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Charitable Giving

Many of our clients wish to make gifts to charity, or to establish a private charitable foundation. Generally, gifts to charity are deductible for purposes of federal and state income, gift and estate taxes. While you generally can't increase your own wealth, or that of your family, by making charitable gifts, there are significant personal benefits that can arise from making charitable gifts, including the following:

- First and foremost, you receive the personal satisfaction of knowing that you have benefited a worthy cause that you support.
- If you have an asset which you are not making use of, and you don't want to bother with trying to sell the asset, a donation may provide you with an immediate income tax saving.
- If you establish a private family foundation, you can put your children on the board and educate them in the importance of private philanthropy, and provide an important forum for bringing the family together.
- If you are in maximum federal and state income and estate tax brackets, giving assets to a private family foundation can cost your family a relatively small amount, and provide your family with a significant base of wealth which can be used to raise the family's stature in the community.

    - Consider the following example: You have $500,000 of ordinary income, and hold a capital asset worth $100,000 but with a nominal income tax basis. If you sell the asset, you'll net about $75,000 after income taxes (ignoring brokerage and other selling expenses, which would further reduce your net.) You'd pay about 48% in income taxes (taking into consideration both federal and California income taxes, and the fact that high income individuals lose part of their itemized deductions and exemptions) on the $500,000 of ordinary income, leaving about $260,000. Thus, between the net from the sale of the capital asset and the net from your ordinary income, you'd have about $335,000. If you were to then die, and your assets were taxed at a 46% bracket, you'd leave your children $187,600 of that amount.
    - Suppose, alternatively, that you gave the $100,000 capital asset to charity. The income tax deduction would reduce your ordinary taxable income to $400,000, and thus only pay about $192,000 in income taxes, so you'd have about $308,000 left after taxes. After paying estate taxes on your death, your family would have about $172,400 (or about $15,200 less than in the first example); but they would also control a $100,000 charitable fund.

Please see our memorandum on ***Advanced Estate Planning Techniques*** for a basic discussion of the various types of charitable gift techniques, including charitable annuities, charitable lead trusts, charitable remainder trusts, pooled income funds, private foundations, private operating foundations, public charities and various approaches available through community foundations (including donor advised funds.) The lawyers of Hoffman, Sabban & Watenmaker are available to assist you in understanding the advantages and disadvantages of the various techniques in your particular situation.

When a person wants to begin a charitable gifting program, he or she will quickly find that there are an enormous number of worthy organizations anxious to receive a donation. The first thing to do (after obtaining qualified legal and accounting help) is to try to decide on one or more fields which you want to assist, and then try to locate the best charities to assist in those fields.

Information on particular charities can be obtained in a variety of ways. First and foremost, you should check the IRS Cumulative List of Organizations (which is available over the Internet at http://www.irs.ustreas.gov/charities/article/0,,id=96136,00.html). If the organization is not listed, ask the organization for a copy of their letter from the IRS acknowledging their tax exempt status. Not only will this assure you that the organization is tax exempt, but it will (a) show you whether it is a public charity or private foundation, and (b) assure you that you've got the correct name for the organization.

Second, ask to see the organization's latest tax returns. You'll be able to see what portion of the organization's funds are spent on fundraising and administration, as opposed to operations.

Third, check with an organization such as Philanthropic Research in Williamsburg, Virginia (http://www.guidestar.org), or the National Charities Information Bureau in New York, New York (http://www.give.org or telephone 212-929-6300). They can provide you with information on many non-profit organizations. You can also check with the Foundation Center (http://www.fdncenter.org), which maintains libraries in San Francisco, Atlanta, Cleveland, New York and Washington. Many community foundations, such as the California Community Foundation (http://www.calfund.org) in Los Angeles, provide comparable resources.

Fourth, educate yourself and your family on charitable giving issues. The Council on Foundations (http://www.cof.org , telephone 202-466-6512) publishes many fine books and pamphlets on a variety of subjects. You or your adult children may want to consider enrolling in a philanthropy workshop offered through the Rockefeller Foundation (http://www.rockefellerfoundation.org) in New York (tuition $10,000.) There are quarterly week long meetings, at which participants learn about the range of charitable organizations in fields such as education, the environment, rebuilding communities, and developing nations. Telephone 212-869-8500.