to the amount of income earned by the CRAT, but not in excess of \$50,000. To the extent the CRAT does not have income equal to \$50,000 for the year, the donor will have capital gain income (but not in excess of \$50,000, minus the amount of other income the donor is treated as receiving from the CRAT), to the extent the CRAT has capital gains that are not treated as previously distributed to the donor.

### Lifetime Charitable Lead Trusts

#### Summary

A charitable lead trust (generally referred to as a "CLT") is a trust that grants an annuity or unitrust interest to various charities and provides for the remainder of the trust assets to pass to non-charitable remainder beneficiaries. The gift by the donor to the trust is a completed gift for gift and estate tax purposes. The amount of the gift to the non-charitable beneficiaries is the difference between the value of the property contributed to the trust and the value of the interest payable to the charities. These amounts are valued using actuarial tables published by the Internal Revenue Service. The trust can be structured so that the value of the gift can be zero for gift tax purposes. For income tax purposes, as described more fully below, the trust can allow the donor an immediate income tax deduction equal to the value of the charity's income interest, or the trust can be structured in a manner that will permit no immediate income tax deduction at all for the donor but also will prevent any of the trust's future income from being taxed to the donor.

A charitable lead trust may be designed to provide that the charitable term (known as the lead interest) will be based upon either a specific number of years or the life or lives of one or more individuals. A charitable lead trust that pays a fixed annuity is called a charitable lead annuity trust, or a "CLAT". A charitable lead trust that pays a unitrust amount is called a charitable lead unitrust, or a "CLUT". A CLAT can be structured to produce a gift valued at zero for gift tax purposes, but a CLUT cannot.

A CLT may be structured so that the trust is responsible for paying its own income tax. In such an arrangement, a CLT is required to report and pay income taxes on all of the trust's income (including capital gain or loss). However, to offset the income reported by the CLT, the trust will receive a charitable deduction each year equal to the amount that the CLT distributed to charity. The donor does not receive an income tax deduction for establishing such a CLT, but also is not responsible for paying tax on the income generated by the CLT's assets.

In the alternative, if the CLT is formed as a "grantor trust," the donor will receive an income tax deduction in the year that the trust is formed. The amount of the income tax deduction is the value of the income interest passing to the charity. Thus, if the CLT is designed to result in a zero gift, the entire value of the assets contributed to the trust will be deductible as a charitable income tax deduction. Any charitable deductions that are not used in the current year may be carried forward for up to five years. Although a CLT that is a grantor trust will provide the donor with an immediate income tax deduction, the donor (and not the trust) is required to report all of the trust's income, gain and loss on his or her personal income tax return each year. Because the donor of a grantor CLT receives a personal income tax deduction in the year that the trust is formed, no additional income tax charitable deductions are permitted in subsequent years.

### Example of a Lifetime CLAT

#### Assumptions:

Donor contributes assets to a CLAT valued at \$1,000,000 during August 2011. Assume that the CLAT is going to pay to charity a fixed annuity of \$79,000 per year for a period of 15 years and the CLAT is structured as a grantor trust. At the end of the CLAT term, the balance of the CLAT assets passes to the donor's children.

#### Results:

The donor is deemed to have made a gift to his children valued at \$0. The donor is also deemed to have made a charitable gift that will be eligible for the charitable income tax deduction for the year 2011. The amount of the deduction is equal to \$1,000,000, subject to any applicable percentage limitations for the year. If the trust investments return at least 7.9% each year, then the entire principal of the trust will pass to the donor's children at the end of the 15 years.

#### Pros

An individual forming a CLT can provide benefits to both a charity and his or her family at the same time because any assets remaining in the CLT at the end of the lead interest will pass to the non-charitable remainder beneficiaries. For individuals seeking to transfer wealth to family members without paying a gift tax, or by paying a reduced amount, a CLT may be an appropriate strategy to consider. A CLT also can be created at death.

#### Cons

Establishing a CLT requires the creation of a trust, and that will generate some additional costs (as compared to making an outright gift of an asset).

Should the CLT's investments fail to perform, it is possible that the CLT will be depleted before the end of the CLT. In that case, the CLT will terminate, the charitable beneficiaries will cease to receive any payments and no assets will pass to the non-charitable remainder beneficiaries.

## ESTABLISHING YOUR OWN PHILANTHROPIC FUND

### Donor Advised Funds

#### Summary

A donor advised fund (or "DAF") is an account established with a qualified charity (known as the DAF's "sponsoring organization") that permits the donor (and/or other parties designated by the donor) the right to make non-binding recommendations to the charity with respect to the fund's administration. Recommendations that may be made include grants to other charities and, in some cases, how the fund is to be invested. Although contributions to a donor advised fund are pooled for purposes of investment and management by the charity sponsoring the donor advised fund, an account is maintained on the charity's books reflecting each donor's contribution and adjusted to take into account: (a) grants made, (b) a share of the income, gains and losses, and (c) management and other charges imposed upon each donor's account. Periodic reports or statements are normally provided to donors reflecting the account balance and these adjustments.

#### Pros

Donor advised funds are very simple to establish, can be created quickly and do not require any maintenance, tax return or additional obligations on the part of the donor. In most cases, starting a fund only requires selecting a charity to administer the fund, opening an account by completing an application and arranging for a contribution to the account. Because DAFs are maintained by public charities, a contribution to a DAF will receive the maximum potential charitable income tax deduction (which is not always the case with a contribution to a private foundation).

#### Cons

A contribution to a DAF is irrevocable. Furthermore, legally, the donor may only make recommendations as to gifts from the fund; the donor's wishes with respect to the fund are not legally binding upon the DAF. Thus, a donor has no assurance that his or her wishes will be followed. In addition, most DAFs have restrictions with respect to the types of grants that they will approve. For example, most DAFs prohibit grants to non-US based organizations and private foundations.

## Private Foundations

### Summary

A private foundation is a non-governmental, nonprofit organization (either a corporation or a trust) with a fund managed for charitable purposes by its officers or trustees. Private foundations usually derive their funding from a single source, such as an individual, a family or a corporation. Most private foundations make grants to public charities, although a private operating foundation actually operates a program or programs or provides direct services that are charitable, educational or religious in nature or that otherwise serve the public good. Private foundations are generally exempt from income taxes on income earned. Non-operating private foundations, though, must pay an annual excise tax equal to 2% (or, in some cases, 1%) of their net investment income.



### Pros

Gifts to establish or grow a private foundation are deductible for income tax, gift tax and estate tax purposes. Lifetime contributions of appreciated publicly traded securities, for example, are deductible at their full fair market value (but subject to percentage income limitations). Private foundations often serve as a forum to instill the value of charitable giving in multiple generations of a family. The donor (and his or her family in the case of a family foundation) can continue to control the investments of the foundation and the recipients and amounts of grants.

### Cons

Because of past abuses of private foundations, they are subject to numerous restrictions and regulations to assure that the foundation is used to further charitable purposes rather than to benefit the creator or his or her family. These restrictions create many traps for the unwary. Because of federal organizational and operating restrictions and regulations, together with state registration and reporting requirements, private foundations are relatively expensive to create and maintain, and great care must be taken in their operation to avoid inadvertent violation of federal and state rules and restrictions. Consequently, private foundations should be considered only by individuals who are willing to commit substantial resources to charitable endeavors.

## CHARITABLE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS

A special tax provision sometimes known as the “IRA charitable rollover” is available this year for individuals over age 70½ who wish to fund gifts to charities from their individual retirement accounts. The provision allows an individual to make distributions from an IRA up to an aggregate of \$100,000 during the year directly to qualified charities of his or her choice. These distributions receive favorable tax treatment: they are not included in the IRA owner’s gross income, but will nonetheless count against the required annual distributions that the IRA owner must otherwise receive after reaching age 70½. In addition, the distribution to charity will not affect the amount the donor can otherwise give to charity on a fully deductible basis. As described above, an individual generally may make deductible cash gifts up to 50% of his or her adjusted gross income in any year for gifts to public charities; gifts of appreciated stock, land or other long-term capital gain property to public charities generally are deductible up to 30% of adjusted gross income in the year of the gift. Under this provision, IRA distributions made directly to a qualified charity are not subject to these limitations; nor do they affect the deductible amount of other charitable gifts a donor may choose to make. (Since the

distribution to charity is not included in the donor’s income, the donor does not receive an additional deduction for the IRA distribution itself.)

As might be expected there are some limitations on these qualified IRA charitable distributions. The IRA custodian must permit direct transfers to charities. Gifts to private foundations, donor advised funds, and supporting organizations do not qualify; nor can a qualified charitable IRA distribution be made in connection with a gift annuity or charitable remainder trust. The distribution must be made directly and outright to the charity and the donor must receive the appropriate acknowledgment.

Although there are efforts to make it permanent, this provision of the law is scheduled to expire on December 31, 2011. Individuals wishing to make tax-free gifts from their IRAs should do so before year end.

## CONCLUSION

For those charitably inclined there are many ways to make a charitable gift. As this publication suggests, each strategy presents its own unique pro and cons. Before making any charitable gift, it is wise to consult with experienced professionals who can work with you to ensure that your goals and objectives will be achieved.

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