Philanthropy in the COVID-19 World: What Gives?*

April 9, 2020

In a few short (but seemingly very long) weeks, the world has become a very different place. Philanthropy has become urgent to meet the needs of people all over the world who are impacted by the COVID-19 virus. At the same time, the economy has come to a screeching halt with mandatory government shutdowns, skyrocketing unemployment and extreme business and individual financial impacts. And families are suffering the illness and deaths of loved ones across the globe.

What can donors and nonprofits who rely on them do in this new world to further charitable giving as well as tax planning? A number of existing strategies can be considered in today's environment, including some new ideas from the recently passed CARES Act.

Cash Gifts Under CARES Act

As part of the CARES Act, a new universal deduction is available in 2020. An annual amount of up to $300 may be taken as an "above the line" deduction by non-itemizers for cash gifts to public charities (not to donor advised funds, private foundations or supporting organizations). While the amount is small compared to what nonprofits had hoped, this encourages additional 2020 charitable giving by taxpayers who otherwise would not gain a tax benefit by giving because they won't itemize their deductions.

In addition, a donor can elect to deduct cash gifts to public charities (not to donor advised funds, private foundations or supporting organizations) up to 100% of the donor's contribution base (roughly, the donor's adjusted gross income) for 2020, less all other charitable contributions made in 2020, if the donor itemizes deductions. Before the CARES Act, cash contributions to public charities were deductible up to 60% of the donor's contribution base less all other charitable contributions allowed for that year. In 2020, a donor who itemizes deductions can elect to deduct these cash gifts, with any excess carried over in the succeeding five years. For individuals who are in a position to make larger cash contributions, this provision provides an incentive to accelerate those gifts into 2020.

For corporations, the CARES Act raises the limit for 2020 cash contributions from 10% to 25% of its taxable income, with certain modifications, and for food inventory from 10% to 25% of its taxable income.

Planned Gifts While Interest Rates Are Low

Certain types of planned gifts also may be attractive to donors in the current economic environment when interest rates are low. Planned gifts usually involve structures under which individual noncharitable persons and charity share the benefits of the gift but at different times. Section 7520 of the Internal Revenue Code values those present and future interests using a rate based on the prevailing interest rates in the market during the month the gift is made. Two types of planned gift structures are particularly beneficial for donors seeking tax benefits while interest rates are low, such as now when the April 2020 Section 7520 rate is 1.2%.

A donor may take a current charitable income tax deduction for a gift of a remainder interest in a personal residence or farm to charity where the donor retains a life estate in the property. The donor holding the life interest may occupy the property and collect income from the property during lifetime, and the donor may share in the proceeds if the property is sold during his or her life. Even though the charity will not receive the property until the donor's death (or a prior sale), the charitable deduction is available currently, based on the actuarial value of the charity's right to receive the property after the donor's life expectancy. The Section 7520 rate is used to value the charity's remainder interest. Thus, if a 65 year old donor gifts a home or farm valued at $1,000,000 while the Section 7520 rate is 8.0%, the charitable deduction is $318,500, whereas if the Section 7520 rate is 1.2%, the charitable deduction is valued at $813,460. This larger deduction should incentivize donors to give remainder interests in personal residences and farms to charity during economic times like now when interest rates are low. While a gift of a remainder interest does not provide an immediate benefit to charity, these types of gifts will help secure charity's future service to the community.

A type of planned gift that does provide an immediate benefit to charity while furthering a donor's gift and estate tax planning is a charitable lead annuity trust (CLAT). A CLAT provides an immediate stream of payments to charity over a term defined in the trust, and it then pays the remainder to the donor's family. The donor of a CLAT generally does not claim an income tax deduction for the value of the charity's stream of payments, depending on the structure of the trust, but the primary tax benefit for the donor is that the future remainder interest given to his or her family is valued less for gift tax purposes when interest rates are low, thereby saving gift and estate taxes. For example, if the charity's payments from a $1,000,000 CLAT are $50,000 per year (5% of the initial value) for 20 years, a gift in April of 2020 when the Section 7520 rate is 1.2% would value the remainder going to family at $115,635 for gift tax purposes. If the donor makes that gift when the Section 7520 rate is 8.0%, the value of the reminder subject to gift tax is $509,095. If the assets in the CLAT generate a total return of 5% per year, the family would still end up with a net transfer of $1,000,000 after 20 years. If the assets of the CLAT generate a greater total return, the family ends up with even more assets free of gift tax. If the assets funding the CLAT generate a lesser total return, the value of the remainder that the family receives would have a lower value. A CLAT also can be structured to "zero out"

the taxable gift to family, which makes it a very gift tax-efficient wealth transfer strategy (if the CLAT generates a total return during the trust term in excess of the current 1.2% Section 7520 rate, the family would receive the remainder interest without gift tax). Thus, a CLAT can be a great way to provide for charity now while also reducing the donor's gift and estate taxes.

Appreciated Property Gifts

Tried and true charitable giving advice suggests giving long-term appreciated property to charity because those gifts yield two tax benefits: in most cases, with a few exceptions, a charitable deduction for the fair market value of the property will be available plus the built-up capital gains may be excluded from the donor's taxable income. In times like these, publicly-traded stocks have become devalued where the stock market has fallen precipitously; gifts of devalued stock will yield lower income tax charitable deductions if given at those lower values. Further, publicly-traded stocks may not be appreciated, or at least not appreciated as much in the current market. Thus, publicly-traded stock may not be the best source for charitable gifts in the current market. However, other properties, such as real estate, may not have suffered the same losses as publicly-traded stock and may still be appreciated. Donors looking to support charities in 2020 can look to their appreciated assets as one source of support. Of course, if the gifted property is not liquid, charities will need to consider how such gifts can be liquidated expeditiously if cash needs are pressing during these times.

IRA Charitable Rollovers

Over the last decade or more, donors have increasingly given to public charities from their IRA funds. Donors over age 70½ can gift up to $100,000 per taxpayer per year if the gift is made directly from the IRA to a public charity (excluding donor advised funds and most private foundations). IRA Charitable Rollover gifts do not yield an income tax deduction but are usually not included in income either, so these gifts have been a particularly beneficial option for donors who do not itemize their deductions. An added benefit is that the amount of an IRA Charitable Rollover counts toward the required minimum distributions (RMDs) from those accounts in that year. The SECURE Act changed the beginning RMD age to 72, but IRA Charitable Rollovers still are available for donors over age 70½. The CARES Act suspends RMDs from IRAs for 2020. Thus, while the added benefit of satisfying RMD requirements won't apply in 2020, IRA Charitable Rollovers have been prolific and are still available in 2020. In light of the suspension of the 60% cap on cash charitable deductions in 2020, an alternative for donors seeking to donate more than $100,000 from IRAs in 2020 would be to withdraw cash from the IRA, include the distribution in income, and take the cash charitable deduction if the donor itemizes deductions.

Gift planners should work closely with their donors and their advisors to identify giving strategies that continue to work, or work better, during these difficult times. If you have charitable giving questions, please

contact Sheryl Morrison; Ann Burns; Jim Lamm; Trusts, Estates & Legacy Planning Practice Group Chair Courtney Conrad; or your regular Lathrop GPM attorney. We look forward to helping.

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*Some readers will recognize the subtitle coined by Robert Harding, our recently-retired law partner who, alongside the late Clinton Schroeder, so successfully created, managed and shouldered the charitable giving advisory practice for our nonprofit clients at Lathrop GPM, formerly Gray Plant Mooty. Many of us owe our work in this practice area to Bob and Clint and I use that title here in honor of them.