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**WHAT'S A DONOR TO DO?  
PLANNED GIVING IN A CHANGING TAX LANDSCAPE**

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**I. CURRENT INCOME TAX CHARITABLE DEDUCTION RULES (AS OF NOVEMBER 6, 2017).**

- A. **Donors Must Itemize Deductions.** A donor who itemizes deductions is entitled to an income tax charitable deduction for contributions to qualified charitable organizations. IRC § 170(a).
- B. **Overall Limitation on Itemized Deductions (also known as the “Pease Amendment”).** The overall limitation for certain taxpayers with income above a certain amount requires such taxpayers to reduce their itemized deductions by the lesser of 3% of the excess of their adjusted gross income over this certain amount or 80% of the amount of itemized deductions otherwise allowable for the tax year. IRC § 68(a).
- C. **50% Limitation.** For a gift of cash or unappreciated property to a “50%-type” organization (generally section<sup>1</sup> 501(c)(3) organizations classified as section 509(a)(1), (2), or (3) organizations, private operating foundations, and conduit private foundations but not private foundations), the donor is generally entitled to deduct the full amount of the contribution up to 50% of the donor’s contribution base (essentially adjusted gross income). IRC § 170(b)(1)(A).
- D. **30% Limitation.** For a gift of cash or unappreciated property to a “30%-type” organization (a private foundation, other than a private operating foundation or a conduit private foundation) and gifts *for the use of* a 50%-type organization, the donor is generally entitled to deduct the full amount of the contribution up to 30% of the donor’s contribution base.
- E. **Limitations for Gifts of Capital Gain Property.** For gifts to a 50%-type organization of long-term capital gain property that has appreciated, the donor may deduct the full fair market value of the gift only up to 30% of the donor’s contribution base. IRC § 170(b)(1)(C). For gifts of such property to a private foundation, the deduction is limited to 20% of the donor’s contribution base. IRC § 170(b)(1)(D).
- F. **Five-Year Carryover.** A five-year carryover generally applies to any portion of a charitable deduction that cannot be deducted because of the percentage limitations. IRC § 170(b)(1)(D).
- G. **Special Rules for Gifts to Private Foundations.**
  - 1. In addition to the deduction limitation discussed above, the contribution deduction for gifts of appreciated property to a private foundation is further limited. If an individual contributes capital gain property, such as real estate held for more than one year, the amount of the deduction is limited to the lesser of the property’s basis and its fair market value. IRC § 170(e)(1)(B)(ii).
  - 2. There is a special rule, however, that allows a deduction at fair market value (rather than tax basis) for a contribution of “qualified appreciated stock,” which is stock for which market quotations are readily available on an established securities market. The value of such gifts for purposes of a charitable contribution deduction is the fair market value of the stock. IRC § 170(e)(5).
- H. **Contributions of Related Use Tangible Personal Property.**
  - 1. A donor is entitled to a charitable deduction equal to the greater of fair market value or basis for a contribution of tangible personal property the use of which is related to the donee’s exempt

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<sup>1</sup> All references to “sections” are to sections of the Internal Revenue Code of 1986, as amended.

purpose. If the property is not related, the donee's deduction is limited to the property's basis (or fair market value if less). IRC § 170(e)(1)(B)(i).

2. Changes made by the Pension Protection Act of 2006 treat as unrelated use tangible personal property that is sold, exchanged, or otherwise disposed of by the donee before the last day of the taxable year in which the donor made the contribution and with respect to which the donee has not in a written statement signed by an officer of the donee under the penalties of perjury either (a) certified that the use of the property was related to the donee's exempt purpose or function and described how the property was used and how such use furthered such purpose or function of the donee or (b) stated the intended use of the property by the donee at the time of contribution and certified that such use has become impossible or infeasible to implement. IRC § 170(e)(7)
  3. If the property is disposed of after the close of the taxable year of the contribution and within three years of the date of the contribution (unless the donee makes the certification described above), the donor must recapture the charitable deduction in an amount equal to the difference between the amount claimed as a deduction and the property's basis. The donor must include this amount in ordinary income in the year in which the disposition occurs. IRC § 170(e)(7).
  4. The rule applies to property that was identified as related use property by the donee on Form 8283 and for which a deduction of more than \$5,000 is claimed by the taxpayer.
  5. A \$10,000 penalty (in addition to any criminal penalties) is imposed on any person who identifies property as exempt use property knowing that the property is not intended for such a use.
- I. **Limitations for Gifts of Ordinary Income Property.** The amount of the charitable deduction for gifts of property, the sale or exchange of which would produce a gain, other than a long-term capital gain, is reduced by the amount of the non-long-term gain. IRC § 170(e).
1. Included in this category are: inventory, crops, dealer property and works created by the donor. In the case of a painting donated by the artist, for example, the deduction is limited to the artist's cost of materials.
  2. Note: This applies to property that would yield a short-term capital gain, as well as to property that would yield ordinary income.
  3. Normally, this means that if the asset is not a long-term capital asset, a charitable deduction is limited to basis (fair market value, less potential non-long-term capital gain).

## II. WHERE WE HAVE BEEN – AMERICAN TAXPAYER RELIEF ACT OF 2012.

### A. Significant Provisions of ATRA.

1. Increased income tax rates.
2. Increased tax rate for capital gains and qualifying dividends.
3. Extended tax benefits of IRA charitable rollover.
4. Extended tax benefits for gifts of conservation easements.
5. Extended enhanced tax benefits for gifts of food inventory.
6. Made “permanent” the estate, gift, and generation-skipping transfer tax rates and exemption amounts.
7. Also, remember the 3.8% surtax under Patient Protection and Affordable Care Act.

**B. Income Tax Rates for 2018 (without Tax Legislation).**

1. The top income tax rate for individuals making \$426,700+ in 2018 and families making over \$480,050+ in 2018 is 39.6% plus and the 3.8% surtax on investment income imposed by the Patient Protection and Affordable Care Act = 43.4%.
2. State taxes can increase the total tax rate to close to or more than 50%.
3. The increased incentive for income tax planning and use of the income tax charitable deduction to reduce taxes is obvious.

**C. Capital Gains (without Tax Legislation).**

1. For individuals making \$200,000+ and families making \$250,000+ the new rate is 18.8%. (15% plus the 3.8% surtax).
2. For individuals making \$400,000+ and families making over \$450,000+ the new rate is 23.8%. (20% plus the 3.8% surtax).
3. Charitable gifts of stock and other appreciated property avoid capital gains tax and the amount of tax avoided by such gifts will now be significantly higher.

**D. Pease Amendment (without Tax Legislation).**

1. The so-called "Pease Amendment" reduces deductions by an amount equal to 3% of adjusted gross income over \$266,700 in 2018 for individuals and \$320,000 in 2018 for families.
2. For example, if a family makes \$400,000 (which is \$100,000 more than the \$300,000 threshold), the family's total itemized deductions are reduced by \$3,000 (3% of \$100,000).
3. These amounts are adjusted for inflation.
4. This provision does not affect charitable giving as often as many believe because many taxpayers will have the same reduction with or without the charitable gift.

**E. Federal Transfer Taxes (without Tax Legislation).**

1. Exclusion amount is \$5 million adjusted for inflation (\$5.6 million for 2018).
2. The estate and gift tax are unified.
3. Per donee gift tax exclusion is inflation adjusted to \$15,000 for 2018.
4. Tax rate effectively a flat 40% for gift, estate, and generation-skipping transfer taxes.
5. Is repeal on the horizon??

**III. THE DRAFT TAX REFORM OF 2014 AND CHARITABLE GIVING.**

- A. Release of Draft.** On Feb. 26, 2014, Rep. Dave Camp (R-MI), the chairman of the U.S. House of Representative's Ways & Means Committee, released a discussion draft of a forthcoming "Tax Reform Act of 2014" (the "Draft"). The Draft's broad reforms include changes to the Internal Revenue Code that directly impact donors to charitable organizations.

**B. Itemized Deduction for Charitable Contributions.**

1. The provisions of the Draft simplify but impose additional limits on the itemized deduction for charitable contributions.
2. The Draft proposes several taxpayer-friendly changes to the itemized deduction for charitable contributions, but also imposes new limits on the deduction. Under the changes, taxpayers would be able to deduct charitable contributions made after the close of the tax year but before the due date of the return for that year (April 15 for calendar year taxpayers).
3. The Draft also simplifies the complex percentage limitations on the amount of the income tax charitable deduction that may be used in a tax year by imposing a single limit of 40% of adjusted gross income for both cash contributions and contributions of capital gain property to public charities and certain private foundations — gone are the 50% and 30% limitations. Similarly, the limitation for contributions to private foundations not covered by the new 40% limitation would be 25%, instead of the current 30% limitation for cash contributions and 20% limitation for contributions of capital gain property.
4. The Draft limits the income tax charitable deduction by imposing a 2% floor on charitable contributions and limiting the amount that can be deducted for a contribution of appreciated property to the donor's adjusted basis in the contributed property. Charitable contributions would be deductible only to the extent that they exceed 2% of the donor's adjusted gross income. This floor applies first to contributions subject to the new 25% limitation, then to qualified conservation contributions and finally to contributions subject to the new 40% limitation.
5. Contributions of property will generally result in a deduction equal to the donor's adjusted basis in the contributed property. However, contributions of certain types of property (including publicly traded stock) will still be deductible at fair market value, less any short-term capital gain or ordinary income that would have been recognized had the donor sold the property at fair market value.

#### **IV. HOUSE WAYS AND MEANS COMMITTEE'S TAX CUTS AND JOBS ACT OF 2017 (H.R. 1) RELEASED ON NOVEMBER 2, 2017.**

##### **A. Individual Income Tax Changes.**

1. Reduces current seven brackets of 10%, 15%, 25%, 28%, 33%, 35%, and 39.6% to four brackets of 12%, 25%, 35%, and 39.6%.
2. 39.6% bracket applies for income of \$1,000,000 or more for married taxpayers and \$500,000 as more for single taxpayers.
3. Increases the standard deduction for married taxpayers to \$24,000 (adjusted for inflation to \$24,400 for 2018) and \$12,000 for single taxpayers or \$18,000 with at least one qualifying child to be adjusted for inflation.
4. Repeals the personal exemption.
5. Repeals the alternative minimum tax.
6. Increases the 50% percentage limitation for cash gifts to public charities, private operating foundations, and conduit foundations to 60% and retains the five-year carryforward.
7. Repeals the 80% charitable deduction for amounts paid to purchase tickets to athletic events.
8. Provides for inflation adjustments to the mileage rate for miles driven in service to a charitable organization.

**B. Transfer Tax Changes.**

1. Exclusion amount is doubled to \$10 million as adjusted for inflation (or \$11,100,000 in 2018) for 2018 through 2022.
2. Repeals the estate and generation-skipping transfer tax as of 2023 and maintains the beneficiary's stepped-up basis in property inherited at death.
3. Lowers the gift tax rate from 40% to 35%.

**C. Exempt Organization Changes.**

1. Reduces the private foundation tax on net investment income from 2% to 1.4% and eliminates the reduced tax now permitted in certain circumstances.
2. Requires sponsoring organizations of donor advised funds to disclose their policy on inactive donor advised funds as well as the average amount of grants made from donor advised funds.

**V. EFFECTS OF TAX REFORM AND ECONOMIC FACTORS ON CHARITABLE GIVING.**

**A. Effects of Tax Reform.**

1. Have the income tax rates changed enough to affect a donor's charitable giving?
2. Have the income tax charitable deduction rules become more favorable for charitable giving?
3. Will donors still want to avoid capital gain taxes when faced with an income realization event or a desire for greater diversification?
4. If the estate tax is repealed, will donors prefer lifetime giving to capture available income tax benefits?
5. If the estate tax is repealed, will donors continue to give to charity at death?
6. Will desire to give back to community or advance a particular mission override tax motivations for charitable giving?

**B. Effects of Economic and Other Factors.**

1. For many people in the United States, philanthropy is important and, while their charitable giving may be impacted by tax uncertainties, as well as other economic factors, many people continue to give generously despite these uncertainties.
2. Current market conditions should favor charitable giving and, in particular tax efficient charitable giving through the use of appreciated property gifts.
3. Continued uncertainty in political and economic landscape may inhibit charitable giving.
4. Perceived and real cuts in government funding for certain programs and activities may be a motivating factor for some individuals to increase charitable giving as social needs increase.
5. There are certain gift techniques that are particularly attractive in the current low interest rate environment and others that require the exercise of greater caution.
6. Fluctuations in the section 7520 rate used to value many types of charitable gifts, including charitable gift annuities, charitable remainder trusts, charitable lead trusts, and remainder interests in personal residences or farms, can have a dramatic effect in certain circumstances on the amount

of a donor's income or transfer tax charitable deduction. The rates, which vary monthly, have ranged from a high of 11.6% in 1989 to a low of 1.0% in July, August, and September 2012. The rate for November 2017 is 2.4%.

7. Historically low section 7520 rates favor certain planned giving techniques, such as CLATs and gifts or remainder interests in residences or farms.
8. The low section 7520 rates make some gift techniques, such as charitable remainder trusts, inaccessible for certain younger donors and will impact a donor's charitable deduction.
9. Will we have added uncertainty due to rising interest rates?
10. Will rising interest rates make charitable remainder trusts more attractive for donors seeking tax benefits and avoidance of capital gains?

## **VI. WHY DO DONORS ENGAGE IN PHILANTHROPY?**

### **A. Impact of Tax Laws on Charitable Giving.**

1. No one gives to charity solely to get a tax deduction.
  - a. A person may refuse to make a gift if he or she cannot obtain a charitable deduction for tax purposes, but under today's tax rates, no one gives solely to get a deduction.
  - b. Some charitable motivations must be present before a person will give.
  - c. A charitable gift is unlikely to be made if it does not fit the donor's overall estate and financial planning objectives.
  - d. Many donors are not able to use the income tax charitable deduction due to percentage limitations or other reasons.
2. The complexity of the tax laws may discourage many donors.
  - a. Gifts in kind frequently require qualified appraisals and reporting requirements.
  - b. Predicting the exact taxes to be saved through a charitable gift is almost impossible.
  - c. More complex substantiation rules further complicate the availability of a charitable deduction for even the simplest gifts.

### **B. "The 2016 U.S. Trust Study of High Net Worth Philanthropy – Executive Summary"<sup>2</sup>**

1. **Contributions by High Net Worth Individuals.**
  - a. 91% of high net worth individuals donated to charity in 2015 as compared to 58.8% of the general population.
  - b. Average dollar amount given by high net worth individuals in 2015 was \$25,509 as compared to \$2,520 by the general population.
  - c. 28% of high net worth individuals plan to increase giving in the next three years.

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<sup>2</sup> Available at [http://www.ustrust.com/publish/content/application/pdf/GWMOL/USTp\\_ARMCGDN7\\_oct\\_2017.pdf](http://www.ustrust.com/publish/content/application/pdf/GWMOL/USTp_ARMCGDN7_oct_2017.pdf).



- d. 33% of high net worth individuals participate in impact investing and 34% of these do this in place of some of their charitable giving, while 5% do it in place of all charitable giving.

2. **Volunteering.**

- a. 50% of wealthy individuals volunteered their time and talents to charitable organizations they care about, which is about twice as many as in the general population.
- b. Volunteering is more fulfilling than giving.

3. **Tax Motivations for Giving.** Receiving tax benefits only motivated 18% of wealthy donors in 2015 as compared to 34% of donors in 2013.

4. **Personal and Altruistic Reasons for Giving.** The top three reasons for giving are:

- a. Belief in mission (54%)
- b. Belief that gift can make a difference (44%)
- c. Personal satisfaction, enjoyment, or fulfillment (39%)

5. **Challenges Faced by Wealthy Donors.**

- a. The greatest challenge faced by wealthy donors is identifying causes they care about and where to donate (67%).
- b. Other challenges include understanding how much they can afford to give (50%), allocating time to volunteer to organizations they care about (45%), monitoring giving to ensure it has its intended impact (37%), and structuring gifts in a tax-efficient manner (22%).

6. **Impact on Society.**

- a. When asked what has the greatest potential for positive impact on society, wealthy donors cited charitable giving (45%) and volunteering (31%) above all else.
- b. Political candidates that share their ideals was only 13%.

C. **Other Reasons Donors Give.**

- 1. Religious reasons.
- 2. Other high profile donors give to the organization.
- 3. Public recognition.
- 4. Appreciation of the organization, such as a hospital or college or university.
- 5. Emotional connection with organization's story and mission.
- 6. Family value.
- 7. Leave a legacy.
- 8. Share good fortunes or give back to the community.

9. Self image.
10. Encourage younger generations to give.
11. Reduce taxes.

## VII. USES OF TRADITIONAL PLANNED GIVING TECHNIQUES AND ASSETS IN CURRENT TAX AND ECONOMIC ENVIRONMENT.

### A. Gift Annuities.

1. In periods of low interest rates, many donors favor the security of fixed payments offered by a charitable gift annuity, as well as the simplicity of establishing a gift annuity.
2. With a gift annuity the donor transfers assets to a qualified charitable organization in return for the charitable organization's agreement to pay the donor or another beneficiary an annual annuity for life.
3. For income tax purposes the donor is entitled to an income tax charitable deduction equal to the difference between the fair market value of the property transferred and the value of the annuity contract. A portion of the income received by the donor will be taxable as ordinary income, while a portion may be exempt from federal income tax.
4. If the gift consists of appreciated property, the transfer is treated as a bargain sale (that is, part-gift, part-sale). Assuming the donor is the annuitant, any capital gains attributable to the sale portion of the gift are reported ratably over the donor's lifetime.
5. Many donors like the certainty of receiving an annual fixed amount. Of course, because a charitable gift annuity is a contract with a particular charity, the financial viability of the charity can present a risk to the donor. Any donor entering into a gift annuity arrangement with a charity should undertake appropriate due diligence before making the transfer to determine the financial stability and longevity of the charity.
6. The current low section 7520 rates significantly reduce the available charitable deduction.
7. But for a donor interested in tax-free income and not concerned with the amount of the charitable deduction, the low section 7520 rates have a significant and advantageous impact on the exclusion ratio.
  - a. The exclusion ratio is the amount of the annuity payments that will be excluded from income each year for federal income tax purposes.
  - b. **Example.** A 65-year old donor gives property in return for a 4.7% annuity. With a 7.0% section 7520 rate, the donor's charitable deduction is 55.7% of the value of the property transferred, and the exclusion ratio for the annuity payments is 47.08%. If the section 7520 rate is 1.0%, however, the donor's deduction decreases to 25.1%, while the exclusion ratio increases to 79.71%.
8. **Creative Uses of Charitable Gift Annuities.**
  - a. **Property Not Suitable for a Charitable Remainder Trust.** In many cases, a charitable remainder trust will not work to accomplish the donor's goals. For example, gifts of tangible personal property, such as artwork, to a charitable remainder trust do not produce any income tax deduction for the donor. But in many instances, the donor may not be willing to fully part with the value of the artwork that the donor would like to give to his favorite local museum. The museum also may not be willing to enter into a bargain sale arrangement because it would require an immediate significant expenditure of capital. This is the perfect situation for the donor and the museum to consider a gift

annuity to accomplish the goals of all the parties. Similarly, a charitable organization, such as a school, may want property owned by the donor adjacent to the school's property. Again, if the donor does not want to part with the full value of the property or is concerned about future financial security, a gift annuity may work to meet the goals of both the donor and the school. Mortgaged property can create a host of problems when contributed to a charitable remainder trust due to the self-dealing rules and the unrelated business income tax. In appropriate circumstances, a gift annuity may avoid these problems. The self-dealing problem can never arise if a public charity is involved. In certain circumstances, the unrelated business income rules can be avoided as well. Basically, if a charitable organization accepts mortgaged property for a gift annuity, it will have debt-financed income unless the mortgage was placed on the property more than five years before the inter vivos transfer, and the donor owned the property more than five years before the transfer. In this case, the mortgage is not considered acquisition indebtedness for a 10-year period following the transfer. Of course, the donor's charitable gift is valued by deducting the amount of the encumbrance. Any capital gain attributable to the donor as a result of the transfer of the mortgage probably cannot be reported ratably.

- b. **Planning for Retirement.** Many donors are concerned about their financial security when they are older, but want immediate income tax deductions. Because of the unavailability of the IRA deduction for many individuals and the limits on the amount that can be placed in a qualified retirement plan under current tax laws, a deferred gift annuity may be useful to enable the donor to ensure future financial security during the donor's retirement years, while obtaining a current income tax deduction in years when the donor's taxable income is likely to be higher. The benefits of the gift annuity are even greater in this scenario because the deferral may generate a larger income for the donor, and the charitable organization is likely to be willing to pay a larger annuity when payments commence.
- c. **Planning for the Elderly or Incapacitated.** An immediate or deferred gift annuity can be used to provide for an individual, such as a relative or family employee, whom the donor wishes to provide for during the person's life, when the donor also wants to make a gift to a particular charitable organization. Of course, this technique is probably best suited for cash gifts because the donor will not be able to recognize any capital gain ratably if the donor is not an annuitant. The gift tax consequences of the arrangement will also need to be examined when advising the donor.
- d. **Combined with Gift of Remainder Interest in Personal Residence or Farm.** It may be possible to combine two gift techniques. The donor can give the charitable organization a remainder interest in a personal residence in return for an annuity. As long as the value of the remainder exceeds the value of the lifetime annuity, the donor is entitled to an income tax charitable deduction. Note, though, that the charitable organization may not be willing to do this because payments commence immediately while the charitable organization will not receive any property until the donor's death.
- e. **Testamentary Gift Annuities.** A testamentary gift annuity for the life of a family member, spouse, or family employee may be appropriate for certain donors. An estate tax deduction is allowed as long as the will or trust agreement properly defines the amount of the annuity to be paid. The Internal Revenue Service will disallow a deduction if the annuity cannot be ascertained. If the estate uses appreciated property to fund the bequest to charity, the estate will incur capital gains under the bargain sale rules. The gain will be fully recognized in the year of the transfer because the ratably recognition rule is unavailable.

**B. Gift of a Remainder Interest in Personal Residence or Farm.**

1. Unlike most planned giving vehicles where the donor retains an interest and which are adversely affected for donor deduction purposes by low section 7520 rates, the charitable deduction for a gift of a remainder interest in a personal residence or farm is enhanced by a lower section 7520 rate.
2. The federal tax laws allow a charitable deduction for income, estate, and gift tax purposes for a charitable gift (not in trust) of a donor's personal residence (including a vacation home or second residence) or farm, even though the donor retains an interest in the property for life or a term of years. The donor may either retain a life estate or give one to others, and the life estate may be for one or more lives. IRC § 170(f)(3).
3. Many donors have charitable commitments but do not want to dispose of liquid assets. Others continue to be wary of large transfers to charity as a result of tax and economic uncertainty.
4. For a donor interested in satisfying a charitable commitment or obtaining an income tax charitable deduction currently, a gift of a remainder interest in a personal residence or farm may be appropriate as it will have little, if any, immediate impact on the donor's lifestyle and liquidity.

**C. Charitable Remainder Trusts.**

1. Although charitable remainder trusts remain attractive for donors who wish to avoid capital gains on appreciated property, particularly for those facing an income realization event, the low interest rate environment will require the exercise of caution.
  - a. To be qualified charitable remainder trust, the value of the charitable remainder interest upon the creation of the trust must be at least 10%.
  - b. The valuation of the interests in a charitable remainder unitrust is not affected significantly by the section 7520 rate, but the 10% remainder requirement can still cause issues. With a 2.2% section 7520 rate, a unitrust cannot be established for the life of an individual under age 27. Also, in the case of the two-life unitrust, if both individual beneficiaries are the same age, a unitrust cannot be established unless the beneficiaries are at least 39 years old with a 2.2% section 7520 rate.
  - c. But charitable remainder annuity trust valuations are impacted by the section 7520 rates. With a 2.2% section 7520 rate, a husband and a wife who are the same age and are to receive the annuity amount must be older than 64 to establish a charitable remainder annuity trust that does not violate the 10% remainder requirement. A trust for a single individual beneficiary will violate the 10% remainder requirement if the section 7520 rate is 2.2% unless the individual beneficiary is 57 or more years old.
2. While charitable remainder trusts may not look favorable from an income tax charitable deduction standpoint when the section 7520 rates are low, donors with existing charitable remainder trusts may want to consider a gift of their unitrust or annuity trust interest. This is appropriate for a donor who no longer needs the income from the charitable remainder trust and wishes to make a current contribution to the charitable remainderman.
3. The donor will be entitled to an income tax charitable deduction for the current value of the annuity or unitrust interest (which for some annuity trusts could be as much as 100% of the value of the trust assets), and the charitable remainderman will be able to use the assets in furtherance of its mission immediately.
4. **Income Tax Planning.**
  - a. Avoidance of capital gain on appreciated assets.
  - b. Income tax deduction without loss of income stream.

- c. Early termination.

5. **Unique Assets or Circumstances.**

- a. Retirement assets and testamentary charitable remainder trusts.
- b. Deferral of philanthropic planning.
- c. Short-term trust to control sale of assets.

6. **“Flip” Charitable Remainder Unitrusts.**

- a. The regulations allow the creation of a net income charitable remainder unitrust (whether with or without a makeup provision) that converts to a straight percentage charitable remainder unitrust upon the occurrence of a specified event. Treas. Reg. § 1.664-3(a)(1)(i)(c). Under these rules, a net income charitable remainder unitrust may convert to a straight percentage unitrust (using the same percentage) if the governing instrument of the charitable remainder unitrust meets the following requirements:
  - (1) The change from a net income unitrust to a straight unitrust must be triggered on a specific date or by a single event whose occurrence is not discretionary with, or within the control of, the trustee or any other person (referred to as the “triggering event”).
  - (2) The change from a net income unitrust to a straight unitrust must occur at the beginning of the taxable year of the unitrust that immediately follows the taxable year during which the triggering event occurs. Under this rule, if the triggering event occurs on July 1, 2018, the conversion of the unitrust to a straight unitrust must occur on January 1, 2019.
  - (3) Following the conversion in the case of a net income unitrust with a makeup provision, the unitrust’s governing instrument must provide that any makeup amount not paid as of the conversion date is forfeited.
- b. These new flip unitrust rules are extremely broad and significantly enhance the planning opportunities available when establishing a charitable remainder unitrust for a donor.

7. **Planning with “Flip” Charitable Remainder Unitrusts.**

- a. In the past, the use of a charitable remainder trust as a charitable gift technique had become fairly routine without much consideration given to planning opportunities presented beyond the immediate income tax benefits. Typically, the only decisions required were whether to use a charitable remainder annuity trust or a charitable remainder unitrust, the amount of the payout to the noncharitable beneficiary, and the timing of the payments to the noncharitable beneficiary. If a charitable remainder unitrust was selected, it was necessary to decide whether the unitrust should provide for payment of a straight percentage or the lesser of the net income or the set percentage. If a net income charitable remainder unitrust was selected, it was also necessary to decide whether to include a makeup provision. Because the options were somewhat limited, establishment of the charitable remainder trust and preparation of the trust agreement were fairly straightforward, and reliance on forms was the norm.
- b. With the advent of the flip unitrust, traditional approaches to the establishment of a charitable remainder trust no longer work. Planned giving officers, lawyers, and other advisors to individuals desiring to establish charitable remainder trusts must now explore more fully the estate planning objectives and goals of the donor. Depending upon these objectives and goals, more attention must also be given to the drafting of the actual terms of the charitable remainder trust agreement. But, the charitable remainder unitrust is now

a much more flexible estate planning tool. While there are certain obvious uses for a flip unitrust, there are also a myriad of circumstances for using flip unitrusts to accomplish the unique objectives and goals of the donor that are not so obvious.

- c. The wide range of planning opportunities associated with a flip unitrust arises from the broad definition of a “triggering event” under the final regulations. Treas. Reg. § 1.664-3(a)(1)(i)(d). It is the triggering event that causes the flip unitrust to convert from a net income charitable remainder unitrust (whether with or without a makeup provision) to a straight charitable remainder unitrust. The actual conversion to a straight charitable remainder unitrust will occur on January 1 of the first taxable year after the year in which the triggering event occurs.
  - (1) The final regulations offer a number of examples of permissible triggering events. Treas. Reg. § 1.664-3(a)(1)(i)(d). A specific date is a permissible triggering event.
  - (2) A single event whose occurrence is not discretionary with, or within the control of, the trustee or any other person is a permissible triggering event.
  - (3) The sale of an unmarketable asset or the marriage, divorce, death, or birth of a child with respect to any individual are permissible triggering events. Unmarketable assets include real estate, closely held stock, or unregistered securities for which there is no available exemption permitting public sale under the rules of the Securities and Exchange Commission.
- d. The regulations also set forth a number of examples that illustrate the breadth of the definition of a permissible triggering event. Permissible triggering events under these examples include the sale of a personal residence, the attainment of a certain age by the noncharitable beneficiary of the flip unitrust, the marriage or divorce of the noncharitable beneficiary, the birth of the first child of the noncharitable beneficiary, and the death of the noncharitable beneficiary’s father. Treas. Reg. § 1.664-3(a)(1)(i)(e).

## **8. Use of Flip Unitrust for Unmarketable Assets.**

- a. The most obvious use of a flip unitrust is in connection with a gift of an illiquid or unmarketable asset, such as real estate or closely held stock. In the past, charitable remainder trusts funded with these types of assets were typically structured as net income (either with or without a makeup provision) charitable remainder unitrusts. This approach was necessary to enable the charitable remainder unitrust to satisfy the payout requirements to the noncharitable beneficiary during the time before the unmarketable asset was sold. Under recent market conditions, however, the sale of the unmarketable asset did not usually result in payment of the full straight percentage to the noncharitable beneficiary following the sale without an investment approach that favored the generation of income. This type of investment approach often conflicted with the long-term objective of growth, which would have resulted not only in benefits to the charitable remainderman, but also to the noncharitable beneficiary in the form of higher payouts over time.
- b. Use of a flip unitrust when dealing with an unmarketable asset, with the triggering event defined as the sale of the unmarketable asset, will avoid problems associated with a net income unitrust and allow the assets of the unitrust to be invested for total return following the sale of the unmarketable asset. The flip unitrust enables the initial problems associated with funding a charitable remainder trust with unmarketable assets to be handled during the period before the unmarketable asset is sold, but has solved the long-term problem associated in the past with net income charitable remainder unitrusts and an investment strategy designed to produce income. Now, if a flip unitrust is used, the trust assets can be invested for growth or total return following the sale of the

unmarketable asset to the ultimate benefit of not only the charitable remainderman, but also the noncharitable beneficiary of the charitable remainder unitrust.

- c. If the flip unitrust is structured initially as a net income with a makeup provision and post-contribution appreciation is allocated to income under the terms of the trust agreement, it may also be possible to ensure that the noncharitable beneficiary receives some of the unitrust amount accrued while the unitrust owned the unmarketable asset before this amount is forfeited following the conversion to a straight unitrust on January 1 of the year following the year in which the triggering event occurs.
- d. Example. Donor establishes a flip unitrust and funds the unitrust with unimproved real estate on January 1, 2018. The flip unitrust provides that the Donor is to receive the lesser of the net income of the unitrust or 6% of the value of the trust's assets as valued each year until the year following the year in which the real estate contributed to the unitrust is sold. The flip unitrust also provides that post-contribution appreciation is to be included in income or purposes of determining the payments to the Donor before the conversion of the unitrust to a straight unitrust. At the time the flip unitrust is funded the real estate is valued at \$100,000. The real estate is sold on December 30, 2020 for \$150,000. The accrued unitrust amount through 2020 is \$18,000. Because post-contribution appreciation is allocated to income, the trustee has \$50,000 of income in 2020, which amount can be used to pay the Donor the accrued unitrust amount of \$18,000. Beginning on January 1, 2021, the unitrust will pay the Donor 6% of the fair market value of the trust assets as revalued each year.
- e. Because of the unique benefits of the flip unitrust when dealing with unmarketable assets, it is likely that the flip unitrust will supplant the net income charitable remainder unitrust and become more widely used. Of course, there may still be situations where the donor may prefer a net income charitable remainder unitrust instead of a flip unitrust, particularly if income is defined to include post-contribution appreciation as now permitted under the final regulations. For these reasons, it will be necessary for the donor's advisors to review the possible choices with the donor in greater detail to insure that the form of charitable remainder unitrust chosen meets the donor's objectives and goals.

## 9. **Use of Flip Unitrusts for Retirement Planning.**

- a. Another significant planning opportunity associated with the flip unitrust is in connection with planning for the donor's retirement. In the past, net income charitable remainder unitrusts have been promoted as an effective technique for retirement planning in conjunction with a charitable gift. Under this technique, the donor would contribute assets to a net income charitable remainder unitrust during a year when the donor's income was high, thereby obtaining an immediate income tax charitable deduction to reduce the donor's income taxes. Then, through a choice of an investment strategy designed to minimize income and maximize growth while the donor was still earning significant income, the income received from the net income charitable remainder unitrust during the employment years was limited. Upon the donor's retirement, the investment strategy of the charitable remainder unitrust would be changed so as to favor income in the years following retirement. While this technique could work in certain circumstances, its success depended in part upon market conditions, which are not always predictable. There have also been concerns in the past that the manipulation of the investments to favor the donor's income needs could be considered self-dealing under Internal Revenue Code section 4941.
- b. The flip unitrust is an excellent alternative to the net income unitrust in connection with retirement planning for the donor. The triggering event in the flip unitrust would be either a set date or the date upon which the donor attains a certain age, such as age 65. Before that time, the unitrust would be invested for growth or total return and the donor would receive the actual income earned by the charitable remainder unitrust under the net

income limitation. Upon the conversion of the flip unitrust to a straight charitable remainder unitrust, the donor will begin receiving a straight percentage of the value of the trust assets as revalued each year. Thus, the donor's retirement objectives have been met without having to alter the unitrust's investment strategy to achieve these goals. The investment of the trust assets for total return throughout the donor's lifetime should also have the added advantage of generating a higher unitrust amount in later years assuming the assets increase in value during the term of the unitrust.

- c. The use of a flip unitrust for retirement planning again illustrates the need for the donor's advisors to explore the donor's objectives when establishing the unitrust. In the case of a donor who is still working, the advisors should point out the potential benefits associated with the use of a flip unitrust tied to the donor's anticipated retirement date. (Note that the triggering event should not be defined as the donor's retirement as this could be deemed to be an event that is discretionary with the donor. Instead, the triggering event should be defined as a specific date or the date upon which the donor attains a certain age.)

- 10. **Use of Flip Unitrust to Meet Estate Planning and Income Objectives.** Because of the broad range of possible triggering events, there is a greater need to explore the donor's particular objectives when establishing a charitable remainder unitrust, even if the trust is funded with marketable assets or the donor is not concerned about retirement. There are a number of circumstances where the flip unitrust may be advisable or prudent for the donor. Planning with the flip unitrust will require a great deal of attention to the specific circumstances of the donor and greater creativity when structuring a charitable remainder unitrust to meet the objectives and goals dictated by the donor's unique circumstances. Examples of the types of situations where a flip unitrust may be useful or advisable include:

- a. Planning for Surviving Spouse. Many donors are not concerned about their income needs while they are living, but instead worry that their spouses may need greater income following their deaths. In these circumstances, the donor should consider a flip unitrust, with the surviving spouse as a noncharitable beneficiary and the triggering event defined as the donor's death.
- b. Planning for a Child. Many donors worry that their children may not have the necessary financial resources in the event of certain occurrences during their children's lives, such as divorce or birth of a child. In these circumstances, the donor may consider a flip unitrust, with the child as a noncharitable beneficiary and the triggering event defined as the child's divorce or the birth of the child's first child. Other possibilities would include defining the triggering event as the death of the donor or the death of the child's spouse to ensure that the child is adequately provided for following the donor's death or the death of the child's spouse.
- c. Planning for Education. Many donors have provided funds for grandchildren's education under favorable gift tax provisions. Often, there are younger grandchildren who are not yet of school age. If the donor is concerned that he may not be living when the grandchild reaches school age, the donor may consider a flip unitrust for a term of years with the triggering event defined as the date the grandchild reaches a certain age. Particular care should be taken to examine the transfer tax ramifications upon the creation of the trust.
- d. Planning for Uncertainty. Many donors do not have a current need for income but worry about a possible need for income in the future. In these circumstances, a flip unitrust may be advisable with a triggering event tied to an event such as involuntary termination of employment or total disability. The examples under the final regulations also make it clear that it is permissible to use a triggering event tied to the sale of an unmarketable asset even when other assets of the unitrust consist of marketable assets. Because it may not be possible to plan for an unknown event, some flexibility could be created by funding a flip unitrust with marketable assets and one unmarketable asset, such as real



estate or a share of closely held stock and defining the triggering event as the sale of the unmarketable asset. If the donor had a need for greater income in the future, the trustee could then sell the unmarketable asset to trigger a conversion of the unitrust from a net income charitable remainder unitrust to a straight charitable remainder unitrust.

**D. Charitable Lead Annuity Trusts.**

1. While charitable lead annuity trusts are not affected significantly by fluctuations in the section 7520 rate, charitable lead annuity trusts are affected by the section 7520 rate – lower rates generally increase the value of the charitable lead interest.
2. With a charitable lead annuity trust a fixed amount is paid to a charitable beneficiary for either a term of years or during someone's lifetime. Upon expiration of the term, the remaining assets of the trust pass to the donor's designated beneficiaries (usually children in the case of a charitable lead annuity trust because of GST tax considerations).
3. Unlike charitable remainder trusts, there are no limits on the number of years of the charitable term and no minimum or maximum annuity amount.
4. While the donor is not entitled to an income tax charitable deduction upon the establishment of the charitable lead annuity trust unless it is structured as a grantor trust for federal income tax purposes, the donor is entitled to an estate or gift tax charitable deduction for the value of the charitable lead interest.
5. Assuming the charitable lead annuity trust is a nongrantor trust, the trust will be entitled to an income tax charitable deduction each year for amounts of its gross income paid to charity under the terms of the trust agreement.
6. Because the present value of the remainder interest (that is the transfer to the children) factors in the delay in the children's receipt of and control over the trust assets, these assets are valued at a discount resulting in a smaller transfer or gift to the children.
7. Although the value of the charitable interest is limited to the value of the property transferred to the trust, it is possible for a donor to create a charitable lead annuity trust with a charitable interest equal (or nearly equal) to the value of the property transferred to the trust.
  - a. With these so-called "zeroed out" charitable lead annuity trusts, the remainder interest passing to the noncharitable beneficiaries would be equal to zero or of nominal value, and the donor would make no (or a nominal) transfer for gift or estate tax purposes as a result of the creation of the trust.
  - b. With lower section 7520 rates, the remainder interest can be reduced to zero with shorter terms and lower payouts than would be the case at higher section 7520 rates.
  - c. The following table shows payout rates and trust terms that "zero out" the remainder value in a charitable lead annuity trust assuming a 2.4% section 7520 rate and quarterly payments made at the end of each quarter to charity.

## CHARITABLE LEAD ANNUITY TRUST FOR TERM OF YEARS

### Payout Rates to Zero Out or Produce Nominal (Unitrust) Remainder Value

<u>Term of Years</u>	<u>Annuity Payout Rate</u>
10	11.266%
15	7.946%
20	6.297%
25	5.318%
30	4.672%

- d. With a zero'd out charitable lead annuity trust, if the trustee's investment of the transferred assets yields a higher return than the section 7520 rate during the trust term, the excess return passes to the children free from transfer tax.
- e. **Example.** Donor wishes to contribute \$100,000 annually to her favorite charities for 20 years. She transfers \$1,588,058 to the trust and directs annual charitable payments of \$100,000 (or 6.297% of the value of the initial assets contributed to the trust). At the end of the 20-year term, the trust assets are to be distributed to her daughter. Assuming the section 7520 rate is 2.4%, Donor is entitled to a gift tax charitable deduction equal to the amount transferred to the trust, and there is no gift to the daughter for gift tax purposes. During the 20-year trust term, the trust assets earn an annual return of 6%. At the end of the charitable term, the trustee will distribute remaining assets, worth \$1,331,790, to Donor's daughter, free of transfer tax. If the trust earns an annual return of 7%, the distribution to Donor's daughter will be \$1,938,121.

#### 8. CLAT with Increasing Payout.

- a. The IRS forms for CLATs provide that the "governing instrument of a CLAT may provide for an annuity amount that is initially stated as a fixed dollar or fixed percentage amount but increases during the annuity period, provided that the value of the annuity amount is ascertainable at the time the trust is funded." Rev. Proc. 2007-45, 2007-9 I.R.B. 89, Sec. 5.02(2).
- b. One alternative is to vary the payout rate by steadily increasing it over the term. This method of payment still qualifies as a guaranteed annuity, because the amount received by the charity may be calculated as of the date of the initial transfer. This method allows the trust's growth to be sheltered from depletion during the early years of the trust. For example, assume \$50 million is contributed to a CLAT with a term of 20 years, the IRC § 7520 rate is 2.0%, and the payout rate starts at \$363,000 and increases by 20% each year. With a 4% growth rate, the charity receives a total of \$67,768,380 (compared to \$61,160,000 with a straight percentage payout of 6.116% to zero out the remainder), while the remainder interest is \$27,548,095 (compared to \$18,494,793 with a straight percentage payout). The IRS approved a CLAT with an ascending annual annuity payment in Ltr. Rul. 201216045.
- c. Another alternative is to provide a low, steady payout rate until the last year of the term when the charity receives a balloon payment (commonly referred to as a shark-fin CLAT). There has been no definitive guidance issued by the IRS regarding the ability to back load a CLT.

**E. Private Foundations.**

1. Individuals with significant philanthropic goals and a desire to remain in control may wish to establish a private foundation as a permanent vehicle for their charitable giving.
2. A private foundation provides an individual with the maximum degree of control and flexibility with respect to use of his or her assets for charitable purposes both during the life and after death.
3. A private foundation can be organized as either a corporation or a trust. Under either form, the individual who establishes the foundation can set forth his or her preferences for future charitable giving in as much detail as desired. The individual can outline a comprehensive giving program for the foundation when established, which can be modified over time or leave decisions to the discretion of the foundation's governing body. The individual can retain this decision-making authority and designate the person or persons who will have this authority after death.
4. While private foundations are subject to a number of tax rules and income tax charitable deduction limitations that are less favorable for gifts to charity, these are usually not an impediment.
  - a. The private foundation rules (self-dealing, minimum distribution requirements, excess business holdings, tax on net investment income, jeopardy investments, and taxable expenditures) have been around since 1969 and have not changed significantly. This certainty can be a positive factor for a donor. *See* IRC §§ 4940 – 4946.
  - b. Private foundations can be funded through charitable lead trusts (which are usually not established to obtain income tax benefits) thereby eliminating concerns about the limitations on the income tax charitable deduction for gifts to private foundations.
  - c. Donor or family control is usually the overriding factors in the decision to establish a private foundation.
5. Private foundations can also carry out activities beyond traditional grant-making often on a tax favorable basis, such as mission or impact investing and program-related investments.
6. Private foundations can also carry on direct charitable activities and may qualify as a private operating foundation. Private operating foundations are treated as public charities for purposes of the income tax charitable deduction.
7. Private foundations can be used to:
  - a. Coordinate the family's philanthropy.
  - b. Obtain an income tax deduction at year-end even if philanthropic objectives and uses of the donated funds have not yet been developed.
  - c. Maintain the family's philanthropic tradition.
  - d. Bring family together.
  - e. Keep family history alive.
  - f. Train younger generations in investments and philanthropy.
  - g. Achieve niche charitable objectives.

**F. Retirement Benefits.**

1. Retirement benefits are potentially subject to both estate and income tax upon the death of the participant. The designated beneficiary of the benefits will be subject to income tax on

distributions from the retirement account after the death of the participant. The benefits also are subject to estate tax unless they are paid to a surviving spouse. In that case, they will be subject to tax at the spouse's subsequent death.

- a. Because of this excessive tax burden, retirement benefits are viewed as good assets to leave to charity. Even if an individual is not charitably inclined, having a charitable remainder trust as the beneficiary of retirement benefits can minimize the tax cost and ultimately leave the family in a better financial position. The estate will be entitled to a charitable deduction for the value of the interest that will pass to charity. The trust will be tax-exempt, so it will not owe income tax upon receipt of the benefits. (Note, however, that any excise tax on excess accumulations will still be due.)
- b. The payment of retirement benefits to a charitable remainder trust often makes the most sense when the participant in the plan is widowed or not married, so the beneficiary otherwise would bear the full brunt of the income tax and estate tax. If the beneficiary is a child or other family member in a lower generation and he or she lives to his or her normal life expectancy, it is likely that the increased amount that can be paid annually to the beneficiary from the charitable remainder trust as a result of the tax savings will offset the "loss" of the property to charity at the beneficiary's death.

## 2. Designating a Charitable Entity as Beneficiary.

- a. If a charity is the designated beneficiary of a qualified plan or IRA, it can collect the proceeds upon the participant's death without incurring income tax, by virtue of the charity's tax-exempt status. From an income tax standpoint, the benefit to the decedent's estate and beneficiaries is similar to the benefit obtained from donating appreciated marketable securities to a charity—the charitable gift is satisfied in part with unrealized taxable income, so the federal government in effect pays for part of the contribution.
- b. **Example.** Client has an estate consisting of a \$500,000 life insurance policy and \$500,000 in a qualified plan. He wants to leave half of his estate to his spouse and half to charity. Assume he designates his wife as beneficiary of the qualified plan, and she takes a distribution of the entire amount. Using a 40% income tax rate, she has \$300,000 left after taxes. Assume instead that he designates the charity as beneficiary of plan, and leaves the life insurance to his wife. The charity receives the plan benefits and pays no income tax. His wife receives \$500,000 in insurance proceeds.
- c. In addition, the decedent's estate will receive an estate tax charitable deduction for the value of the proceeds given to charity.
- d. A charitable gift of qualified plan or IRA proceeds should not be accomplished by using the account proceeds to satisfy a pecuniary bequest to charity in the will or revocable trust. As is the case with other kinds of income in respect of decedent, use of a qualified plan or IRA to fund a pecuniary bequest will cause immediate recognition of income.
  - (1) Instead, the charity should be named as the designated beneficiary or one of the designated beneficiaries of the plan or IRA.
  - (2) The practitioner should make sure the client is aware that the plan or IRA designated to pass to charity could be depleted if the client lives past the RBD and must withdraw funds. If the client wants to be sure that the charity receives at least a specified amount, then a contingent make-up gift can be added to the client's estate plan.
  - (3) **Example.** Client has an IRA worth \$100,000, which he wants to leave to his alma mater. He wants to make sure that the college receives at least \$75,000, to fulfill a capital campaign pledge he made. Client designates the college as beneficiary of the IRA, and adds a bequest to his will that leaves to the college

the sum of \$75,000, reduced (but not below zero) by the value at his death of any IRA on which the college is the designated beneficiary.

- (4) The client also may be concerned that the charity will receive too much if the qualified plan or IRA grows in value. In this case, the client could create a separate IRA account with the amount of property he wants the charity to receive. Each year, if the separate account has excess funds, he can direct an account-to-account transfer of those funds to his other IRA account.
  - (5) **Example.** Client has a \$1,000,000 IRA and wants to use \$250,000 of it for a testamentary gift to a local hospital. He creates a new IRA account with \$250,000. At the end of each year, if the account exceeds \$250,000, he directs that the excess be transferred back to his original IRA account.
  - (6) A client doing this should be sure to have a power of attorney in place which would direct his agent to make these transfers if the client becomes disabled.
- e. One of the entities that can be designated as beneficiary of a qualified plan or IRA is a charitable remainder trust (CRT). An individual could designate a CRT as beneficiary in order to permit a spouse or other relative to receive benefits from the retirement account while still benefiting charity.
  - (1) The CRT itself is a tax-exempt entity. It will not pay income tax upon collecting the qualified plan or IRA benefits. IRC § 664. The annuity or unitrust distributions to the CRT beneficiary will carry out the taxable income represented by the benefits, but possibly on a more favorable basis than if the benefits were payable directly to the beneficiary.
  - (2) The individual's estate also will receive an estate tax deduction for the charitable portion of the CRT.
- f. If the client is considering a CRT for a spouse, he also should consider the alternative of designating a QTIP trust as beneficiary, with the remainder interest of the trust passing to charity. There are several differences between the two options:
  - (1) The QTIP trust provides the opportunity to make additional funds available to the spouse, through principal distributions. The annual distribution is not a fixed amount, as it is in a CRT.
  - (2) On the other hand, greater distributions from a marital trust will mean that more income tax will be incurred as benefits are distributed.
- 3. In most cases, it is not possible to avoid income tax on lifetime distributions from a qualified plan or IRA by "donating" the plan to a charity. The donation would be treated as a distribution taxable to the participant, followed by a charitable gift.
  - a. However, clients who are considering making substantial withdrawals from a plan or IRA (for example, to keep the account below the level at which the excise tax could start to apply) should consider creating a CRT in the year of the withdrawal to provide a charitable deduction that will help offset the additional taxable income.
  - b. The IRA charitable rollover rules allow an exclusion from gross income for certain otherwise taxable IRA distributions from a traditional or Roth IRA in the case of qualified charitable distributions.
    - (1) Qualified charitable distributions are any distributions up to \$100,000 per year from an IRA made directly by the IRA trustee to a qualified charitable organization if the IRA owner has attained age 70½.

- (2) The exclusion is not available for a distribution to fund a charitable remainder trust, pooled income fund, or charitable gift annuity.
- (3) A qualified charitable organization is one described in section 170(b)(1)(A) other than a supporting organization or a donor-advised fund. Contributions to private foundations do not qualify for the exclusion.
- (4) The IRA owner is not entitled to an income tax charitable deduction under section 170 for any amount excluded from gross income under this provision.

**VIII. ARE WE HAVING THE RIGHT CONVERSATION WITH OUR PHILANTHROPICALLY MOTIVATED CLIENTS IF WE ONLY FOCUS ON TAX BENEFITS?**

**A. Focus on Nonphilanthropic Objectives.**

- 1. Use of techniques that accomplish estate planning objectives, such as flip charitable remainder unitrusts and gift annuities.
- 2. If no estate tax, is philanthropy still important to the donor?
  - a. Many do not want to transfer substantial wealth to children and grandchildren.
  - b. Many have desire to give back.

**B. Other Options for Consideration if No Tax Motivation.**

- 1. Impact investing and place-based philanthropy.
- 2. Crowdfunding and other nontraditional means of giving.
- 3. Use of noncharitable entities such as 501(c)(4) organizations or limited liability companies.