The New Normal for Charitable Tax Planning

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THE NEW STANDARD IN WEALTH MANAGEMENT

AGENDA

I. Overview

- What Do Individuals Give and Why Do They Give?

II. Legislative Update

- One Big Beautiful Bill Act (OBBBA or OB3)
- Standard Deduction v. Itemized Deductions

III. Charitable Giving Strategies

- Key Questions for Uncovering Explicit Needs
- Gifts of Cash, Stock or Other Assets
  - Contemporaneous Written Acknowledgements and Qualified Appraisals
  - Assignment of Income
- IRAs
- Charitable Remainder Trusts (CRUTs and CRATs)
- Charitable Deduction for Non-Grantor Trusts and Estates

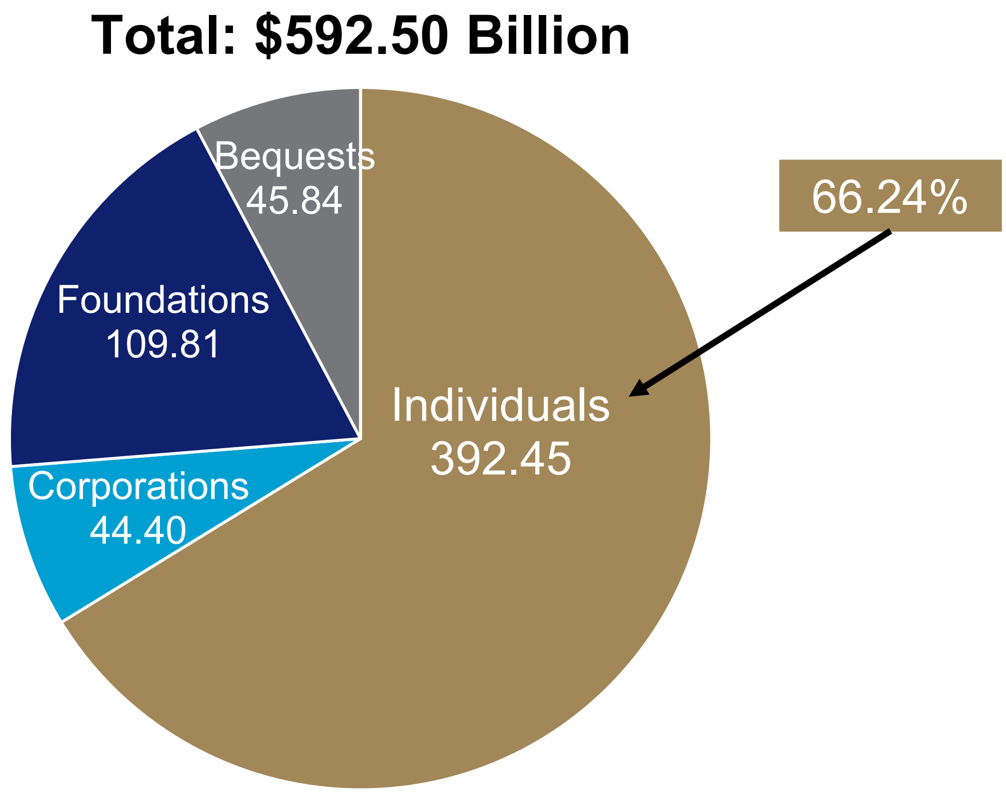
IV. Charitable Giving Vehicles

- Private Foundations; Donor Advised Funds; “Charitable” LLCs; Purpose Trusts; 501(c)(4) Social Welfare Organizations

V. Shams, Scams and No Thank You Ma’ams

Overview

WHAT DO INDIVIDUALS GIVE?



Sources: *Giving USA 2025: The Annual Report on Philanthropy for the Year 2024*, Giving USA Foundation, 2025, researched and written by the Indiana University Lilly Family School of Philanthropy.

WHY DO INDIVIDUALS GIVE?

Studies on Charitable Giving

- Psychological—giving causes happiness[1]
- Social—signaling one's wealth or status[2]
- Economic—tax breaks[3]

[1] Andreoni, J., "Giving with impure altruism: Application to charity and ricardian equivalence," The Journal of Political Economy (1989); Andreoni, J., "Impure altruism and donations to public goods – a theory of warm glow giving," Economic Journal (1990); Dunn, E. W., Aknin, L. B., & Norton, M. I., "Spending money on others promotes happiness," Science (2008); Harbaugh, W., Mayr U., & Burghart, D., "Neural Responses to Taxation and Voluntary Giving Reveal Motives for Charitable Donations," Science, vol. 316, no. 5831 (2007).

[2] Becker, G. S., "Theory of social interaction," Journal of Political Economy (1974); Glazer, A., & Konrad, K. A., "A signaling explanation for charity," American Economic Review (1996); Griskevicius, V., et al., "Blatant benevolence and conspicuous consumption: When romantic motives elicit strategic costly signals," Journal of Personality and Social Psychology (2007).

[3] Clotfelter, C. T., "Federal tax policy and charitable giving," Chicago: University of Chicago Press (1985); Clotfelter, C. T., "The economics of giving," in J. W. Barry & B. V. Manno (Eds.), "Giving better, giving smarter", Washington, DC: National Commission on Philanthropy and Civic Renewal (1997); Reece, W. S., & Zieschang, K. D., "Consistent estimation of the impact of tax deductibility on the level of charitable contributions," Econometrica (1985).

Legislative Update

ONE BIG BEAUTIFUL BILL ACT (OBBBA OR OB3)[1]

RECENT CHARITABLE TAX CHANGES—EFFECTIVE AFTER 2025

- **1% Limitation for Corporate Contributions (in addition to existing 10% ceiling)**
  - Disallowed deduction can be carried forward five years only if total contributions exceed the 10% ceiling
- **0.5% Limitation for Itemizers (e.g., if $1,000,000 of AGI, no charitable deduction on the first $5,000 of donations)**
  - Disallowed deduction can be carried forward five years only if contributions exceed the AGI limitations
- **2/37ths Limitation on Itemized Deductions for Taxpayers in the 37% Bracket**
  - Applies to the lesser of total itemized deductions or amount of taxable income exceeding the 37% bracket threshold
- **60% AGI Limit for Cash Donations Made "Permanent"**
- **$1,000 Per Individual ($2,000 Per Married Couple) Above-the-Line Deduction for Non-Itemizers**
  - Gifts to donor-advised funds not eligible
- **1.4% – 8% Endowment Tax on College/University Investment Earnings**
  - New exemption for schools with fewer than 3,000 full-time paying students
  - An estimated 15 schools will pay a tax on their endowment earnings for 2026 (Princeton/Yale/MIT may be 8%)
- **$1,700 Per Individual ($3,400 Per Married Couple) Federal Tax Credit for Cash Contributions to a "Scholarship Granting Organization" (beginning in 2027)**
  - State must opt in, and credit is reduced by any state tax benefit received

[1] Pub. L. 119-21 (Jul. 4, 2025). Although the law is popularly referred to as the "One Big Beautiful Bill Act," this official short title was stripped from the bill during the Senate amendment process, and therefore the law officially has no short title.

IRC §170(d)(1)(C)(i). Contributions disallowed by 0.5-percent floor carried forward only from years in which limitation is exceeded

(i) In general

In the case of any taxable year from which an excess is carried forward (determined without regard to this subparagraph) under any carryover rule, the applicable carryover rule shall be applied by increasing the excess determined under such applicable carryover rule for the contribution year (before the application of subparagraph (B)) by the amount attributable to the charitable contributions to which such rule applies which is not allowed as a deduction for the contribution year by reason of subsection (b)(1)(I).

INCOME AND INCOME TAXES

Income Category	AGI	Share of Total AGI	Share of Total Income Taxes Paid
Top 1%	**>$663,164**	**22.4%**	**40.4%**
Top 5%	**>$261,591**	**38.3%**	**61.0%**
Top 10%	**>$178,611**	**49.4%**	**72.0%**
Top 25%	**>$99,857**	**69.9%**	**87.2%**
Top 50%	**>$50,339**	**88.5%**	**97.0%**
Bottom 50%	**<$50,339**	**11.5%**	**3.0%**

Source: Internal Revenue Service, “SOI Tax Stats - Individual Income Tax Rates and Tax Shares,” 2024 review of 2022 tax return data.
Note that standard deduction for 2025 is $15,750 for single filers and $31,500 for married filing jointly.

STANDARD DEDUCTION AND CHARITABLE DEDUCTION?

Universal Charitable Giving Tax Deduction[1]

- Proposed legislation
- Above-the-line deduction for charitable contributions of individuals who do not itemize
- May not exceed 1/3 of the standard deduction

Approximately 90M taxpayers claimed the special $300 deduction during the COVID-19 pandemic in 2021 and 2022 —close to $27B from more than 25% of all non-itemizers[2]

[1] The "Charitable Act," S. 566 (Feb. 28, 2023), would apply to tax years beginning in 2023 and 2024. See also H.R. 651 (Jan. 17, 2019); H.R. 5771 (May 10, 2018); S. 2123 (Nov. 14, 2017); and H.R. 3988 (Oct. 4, 2017).

[2] IRS Publication 1304 (Rev.4-2024), "Statistics of Income"; The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; and Consolidated Appropriations Act, 2021.

Charitable Giving Strategies

INVESTIGATE

Key Questions for Uncovering Explicit Needs:

- How has uncertainty in the current environment impacted your charitable giving?
- In what ways have you documented your values and charitable goals?
- What assets have you considered for charitable giving?
- How are you providing for charity while accomplishing wealth transfer goals for your loved ones?
- What have you done to prepare your children to receive your wealth?

BUNCHING ITEMIZED DEDUCTIONS

Who Should Consider?

- Taxpayers with itemized deductions that fall short of the standard deduction amount—in other words, itemized deductions do not produce any tax benefit
- Taxpayers with itemized deductions that will be subject to OBBBA's new 0.5% charitable deduction limitation and 2/37ths itemized deduction limitation beginning in 2026

Solution

- Time deductions and bunch together in one year—which could include a donor-advised fund

BUNCHING ITEMIZED DEDUCTIONS

	2025	2026	2027
State Income Taxes	$15,000	$15,000	$15,000
Property Taxes	$15,000	$15,000	$15,000
Mortgage Interest	$11,500	$11,500	$11,500
Charitable Gifts	$10,000	$10,000	$10,000

SALT Deduction limited to $10,000

Standard Deduction is $31,500 (for married couple, 2025)

Without Bunching: No Charitable Deduction—except for new $1k/2k starting in 2026

With Bunching of $30k Charitable Gifts in Single Year: Charitable Deduction
2025 = $51,500
2026 ≈ $32,288 (standard deduction w/ inflation adjustment)
2027 ≈ $33,095 (standard deduction w/ inflation adjustment)

For illustration purposes, assumes an estimated 2.5% annual inflation adjustment.

ASSET OPTIONS: STOCK VS. CASH

	Sell Stock and Donate Cash	Donate Stock
Value of Stock	$250,000	$250,000
Taxes on Capital Gains	($50,000)	$0
Charitable Deduction	$200,000	$250,000
Amount to Charity	$200,000	$250,000

Donating Stock

- **Saves taxpayer $50k in capital gains taxes**
- **Provides taxpayer with an additional $50k charitable deduction**
- **Provides charity with an additional $50k**

Assumes stock with $166,667 long-term capital gain, and 30% blended tax rate on capital gains (federal and state).

CONTEMPORANEOUS WRITTEN ACKNOWLEDGEMENT (CWA)[1]

Charitable Gifts of $250 or More—Internal Revenue Code § 170

Strict Compliance

- Must state whether you received something in return (e.g., goods or services)
- For a donor advised fund, must confirm that it "has exclusive legal control over the assets contributed" under IRC § 170(f)(18)
- Must receive acknowledgment by the earlier of:

  (i) date the Federal income tax return for the year of the contribution is filed; or

  (ii) due date (including extensions) of the return

[1] Brooks v. Commissioner, No. 23-1314 (4th Cir. Jul. 15, 2024) (no deduction and 40% gross valuation misstatement penalty for conservation easement charitable deduction on less than 1/2 property purchased for $1.35mm when $652k basis reported as $1.35mm, no "contemporaneous written acknowledgment," and substantial misstatement of $5.1mm value for deduction); Tucker v. Commissioner, T.C. Memo 2023-87 (Jul. 17, 2023) (Charity's communications about fashion show donations failed to indicate whether goods and services were provided and were "woefully inadequate for purposes of satisfying the section 170(f)(8)(B) CWA requirements"); Braen v. Commissioner, T.C. Memo 2023-85 (Jul. 11, 2023) (No $5.22mm charitable contribution deduction because bargain sale did not comply with CWA requirements by disclosing bargained-for reversion in settlement agreement); Keefer v. U.S., U.S. District Court, Northern District of Texas, Dallas Division, No. 3:20-CV-0836-B (N.D. Tex. Jul. 6, 2022) (DAF acknowledgement letter did not confirm that it "has exclusive legal control over the assets contributed," under IRC § 170(f)(18), and supplemental material from DAF was not incorporated by reference); Izen v. Commissioner, 38 F.4th 459, 2022 WL 2337393 (5th Cir. Jun. 29, 2022), aff'g 148 T.C. 71 (2017) (no deduction for airplane donation since CWA did not meet § 170(f)(12) requirements for used motor vehicles, boats, and airplanes); Albrecht v. Commissioner, T.C. Memo 2022-53 (May 25, 2022) (No deduction for 120 items donated under five-page gift agreement without statement of goods or services provided); Durden v. Commissioner, T.C. Memo 2012-140 (Receipt from charity lacked statement of goods or services provided, and second receipt was not contemporaneous).

QUALIFIED APPRAISAL[1]

Gifts of More Than $5,000—Internal Revenue Code § 170

Limited exceptions—e.g., cash or publicly traded securities

- Summary or actual appraisal (e.g., $500K+ donation or $20K art)
- Must be attached to the Federal income tax return (for the year of contribution and carryover years)

[1] Cade v. Commissioner, T.C. Memo 2025-20 (Mar. 10, 2025); Corning Place Ohio, LLC v. Commissioner, T.C. Memo 2024-72 (Jul. 17, 2024) (Denial of $22.6 million charitable contribution deduction and 40% gross valuation misstatement penalty when lost development rights for 34-story vertical addition to historic office building would violate rehabilitation plan and historic preservation tax credits); Oconee Landing Property, LLC v. Commissioner, T.C. Memo 2024-25 (Feb. 21, 2024) and T.C. Memo 2024-73 (Jul. 17, 2024) (40% gross valuation misstatement penalty and 20% substantial understatement penalty for portion not attributable to overvaluation when $20.67mm appraisal was not qualified because of tacit agreement with petitioner that a certain value was needed to obtain the desired amount of syndication proceeds and original landowners, who controlled petitioner/partnership, had tried unsuccessfully for two years to sell the land before initiating the syndicated conservation easement transaction and knew its value was significantly less than $10 million); Braen v. Commissioner, T.C. Memo 2023-85 (Jul. 11, 2023) (Valuation not a "qualified appraisal' because it failed to disclose settlement agreement that influenced property value); Estate of Hoensheid v. Commissioner, T.C. Memo. 2023-34 (Mar. 15, 2023) (Valuation date failed to consider bonus payouts, and appraisal failed to sufficiently describe appraiser's relevant qualifications and valuation experience); Chief Counsel Advice 202302012 (Jan. 13, 2023) (qualified appraisal required for cryptocurrency valued at more than $5,000); Schweizer v. Commissioner, T.C. Memo 2022-102 (Oct. 6, 2022) (No deduction for failure to comply with the substantiation requirements of Treas. Reg. §1.170-13); Gemperle v. Commissioner, T.C. Memo 2016-1 (Failure to include qualified appraisal for façade easement resulted in denial of deduction and penalties with no grounds for mitigation of the penalties by reason of acting with reasonable cause and in good faith); Mohamed v. Commissioner, T.C. Memo 2012-152 (No deduction for failure to comply with the substantiation requirements of Treas. Reg. §1.170-13); and Evenchik v. Commissioner, T.C. Memo 2013-34 (No deduction for donated shares of a corporation when appraisal was for two apartment buildings owned by the corporation).

BESAW V. COMMISSIONER[1]

Substantiation Requirements Are Mandatory

Background

- Taxpayer claimed a deduction for noncash charitable contributions
- Form 8283, Noncash Charitable Contributions, contained names and addresses of donees and brief descriptions—but no donation dates or donation values
- No contemporaneous written acknowledgement (CWA)

Court Ruling

- Deductions for charitable contributions are allowed only if the taxpayer satisfies statutory and regulatory substantiation requirements
- "**<u>Although the Court believes petitioner donated items</u>** to charitable organizations in 2019, the record before the Court shows that petitioner did not satisfy the substantiation requirements of section 170(a)(1) and Treasury Regulation § 1.170A-13." [emphasis added]

[1] John Henry Besaw v. Commissioner, T.C. Summary Opinion 2025-7 (Jul. 21, 2025)

WT ART PARTNERSHIP LP V. COMMISSIONER[1]

Appraisals Obtained from a Chinese Auction House Were Not Qualified Appraisals

Background

- Donation of ancient Chinese paintings to the Metropolitan Museum of Art (the "Met")
- Email to Chinese auction house that taxpayer could "use more than a $20 million deduction this year" and two days later estimate provided of $26 million for "Palace Banquet" painting

Court Ruling

- *Taxpayer Won the Battle*: Deduction allowed—failure to obtain qualified appraisals due to reasonable cause (§170(f)(11)(A)(ii)(II)) because petitioner believed auction house could provide acceptable appraisals
- *Taxpayer Lost the War*: Fair market value of main painting was $12 million—not $26 million reported value (exceeded correct value by more than 200%)—so, gross valuation misstatement penalty of 40% of the underpayment of tax

[1] WT Art Partnership LP v. Commissioner, T.C. Memo 2025-30 (Apr. 9, 2025)

RANCH SPRINGS, LLC V. COMMISSIONER[1]

Donation Value Overstated by 7,694%

Background

- December 2016: LLC acquired rural land in Alabama for $6,500 per acre
- December 2017: Appraiser valued land at $236,673 per acre—asserting highest and best use was limestone mining
- 2017 Partnership Return: Claimed $25,814,000 charitable deduction for conservation easement

Court Ruling

- Value of donation was $335,500 ($720,500 “before value” less $385,000 “after value”)
- Rezoning to permit mining was not reasonably probable or financially feasible—and valuation failed to consider assets required to conduct a hypothetical mining business
- 40% gross valuation penalty

[1] Ranch Springs, LLC v. Commissioner, 164 T.C. No. 6 (Mar. 31, 2025). See also Jackson Stone S. v. Comm'r, T.C. Memo. 2025-96 (Sep. 23, 2025).

ESTATE OF WARNE V. COMMISSIONER[1]

Valuation Discounts for Charitable Gifts of LLC Interests

Background

- Estate held majority interests, ranging from 72.5% to 100%, in five LLCs holding real estate
- Estate donated entire 100% interest in one LLC by splitting donation between two charitable organizations
  - 75% to family foundation
  - 25% to church

Court Ruling

- Discounts should be applied for lack of control and lack of marketability
  - Taxpayer win for controlling majority interests (6.9% discount)
  - Taxpayer loss for charitable deduction (4% discount for 75% interest; 27.385% discount for 25% interest)—*easily could have been avoided*

[1] Estate of Warne v. Commissioner, T.C. Memo. 2021-17 (Feb. 18, 2021).

ESTATE OF HOENSHEID V. COMMISSIONER[1]

ASSIGNMENT OF INCOME—PRESALE CHARITABLE CONTRIBUTION OF COMPANY STOCK

Timeline in 2015

- April 1: Business owned by three brothers—grandchildren of founder—received $92M letter of intent (LOI)
- April 16: One of the brothers (Donor) was considering a donor-advised fund (DAF) to make a presale charitable contribution of stock, and Donor's attorney emailed, "**the transfer would have to take place before there is a definitive agreement in place.**"
- April 21: Donor emailed his attorney, "**I would rather wait as long as possible to pull the trigger. If we do it and the sale does not go through, I guess my brothers could own more stock than I…**"
- April 23: Nonbinding LOI signed
- June 1: Donor emailed his attorney, "**I do not want to transfer the stock until we are 99% sure we are closing.**"
- ***June 11***: Shareholders/directors approved sale and Donor's charitable gift—but **field left blank in executed Consent to Assignment for number of shares to be transferred to DAF**
- June 12: Acquiring company's investment committee and managing partners approved acquisition subject to competition of due diligence
- July 6: Donor emailed his attorney and other advisors that he was, "**not totally sure of the shares being transferred to the charitable fund yet.**"

[1] Estate of Hoensheid v. Commissioner, T.C. Memo. 2023-34 (Mar. 15, 2023).

ESTATE OF HOENSHEID V. COMMISSIONER[1]

ASSIGNMENT OF INCOME—PRESALE CHARITABLE CONTRIBUTION OF COMPANY STOCK

Timeline in 2015 (continued)

- July 7: Company approved bonus plan for key employees and distribution of remaining cash at closing
- July 9: Revised draft of Purchase Agreement with partially filled in recital that Donor transferred 1,380 shares to DAF on "July . . . 2015," and Donor's wealth advisor emailed DAF representative, "**it looks like Scott has arrived at 1380 shares—which will come out to about $3,000,000" and that he would "have the stock certificate shortly.**"
- July 10: Bonuses of $6.1M paid to employees; and Donor created online giving account with DAF
- July 13: Revised Purchase Agreement circulated with agreement to all substantive provisions; **PDF of signed/undated stock certificate for 1,380.40 shares emailed to DAF representatives; and Minority Stock Purchase Agreement signed by DAF**
- July 14: Final draft of Purchase Agreement circulated showing share contribution on "July 10, 2015," with minimal other changes, and nearly all remaining cash of $4.7M to brothers/shareholders—but not DAF
- July 15: Transaction closing—DAF received $2,941,966 in cash proceeds from sale
- November 18: DAF sent Donor a confirmation letter acknowledging a contribution of 1380.40 shares on **June 11, 2015**
- *Donor did not report any capital gains associated with the sale of the 1,380 shares and claimed a noncash charitable contribution deduction of $3,282,511 on Form 8283*

[1] Estate of Hoenshеid v. Commissioner, T.C. Memo. 2023-34 (Mar. 15, 2023).

ESTATE OF HOENSHEID V. COMMISSIONER[1]

ASSIGNMENT OF INCOME—PRESALE CHARITABLE CONTRIBUTION OF COMPANY STOCK

Court Ruling

- Completed transfer was on July 13, two days before July 15 closing, when sale was a "virtual certainty"—not June 11 date on confirmation letter from DAF[2]
- Considering the "reality and substance of all the circumstances," Donor had a "fixed right to income in the property at the time of transfer."
- Four-factor test whether sale was "virtually certain to occur at the time of gift"
  - (1) any legal obligation to sell by the donee—which "is only one factor to be considered in ascertaining the 'realities and substance' of the transaction"[3]
  - (2) the actions already taken by the parties to affect the transaction
  - (3) the remaining unresolved transactional contingencies
  - (4) the status of the corporate formalities required to finalize the transaction
- "Bonus payouts and distributions could not be clawed back," no substantial "unresolved contingencies," final written consent was "a foregone conclusion," and "formal shareholder approval was purely ministerial"
- Also, **NO** qualified appraisal and **NO** qualified appraiser—required for gifts of more than $5,000 under §170
  - June 11 valuation date failed to consider $6.1M bonus payouts prior to July 13, and appraisal failed to sufficiently describe appraiser's relevant qualifications and valuation experience

[1] Estate of Hoensheid v. Commissioner, T.C. Memo. 2023-34 (Mar. 15, 2023). See also Lucas v. Earl, 281 U.S. 111 (1930) ("the fruits cannot be attributed to a different tree from that on which they grew").
[2] Michigan state law "requires a showing of: (1) donor intent to make a gift; (2) actual or constructive delivery of the subject matter of the gift; and (3) donee acceptance."
[3] Compare with Rev. Rul. 78-197, 1978-1 C.B. 83 (proceeds treated "as income to the donor only if the donee is legally bound, or can be compelled by the corporation, to surrender the shares for redemption"). See also Treas. Reg. § 1.170A-1(b) and Rauenhorst v. Commissioner, 119 T.C. 157 (1993).

CHARITABLE PLANNING WITH TRADITIONAL IRAS
TAX BENEFIT OF NAMING CHARITY AS IRA BENEFICIARY

	Stock to Charity and IRA to Child		IRA to Charity and Stock to Child	
	Charity	Child	Charity	Child
Stock	$1,000,000		—	$1,000,000
IRA	—	$1,000,000	$1,000,000	—
Income Tax	—	($450,000)*	—	—
NET BEQUEST	$1,000,000	$550,000	$1,000,000	$1,000,000**

* Assumes a blended ordinary income tax rate of 45% (federal and state) upon distribution from the IRA.

** Note that the child's shares of stock also receive a step-up in basis when the decedent dies.

CHARITABLE PLANNING WITH TRADITIONAL IRAS
SECURE ACT 2.0, SECURE ACT, PATH ACT OF 2015*

Qualified Charitable Distributions (aka Charitable IRA Rollovers)

- "Permanent" extension
- Required minimum age of 70½
  - **Beware** of SECURE Act tax trap if post-70½ deductible contributions
- Can satisfy required minimum distribution (RMD)
- Excluded from gross income, but no charitable deduction
- Up to $108k per year (in 2025)
  - **Indexed for inflation under SECURE Act 2.0 starting in 2024**
- Must be paid directly to public charity
  - No supporting organizations, non-operating private foundations (unless conduit rules apply), or donor advised funds**

* The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, SECURE Act 2.0 of 2022, and Protecting Americans from Tax Hikes (PATH) Act of 2015.

** Note that the "Charities Helping Americans Regularly Throughout the Year Act" ("Charity Act") (H.R. 2916, Jun. 15, 2017; S. 1343, Jun. 13, 2017; and S. 2750, Apr. 6, 2016) and "Grow Philanthropy Act" (H.R. 4907, Apr. 12, 2016) would strike existing prohibition for IRA distributions to donor advised funds.

CHARITABLE PLANNING WITH TRADITIONAL IRAS
LEGACY IRA ACT UNDER SECURE ACT 2.0*

One-Time $54,000 (Adjusted for Inflation in 2025) Qualified Charitable Distribution—Life Income Rollover

- Allows income benefit for lifetime with remainder to charity after death
- Can benefit participant and spouse
- Required minimum age of 70½
- Can satisfy required minimum distribution (RMD)
- To a charitable gift annuity (CGA), charitable remainder unitrust (CRUT), or charitable remainder annuity trust (CRAT)
  - Likely most effective with CGAs given cost and administrative burden of charitable trusts

* SECURE Act 2.0 of 2022. See also prior unsuccessful legislative proposals, including Legacy IRA Act, H.R. 1337 (Mar. 2, 2017); H.R. 5171 (May 6, 2016).

COMMUNICATE—LEFT BRAIN VS. RIGHT BRAIN
Don't Just Give Facts and Figures

Charitable Remainder Unitrust (CRUT)—Sample Client Summary for Client

Structure:

- Funded by the sale for the benefit of Client's lifetime
  - The remainder (amount expected to go to charity) must be at least 10% of the fair market value of the assets contributed to the CRUT
- Provides an annual payment of 6.30294% of the trust's fair market value each year (the Unitrust Amount)
  - A higher percentage payout would not pass the 10% test
  - The annual payment may go as low as 5%—decreasing the annual payments would increase the charitable deduction.
- Assumes funding in November 2025, which allows use of the 4.8% §7520 rate from September 2025 (eligible to use the highest out of a three-month period)
  - The higher the rate, the greater the deduction, although there is a relatively small difference
- Upon Client's death, the remaining balance in the CRUT must pass to charity, Client's Donor Advised Fund or another charity of Client's choice

Advantages:

- Provides income for Client's lifetime
- Tax deduction valued at 10% of the initial amount contributed to the trust
- Tax-free growth of the CRUT portfolio
- Defers the payment of capital gains on the amount initially contributed to the CRT upon the sale of the asset
- Provides a substantial bequest to charity at the end of the trust term

Disadvantages:

- Lack of access to principal
- Additional complexity and administration
- May not be advantageous economically for Client—other than benefit to charity—if Client does not live to 2041

COMMUNICATE—LEFT BRAIN VS. RIGHT BRAIN
Don't Just Give Facts and Figures

Trust Type:	Life
Transfer Date:	11/2025
§7520 Rate:	4.80%
FMV of Trust:	$5,000,000
Growth Rate:	5.60%
Income Rate:	1.40%
Optimized:	Yes
Using Optimized Payout:	6.30294%
Payment Period:	Annual
Months Val. Precedes Payout:	3
Lives:	1
Ages:	38
CRUT Type:	Normal
Mortality Table:	2010CM

Payout Sequence Factor:	0.988348
Adjusted Payout Rate:	6.229%
Interpolation:	
Factor at 6.2%:	0.10087
Factor at 6.4%:	0.09499
Difference:	0.00588
(6.229% - 6.2%) / 0.2% = X / 0.00588; Therefore X = 0.00085	
Life Remainder Factor = Factor at 6.2% Less X:	0.10002
Present Value of Remainder Interest = $5,000,000.00 x 0.10002:	$500,100.00
Donor's Deduction:	$500,100.00
Donor's Deduction as Percentage of Amount Transferred:	10.002%

CHARITABLE REMAINDER UNITRUST (CRUT)

Upfront Charitable Income Tax Deduction: $500K

Donor

$5M Asset →

← 6.3% Annual Payment for Life (≈ $14.4M)

CRUT
Tax-Deferred Sale of Asset

Assets Remaining in Trust After Death Pass to Charity →

Charity

Remainder Value
7% Net Return: $5.9M

Assumes 7% net return (5.6% growth and 1.4% income), 38-year-old donor, and most favorable IRC § 7520 rate of 4.8% for most recent three months as of November 2025. Rev. Rul. 2025-17.

CCA 202233014[1]

CRUT with Variable Unitrust Payout to Spouse or Charity

Background

- Annual CRUT unitrust payment of 5% for life with remainder to charity after death
  - 25% of unitrust payment—that is, 1.25% of CRUT—**must** be distributed to decedent's spouse
  - 75% of unitrust payment—that is, 3.75% of CRUT—may be distributed to **either** decedent's spouse **or** charity at the discretion of the trustee

Conclusion

- No estate tax charitable deduction under § 2055 for any portion of unitrust interest
- No estate tax marital deduction under § 2056 for 75% discretionary portion of unitrust interest
- IRS changed position from earlier rulings that taxpayers were entitled to an estate tax marital deduction under § 2056 or a gift tax marital deduction under § 2523 for a CRUT unitrust interest that can be distributed between a charity and spouse at the trustee's discretion[2]

[1] Chief Counsel's Advice 202233014 (Aug. 19, 2022).

[2] PLRs 201845014, 201117005, 200832017, and 200813006.

ESTATE OF BLOCK V. COMMISSIONER[1]

Not a Charitable Remainder Trust—No Charitable Deduction for Estate

Background

- Trust required annual payment of the greater of $50k or the trust's net income to decedent's sister or sister's spouse with remainder to charity
- Article 4.1 stated intent to be "a charitable remainder annuity trust, within the meaning of Rev. Proc. 2003-57 and § 664(d)(1) of the Code, and the terms of this Section shall be construed to give maximum effect to such intent"
- Trust amended, effective on death, to require $50k annually—removed "all net income"

Ruling

- *No* charitable deduction under § 2055(a)—greater of $50k or net income is *not* a "sum certain" for a CRAT
- *Not* a qualified judicial reformation under § 2055(e)(3)—amendment was *not* within 90-day period after estate tax return due and not instituted by court

[1] Estate of Block v. Commissioner, T.C. Memo. 2023-30 (Mar. 13, 2023) ("Congress made clear that the rules for qualified reformations are to be construed strictly, in order to prevent abuse of the charitable deduction")

CHARITABLE DEDUCTION FOR NON-GRANTOR TRUSTS AND ESTATES IRC § 642(c)

Requirements

- Paid from gross income
- Paid pursuant to governing document

Unlimited in Amount

No Distribution Deduction

Generally, Must Be Actually Paid in Current Year or Following Year

- Estates and pre-1969 trusts get charitable deduction if "permanently set aside"

Limited to Basis (Green v. U.S., 2018)

See Mart D. Green v. United States, 880 F.3d 519 (10th Cir. 2018).

CHARITABLE DEDUCTION FOR NON-GRANTOR TRUSTS AND ESTATES HYPOTHETICAL EXAMPLE

In 2025, Trust Has:

- $100K of taxable interest income

During 2025, Trustee Distributes:

- $100K to Amy (mandatory income distribution)
- $100K to Bob
- $100K to a charity

What was distributed to the beneficiaries for tax purposes?

CHARITABLE DEDUCTION FOR NON-GRANTOR TRUSTS AND ESTATES HYPOTHETICAL EXAMPLE

$100K Interest Income → **COMPLEX TRUST**

$100K FAI/DNI
$300K Distributions

First-Tier Beneficiary ($100K FAI/DNI to Amy)

↓

1½-Tier Beneficiary ($100K Principal to Charity)

↓

Second-Tier Beneficiary ($100K Principal to Bob)

1. $100K DNI is taxed first to Amy
2. No remaining DNI is distributed to charity
3. No remaining DNI is distributed to Bob
4. Trust receives distribution deduction of $100K of DNI

CHARITABLE DEDUCTION FOR NON-GRANTOR TRUSTS AND ESTATES HYPOTHETICAL EXAMPLE

Another Option

- Distribute additional $100K to Amy instead of charity (not taxable since the DNI already came out)
- Amy can make a $100K contribution to charity
- Amy will get an income tax deduction, subject to the AGI rules and other limitations

2/37 DISALLOWANCE UNDER OBBBA'S NEW SECTION 68

New § 68 (Effective After 2025)—Impact on Trusts and Estates???

- Repealed § 68(e) Exception for estates and trusts. "This section shall not apply to any estate or trust."
- Section 68 applies "In the case of an individual"
  - Section 641(b): "The taxable income of an estate or trust shall be computed in **the same manner as in the case of an individual**, except as otherwise provided in this part."
  - Section 642(c): "In the case of an estate or trust… there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by section 170(a)… **without limitation**"
- *Additional government guidance is needed to address this issue!*

Charitable Giving Vehicles

PRIVATE FOUNDATION VS. DONOR ADVISED FUND
COMPARING TWO PHILANTHROPIC VEHICLES

	Private Foundation	Donor Advised Fund
Tax Deductibility	• Cash—up to 30% of AGI • Appreciated and closely held stock—up to 20% of AGI	• Cash—up to 60% of AGI • Appreciated and closely held stock—up to 30% of AGI
Minimum Payout Requirements	• 5% annually	• None
Investment Flexibility	• Divest excess business holdings within five years or pay excise tax	• Donor chooses among investment options offered by DAF
Grant Making Support	• Create and handle due diligence and monitoring structure	• Professional staff of DAF handles due diligence
Administration	• Legal/accounting fees; filing fees; and annual tax return	• DAF handles all administration
Excise Taxes	• 1.39% of investment income annually	• None
Liability and Risk Insurance	• Must be purchased	• Provided by DAF
Start-Up Costs	• Legal fees and other start-up costs can be substantial	• Typically, none
Valuation of Gifts	• FMV for cash/publicly traded stock; cost basis for closely held stock/real property	• Fair market value
Privacy	• No	• Yes

DONOR ADVISED FUND: PROPOSED REGULATIONS[1]

New Guidance to Interpret and Apply § 4966—Taxes on Taxable Distributions

- DAF must be "separately identified by reference to contributions of a donor or donors"
  - Sponsoring organization maintains a formal record relating to donor(s)
  - Facts and circumstances—e.g., fund named after donor, donor receives statements, and advice solicited from donor
- Donor or donor-advisor (e.g., donor's appointee, designee, advisory committee member or investment advisor) must have, or reasonably expect to have, "advisory privileges" under facts and circumstances test, regardless of whether exercised
  - Sponsoring organization allows donor/donor-advisor to provide nonbinding recommendations regarding distributions or investments
  - Written agreement that donor/donor-advisor has such advisory privileges
  - Written document or marketing material that donor/donor-advisor may provide such advice
  - Sponsoring organization generally solicits such advice from donor/donor-advisor
- Taxable "deemed distribution" if more than incidental benefit to donor/donor-advisor or related person
  - Exception for non-U.S. public charities if "equivalency determination" or "expenditure responsibility"
  - ***NEEDS REVIEW – No exception for investment fees paid to donor's investment manager***

[1] Taxes on Taxable Distributions from Donor Advised Funds under Section 4966, 26 CFR Part 53, Reg-142338-07 (Nov. 13, 2023). See, e.g., Pinkert v. Schwab Charitable Fund, 48.F.4th 1051 (9th Cir. Sep. 4, 2022), aff'g Case No. 20-cv-07657-LB (N. Dist. Cal. Jun. 17, 2021). Fairbairn v. Fidelity Investments Charitable Gift Fund, Case No. 18-cv-04881-JSC (N. Dist. Cal. Feb. 26, 2021).

DONOR ADVISED FUND: REFORM PROPOSALS

Currently, No Mandatory Distribution Requirement, But…

- 15-Year Qualified DAFs and 50-Year Non-Qualified DAFs—*The Accelerate Charitable Efforts (ACE) Act,* S.1981 (Jun. 9, 2021), Senators Angus King (I-ME) and Chuck Grassley (R-IA), and H. 6595 (Feb. 3, 2022)
- California failed attempts to regulate DAFs include AB 2936 (Wicks 2020) and AB 1712 (Wicks 2019)
- Five-year payout requirement and 20% excise tax for failure—*Camp Proposal* (H.R. 1, Feb. 26, 2014)
- "there is likely to be substantial variation in payout rates at the individual level across all sponsoring organization"—*Congressional Research Service Study* (Jul. 2012)
- "premature to recommend a distribution requirement… at this point"—*Department of Treasury Study* (Dec. 2011)

FAIRBAIRN V. FIDELITY INVESTMENTS CHARITABLE GIFT FUND[1]

Donor Advised Fund Litigation

Background

- Fidelity touted its sophisticated methods to time liquidation so as not to depress price
- Donor transferred thinly-traded shares
- Fidelity sold stock immediately upon receipt

Court Ruling

- Donor had no "special relationship" with DAF sponsor
- No breach of a fiduciary duty by DAF sponsor

[1] Fairbairn v. Fidelity Investments Charitable Gift Fund, Case No. 18-cv-04881-JSC (N. Dist. Cal. Feb. 26, 2021).

PINKERT V. SCHWAB CHARITABLE FUND[1]

Donor Advised Fund Litigation

Background

- Donor claimed Schwab Charitable Fund affiliations with Schwab Corp. maximized profits for Schwab Corp. to the detriment of charity
  - Utilized Schwab index and money market funds
  - Purchased funds at retail prices—instead of wholesale
  - Failed to leverage bargaining power to retain less expensive brokerage and custodial services

Court Ruling

- Court dismissed all claims
  - Donor lacked standing after making irrevocable contribution of assets and relinquishing dominion and control
  - Schwab Charitable Fund had exclusive legal control over donated assets

[1] Pinkert v. Schwab Charitable Fund, 48.F.4th 1051 (9th Cir. Sep. 4, 2022), aff'g Case No. 20-cv-07657-LB (N. Dist. Cal. Jun. 17, 2021).

“CHARITABLE” LLC
NOT A PUBLIC CHARITY, PRIVATE FOUNDATION OR CHARITABLE TRUST

The Good

- LLC *not* subject to mandatory distributions or prohibitions on self-dealing, excess business holdings, jeopardy investments and taxable expenditures (e.g., lobbying/political activities)
- LLC *not* subject to attorney general oversight
- LLC tax returns *not* subject to public disclosure
- Assets *not* permanently restricted for charitable purposes; can be used for any permissible purpose under state law

The Bad and the Ugly

- LLC *not* exempt from federal income tax; taxed as “pass-through” to owners
- *No* charitable income tax deduction from funding; future benefit if LLC donates to charity

PATAGONIA PURPOSE TRUST AND 501(c)(4) ORGANIZATION[1]

2% to Purpose Trust (Voting Shares)

- 2% of $3 billion = $60 million (without discounting)
- $17.5 million in gift taxes = 40% of $43.75 million

98% to Section 501(c)(4) Nonprofit "Social Welfare Organization" (Non-Voting Shares)

- 98% of $3 billion = $2.94 billion (without discounting)
- NO gift, estate or GST taxes—a 40% gift tax on 98% of $3 billion could have been as much as $1.176 billion
- NO income taxes—can continue to grow tax free for generations
- NO charitable income tax deduction, unlike a § 501(c)(3) nonprofit charitable organization
- **Can be used for political purposes, unlike a § 501(c)(3) nonprofit charitable organization**

[1] Estimates based on Juliana Kaplan and Grace Kay, "Patagonia founder's big donation potentially saves him over $1 billion in taxes — and experts say it shows how the wealthy are able to 'entirely opt out of taxes,'" Business Insider (Sep. 16, 2022), and David Gelles, "Billionaire No More: Patagonia Founder Gives Away the Company," The New York Times (Sep. 14, 2022).

Charitable Planning Scams, Shams and No Thank You Ma'ams

GERHARDT V. COMM'R., U.S. V. EICKHOFF, PROP. REG. §1.6011-15 [1]

Charitable Remainder Annuity Trust (CRAT) & Single Premium Immediate Annuity (SPIA)

Background

- Taxpayers contributed substantially appreciated property to CRATs, property was sold, and then majority of proceeds were used to purchase a SPIA
- CRAT tax return, Form 5227, reported no taxable gain from sale of property and K-1s didn't reflect annuity payments carrying out income
- Tax scheme promoters claimed—by misapplying the rules under sections 72 and 664—CRAT payments were excluded from income tax as a return of investment

Ruling

- While trust itself is tax-exempt, the actual tax only is deferred—subject to the worst-in-first-out (WIFO) method of accounting
- Sale of appreciated real property and subsequent annuity payments funded by the sale proceeds were not permanently free of federal income tax

[1] Proposed Regulation §1.6011-15, REG-108761-22 (Mar. 25, 2024); Gerhardt v. Commissioner, T.C., No. 11127-20 (Apr. 20, 2023); US v. Eickhoff, W.D. Mo., No. 2:22-cv-04027 (May 17, 2023) (permanently enjoined the promoters from further promoting the tax scheme); IRS "Dirty Dozen," IR-2023-65 (Mar. 31, 2023) and Treasury Notice of Proposed Rule, REG-108761-22 (Jun. 2023).

IRS IR-2023-185[1]

Promoters of Improper Art Donation Deductions

Background

- Promoters encourage taxpayers to purchase art at “discounted” prices—promoter may take care of storage, shipping, appraisal and donation
- Promotion scheme claims that donation value is significantly more than purchase price

IRS News Release

- Beware of promoters advertising exaggerated values and offering poor appraisals
- IRS increasing compliance activity—more than 60 audits have been completed producing more than $5 million in additional tax
- Taxpayers are responsible for the accuracy of their tax return—participating in illegal schemes to avoid paying taxes can result in additional penalties and interest and potentially even fines and imprisonment

[1] IRS IR-2023-185 (Oct. 5, 2023).

LIM AND CHU V. COMMISSIONER[1]

Abuses of Charitable LPs and Charitable LLCs

Background

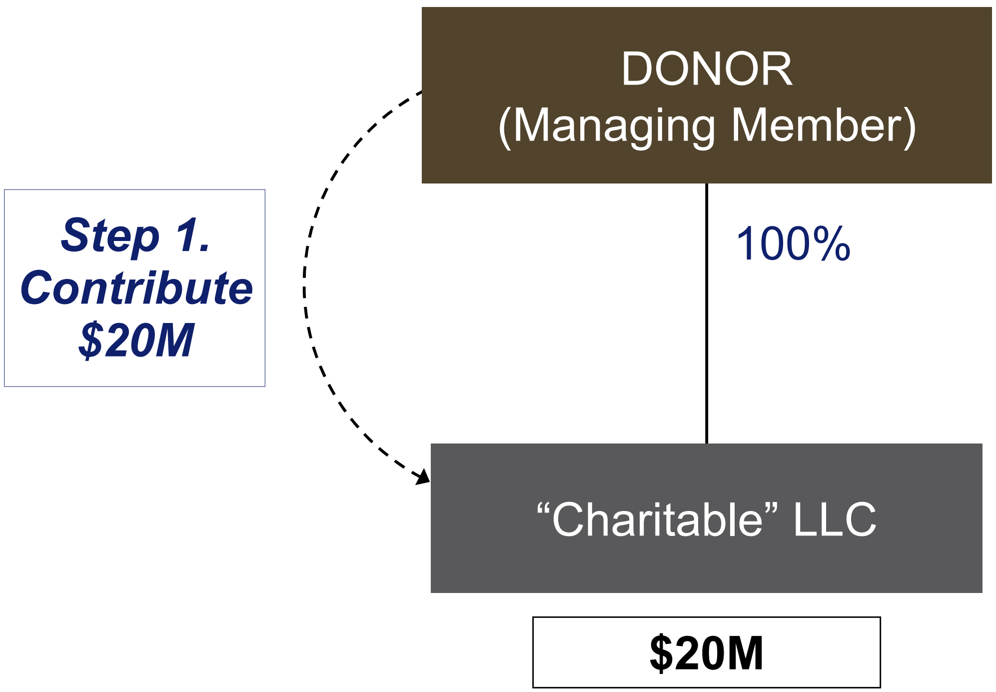
- Taxpayers engaged Michael Meyer, a promoter of a charitable LLC tax scheme commonly referred to as “The Ultimate Tax Plan”—for $84k fee
- In theory, taxpayers…
  - Promised to pay charitable LLC $2 million
  - Donated LLC interests to purported charity related to Mr. Meyer
  - Claimed a deduction for $1.6 million

Court Ruling

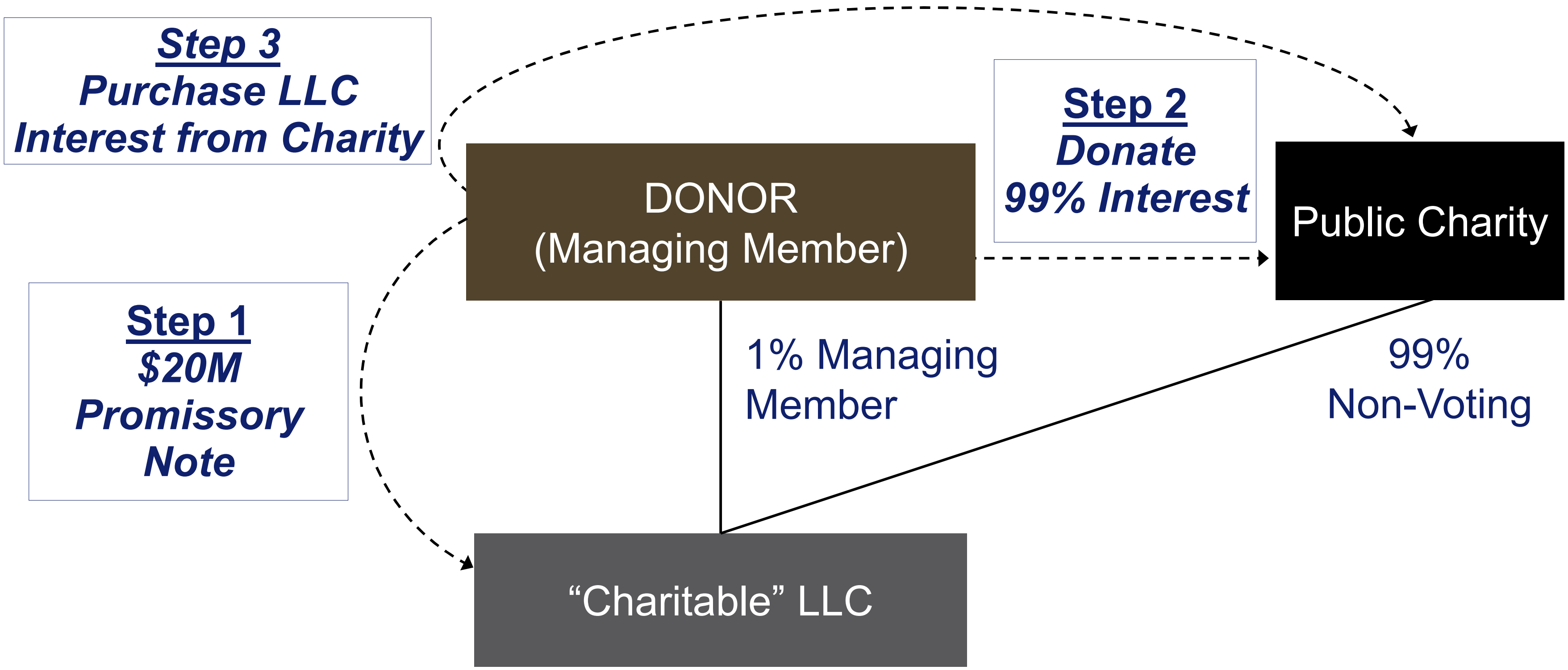
- Failure to prove donation occurred with transfer documentation and failure to obtain CWA and qualified appraisal—prohibited fee arrangement based on appraised value
- However, taxpayers entitled to argue “reasonable cause” defense at future trial due to reliance on advice from CPA and attorney

[1] Calvin A. Lim and Helen K. Chu v. Commissioner, T.C. Memo 2023-11 (Jan. 23, 2023). See also Miller, Justin T., “Using and Abusing Charitable LLCs,” Cal Tax Lawyer, Vol. 27, No. 4 (Jan. 2019); Notice 2004-30; and U.S. v. Meyer, United States District Court, Southern District of Florida (Apr. 26, 2019). Note that advisors were fined and sentenced to prison in April 2024 for promoting “The Ultimate Tax Plan,” an illegal tax shelter scheme involving false charitable deductions using charitable LLCs.

“CHARITABLE LLC” HYPOTHETICAL EXAMPLE



“CHARITABLE LLC” HYPOTHETICAL FRAUDULENT SHAM EXAMPLE



Assumes $15.84M value with a 20% discount for lack of control and lack of marketability and assumes Notice 2004-30 does not apply. But see Lim and Chu v. Commissioner, T.C. Memo 2023-11 (Jan. 23, 2023) and U.S. v. Meyer, United States District Court, Southern District of Florida (Apr. 26, 2019). Note that advisors were fined and sentenced to prison in April 2024 for promoting “The Ultimate Tax Plan,” an illegal tax shelter scheme involving false charitable deductions using charitable LLCs.

Thank You!

BIO

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Justin Miller is a Partner and National Director of Wealth Planning at Evercore Wealth Management and a Managing Director at Evercore Trust Company, where he works collaboratively with accountants, attorneys, and other advisors to provide comprehensive wealth planning advice to clients. Prior to joining Evercore in 2021, Justin was a national wealth strategist for 10 years at BNY Wealth. He previously was a managing director at Wells Fargo and began his career as a tax attorney at Sidley Austin.

Justin also is an adjunct professor at Golden Gate University, a Life Fellow of the American Bar Foundation, and a Fellow of the American College of Trust and Estate Counsel. He has served in leadership positions with the American Bar Association, California Bar Foundation, San Francisco Estate Planning Council, and State Bar of California, and is a former editor-in-chief of the *California Tax Lawyer*. Additionally, he is a past recipient of the Outstanding Conference Speaker Award from the California Society of CPAs and the V. Judson Klein Award from the California Tax Bar, and he has been inducted into the Estate Planning Hall of Fame® by the National Association of Estate Planners & Councils.

Justin received a B.A., with honors, from the University of California, Berkeley, and a J.D. and LL.M. in Taxation from New York University School of Law. He also holds the Accredited Estate Planner® (Distinguished) and CERTIFIED FINANCIAL PLANNER™ designations and is a member of the State Bar of California.

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