charitable giving that's not taxing

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'Tis the season for charitable giving. A recent study showed that most charities receive half of their contributions in the last three months of the year with a staggering 40 percent in the month of December alone.

While giving is a reward in itself, with federal and state income taxes at 40 percent or more and state and federal taxes on capital gains at 22 percent or more, taxes and tax planning are always important considerations when making a donation. Although there are numerous ways to give to charity from simple, direct gifts to complex trust arrangements, here are three effective techniques you should consider as the end of the year approaches.

Gifts of Appreciated Property

A gift of appreciated property (i.e. property that you've held for one year or more and that is worth more than what you paid for it) can often times benefit both you and the charity more than simple cash gifts.

Gifts to public charities of appreciated property allow you to claim an income tax deduction for the fair market value of the property without being subject to capital gains tax if you were to first sell the property. Also, because charities are tax exempt, they won't have to pay capital gains tax upon the sale of the appreciated property, meaning that all of the proceeds are available for charitable purposes.

For example, if you had stock worth $10,000 that you held for more than one year with a basis of $1,000 and you sold it, you would be subject to roughly $2,000 of capital gains tax. If you then donated the net proceeds of $8,000 to charity, you would receive a tax deduction of $8,000. In the end, you would receive a tax deduction worth up to $3,300 in current income tax savings and the charity would receive $8,000. If, however, you donated the stock directly to charity, you could receive a tax deduction for the full $10,000, worth up to $4,200 in tax savings, and the charity receives the full $10,000.

By donating appreciated property to charity, you can give more to charity and save yourself more in taxes. As always, you should check with your tax preparer to see if you are subject to any limitations

on deductibility. It is also important to make sure the charity you are giving to is a "public charity" that allows fair market value deductions for appreciated property as opposed to private foundations which may limit your deduction to your basis.

Charitable Remainder Trusts

Cash or appreciated property can also be used to fund a charitable remainder trust (a CRT). A CRT is an irrevocable trust utilized by donors who do not want to surrender the entire interest in an asset during their lifetimes. CRTs are sometimes referred to as split-interest trusts because the donor retains the income during life and the charity(ies) receive the remainder of the CRT assets on the donor's death.

CRTs are intended to convert appreciated assets into a current or deferred income stream without generating either current capital gains or estate taxes on those assets at death, although the donor will likely pay tax on the income as it is received.

When the CRT is established, the donor receives a charitable tax deduction (usually equal to about 10 percent of the value of the assets contributed to the CRT) and receives an income stream either for life or a set term of years (not to exceed 20). The charity or charities named in the trust document receive the CRT's remaining assets upon the donor's death or at the end of the term of years.

For example, donors, both age 65, transfer $100,000 of appreciated assets to a CRT. The trustee of the CRT then sells those assets, though no tax is due because the CRT is tax exempt. The donors retain the right to receive 9 percent of the value of the CRT each year for their joint lifetimes, which is taxable to them each year. Upon the death of both donors, any assets remaining in the CRT pass to the charity(ies) designated by them.

There are two basic types of CRTs. A charitable remainder unitrust pays the beneficiary a fixed percentage of the fair market value of the trust assets, determined annually. A charitable remainder annuity trust pays the beneficiary a fixed dollar amount annually regardless of the value of the assets.

It's important to note that while the percentage or the amount of the payout is fixed, ultimately the CRT must generate a sufficient return on its assets or the CRT's funds could be extinguished.

Donor Advised Funds

Donor advised funds are a convenient and flexible way to give to charity. Large mutual fund companies typically facilitate donor advised funds by enabling contributions to charitable investment pools that the companies manage. You can make an immediate tax deductible contribution based upon the fair market value of the contribution without having to designate a specific charity right away. Later on you can advise how and when the funds should disburse the gifts to specific charities. Donor advised funds allow for an ongoing philanthropic program without the taxes and administrative burden of a private foundation.

Since the IRS classifies most donor advised funds as public charities, donors can claim tax deductions at the higher public charity levels. These funds permit payouts to charities over a period of years, with the deduction taken in the year the gift is made. Donor advised funds offer a relatively simple and hassle-free way to accomplish your charitable goals. In addition, responsibility for advising the fund can be shared by your family and, in some cases, passed on to your heirs.

Donor advised funds are subject to certain rules. Gifts to donor advised funds are irrevocable, and the donor can only advise the fund regarding investments and recipients of gifts. The fund has the ultimate responsibility for making the decision. Also, a donor should not propose a gift for which he would receive any direct or indirect benefit.

General Considerations

Any time you make a charitable contribution, it's important to remember the following:

>> For cash gifts, the donor may take an income tax deduction of up to 50 percent of his or her adjusted gross income (30 percent in the case of a private foundation). Unused deductions can be carried over for up to five years.

>> For gifts of other property, the donor may take an income tax deduction equal to fair market value of up to 30 percent of adjusted gross income (20 percent in the case of a private foundation). Unused deductions may be carried over for up to five years.

>> Gifts of real property, nonmarketable securities or tangible personal property more than $5,000 in value must be appraised to determine fair market value for tax deduction purposes and the appraisal needs to be included with your tax return along with IRS Form 8283.

Conclusion

The end of the year is a great time to consider a charitable donation, especially with April 15 looming in the distance. Choosing the appropriate technique for your circumstances is an important element in maximizing your charitable donation and your tax benefit.■

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