



THE DIVERSITY OF GIVING

THE DIVERSITY OF PHILANTHROPIC SOLUTIONS

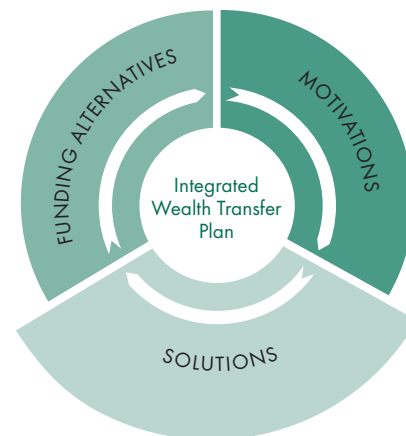
Grace Allison,
Tax Strategist, Personal
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You have attained a level of financial security that allows you the freedom to devote resources to causes that are important to you and to make a difference in the lives of others. But with opportunity comes challenge. Having made the decision – and commitment – to contribute to charity, you are now faced with determining how best to ensure your desired legacy is achieved.

Northern Trust can help.

We are committed to helping you integrate your philanthropic goals into a comprehensive wealth transfer plan. To assist in this endeavor, “The Diversity of Giving” series of white papers was developed to explore, in depth, key aspects of philanthropy:

- *The Diversity of Motivations* will help you understand your motivations and objectives for charitable giving, as well as how to develop a philanthropic plan.
- *The Diversity of Solutions* will help you, your family and your other advisors evaluate alternative charitable solutions that will enable you to meet your charitable and wealth transfer goals.
- And lastly, *The Diversity of Funding Alternatives* will help you decide what and when to give, as well as whether or not to give outright.



At Northern Trust, we recognize that philanthropic giving is personalized and unique to every individual. Working with you and your other advisors, we can help you determine the course of action that will best accomplish your objectives and work with you to implement your charitable strategy, ensuring that you and your family have as much – or as little – involvement in the day-to-day activities as you desire.



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MAKING INFORMED DECISIONS

When you first consider making contributions to charity, there are more questions than answers:

- What do you hope to accomplish through philanthropy?
- What charity or type of charities would you like to benefit?
- Do these activities or charitable organizations reflect your values and goals?
- How will family members be involved in making gifts?
- How involved do you wish to be in the causes that you wish to support?

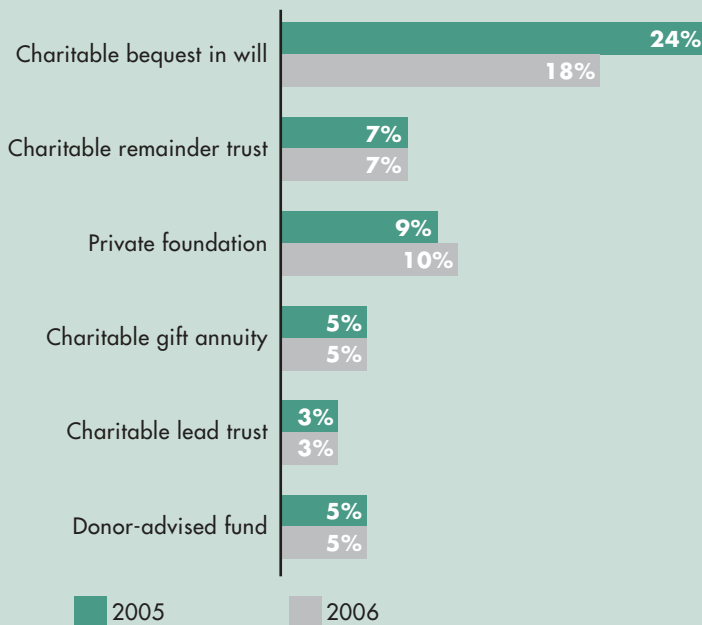
Not surprisingly, the answers to these questions are a springboard for further conversations, conversations about choosing philanthropic solutions that fulfill your wealth transfer and charitable objectives. As always, careful consideration of personal factors leads to a disciplined choice.

ONE SIZE DOES NOT FIT ALL

For many donors, it is a surprise to learn that charitable gifts can be structured in many different ways (see Exhibit 1) – and that the size of the gift may or may not influence the choice of

charitable vehicle. For example, for individuals wishing to make an immediate impact, direct contributions to charity may range from a modest check at one extreme to very substantial asset donations at the other. Similarly, one donor who wants to involve her family in philanthropy may choose to make a sizeable contribution to a donor advised fund, while another chooses to establish a substantial private foundation. From the donor's viewpoint, it is important to recognize that many factors are involved, including motivations, objectives and financial situation. When considering particular philanthropic vehicles, donors typically find that the best choices emerge after a thorough evaluation of the relevant alternatives.

EXHIBIT 1 – CURRENT USE OF GIVING VEHICLES



Northern Trust
Wealth in America Study 2007

TAXES AND CHARITABLE GIVING

While typically not the primary reason for philanthropy, an evaluation of charitable giving options would be incomplete without a discussion of the income and transfer tax benefits of giving. An understanding of how charitable giving can ease your tax burden will likely encourage consistent and long-term giving.

Federal Tax Consequences

The federal tax law provides incentives for charitable giving, in the form of generous deductions under the income, gift and estate tax. In general, the same charitable techniques that qualify for deductions under the income tax also qualify for gift and estate tax charitable deductions. That being said, donors should remember that the gift and estate tax charitable deductions are unlimited; in contrast, the income tax charitable deduction is limited by a number of factors, including the donor's adjusted gross income.

The Income Tax Charitable Deduction

With current income tax rates ranging up to 35%, the after-tax cost of contributing a dollar to charity during life can be as low as 65 cents. In addition, if appreciated assets are contributed to charity during life in a properly structured transaction, capital gain is either avoided or deferred. As Example 1 illustrates, even with capital gains rates at historic lows, the tax savings can be substantial.

EXAMPLE 1: INCOME TAX SAVINGS CAN BE SUBSTANTIAL

SCENARIO	ALTERNATIVE	
Sarah, age 50, donates \$600,000 of highly appreciated securities with \$0 tax cost to a public charity in 2007, when her AGI is \$200,000.	Maximum available income tax charitable deduction in year of contribution ($\$200,000 \times 30\%$):	\$60,000
	Capital gains avoided:	\$600,000
	Tax Benefits:	
	From charitable deduction	\$15,786
	From capital gain avoided	\$90,000
	Total Tax Savings:	\$105,786
	After-tax cost of gift in year of contribution*	\$494,214

* Charitable contribution carryover is available for use in the five succeeding years.

The income tax charitable deduction is limited to a percentage of the donor's adjusted gross income, with a generous five-year charitable contribution carryover for excess contributions – allowing you to carry over the contributions that you are not able to deduct in the current year because they exceed your adjusted gross income limits. In other words, you can deduct the excess in each of the next five years until it is used up, but not beyond that. As Table 1 illustrates, the applicable percentage limitation depends on the charitable vehicle selected by the donor – and on the nature of the contributed asset. For example, cash is deductible up to 50% of adjusted gross income if contributed to a public charity.

TABLE 1: INCOME TAX CHARITABLE DEDUCTION

TRANSFER TO	AGI LIMITATION	DEDUCTION BASED ON
Public charity	50% for cash	Fair market value
	30% for long-term capital gain property	
Private foundation	30% for cash	Fair market value for cash and publicly traded long-term appreciated stock; tax cost for other long-term capital gain property, including closely held stock and real estate
	20% for long-term capital gain property	
Charitable remainder trust with public charity as remainderman	50% for cash	Fair market value
	30% for long-term capital gain property	
Charitable remainder trust with private foundation as remainderman	30% for cash	Fair market value for cash and publicly traded long-term appreciated stock; tax cost for other long-term capital gain property, including closely held stock and real estate
	20% for long-term capital gain property	
Non-grantor charitable lead trust	n/a	n/a
Supporting organization	50% for cash	Fair market value
	30% for long-term capital gain property	

The Gift Tax Charitable Deduction

Were it not for the gift tax charitable deduction, lifetime transfers to charity would be subject to gift tax, with tax rates beginning at 41% for taxable gifts in excess of \$1 million. Happily, there is a gift tax charitable deduction, and as noted above, it is unlimited. The exact amount of the deduction depends on the fair market value of what is transferred.

The Estate Tax Charitable Deduction

Currently, estate tax rates are higher than income tax rates, with a 45% rate in effect through 2008 on transfers in excess of \$2 million.¹ This means that each dollar of estate tax charitable deduction has the potential to save 45 cents of tax in that year. In addition, as noted above, the estate tax charitable deduction is unlimited (so long as the transfer is properly structured). This means that an otherwise taxable estate can avoid taxation through strategic use of the estate tax charitable deduction. As Example 2 illustrates on the next page, it is possible to include charity in an estate plan without substantially diminishing the portion of the estate that flows to individual beneficiaries.

EXAMPLE 2: ILLUSTRATION OF THE ESTATE TAX CHARITABLE DEDUCTIONS

SCENARIO

Sam passes away in 2008, leaving an estate of \$10 million.

	\$0 LEFT TO CHARITY	\$1,000,000 LEFT TO CHARITY
Estate Tax:	\$3,600,000	\$3,150,000
Net to Daughter:	\$6,400,000	\$5,850,000
Estate Tax Savings:	n/a	\$450,000
After-tax Cost of Charitable Gift:	n/a	\$550,000

OUTRIGHT GIFTS TO PUBLIC CHARITIES

For some donors, making an outright gift is as simple as writing a check or arranging for the transfer of selected securities, real estate or collectibles. Others, however, desire a greater degree of control. As a result, their gifts may be documented by written agreements that:

- Restrict the use of the gift,
- Specify how gift proceeds are to be invested, or
- Direct the recipient to produce annual reports detailing how gifted monies are used.

In either situation, donors are best served when they engage both their financial advisors and the planned giving office of the recipient charity before making firm plans. For example, the charity may have a particular funding opportunity that will uniquely match the donor's interests. Planned giving officers also can advise which types of gift restrictions are acceptable – or not acceptable – to the institution. Financial advisors are able to initiate or review relevant documentation and help with related compliance and funding issues.

Endowments

One important distinction for donors is the distinction between endowed funds, on the one hand, and non-endowment funds, on the other. When funds are given as an endowment, the parties agree that only the income from donated monies may be used for current purposes; the donated principal typically must remain intact. As a result, an endowed gift – whether for maintenance of capital assets or for scholarships – can continue in perpetuity. An endowment may take the form of a separate fund on the charity's books or may be structured as a separate entity altogether.

Restricted Gifts

Endowments are one example of the broader category of restricted gifts. Because restricted gifts are targeted to particular areas of need, they work best when donor and charity collaborate. For example, a gift restricted to capital costs might be counter-productive for a charity struggling to meet current operational needs. Conversely, a charity working to build its endowment might be very grateful to receive a donation earmarked for this purpose.

From the donor's standpoint, much will depend, as always, on the motivation for making the gift. For example, if there is a desire to honor a family member in perpetuity, an endowed scholarship may be a better choice than a bricks and mortar facility with a limited lifespan.

To avoid future controversy about restricted gifts, the agreement of the parties should be in writing, with full consideration of contingencies. For example:

- *What happens when a named building becomes obsolete?*
- *What happens when the program for which funds are earmarked ceases to exist?*
- *Is there an opportunity for the donors and their descendants to work with the institution in the future to determine to what use funds should be designated?*

QUALIFIED CONSERVATION CONTRIBUTION:

A special type of outright transfer of property.

A charitable deduction is allowed (for income, gift and estate tax purposes) for “qualified conservation contributions” of real estate, defined broadly to include both transfers of full title and easements in perpetuity. A “contribution” will qualify only if it preserves outdoor recreation areas, open space, natural habitat, or historically important land areas and structures. Contributions of real property to governmental agencies or charities may qualify under this provision, subject to a host of highly technical requirements.²

Effective through December 31, 2007, qualified conservation contributions are deductible up to 50% of gross income and are allowed a special 15-year carryover period. Under certain circumstances, even more generous rules apply to farmers and ranchers. After 2007, the usual 30% limitation and five-year carryover period apply.³

Tax Consequences

As Table 1 illustrates on page 5, the Internal Revenue Code looks with favor on outright transfers to public charities during life. Such lifetime transfers also qualify for a gift tax charitable deduction. Similarly, if an outright transfer is made at death, the unlimited estate tax charitable deduction will be available.

BARGAIN SALES

Sometimes donors find themselves torn between their philanthropic intent on the one hand and their cash flow needs on the other. This is particularly true of collectors, who may have a large percentage of their net worth invested in their collections of art, antiques or jewels. One solution is to engage in a bargain sale,⁴ a strategy that benefits both the charity (with a below-market sales price) and the donor (with a cash infusion from the sale). In this situation, the charitable deduction (for income, gift and estate tax purposes) will be calculated based on the “bargain” element of the sale, i.e. the difference between the actual fair market value of the property and the below-market sale price.⁵

DONOR ADVISED FUNDS

Donor advised funds have become increasingly popular in recent years because of their versatility and ease of operation, particularly in contrast to private foundations. The latest statistics show the nation’s largest donor advised funds have assets in excess of \$15.5 billion.⁶

A donor advised

fund will appeal to individuals who want to establish a tradition of giving by involving their family members in the grant-making process. And compared to private foundations, donor advised funds are less complex for the donor.

Definition of a Donor Advised Fund

In simple terms, a donor advised fund is a separate account over which the donor and his designees have the power to recommend grants and investments.⁷ The account is owned and held by a sponsoring charity, which may or may not receive a certain percentage of grants made.

Often, the sponsoring charity is a community foundation; less frequently, it is a large public charity, such as a hospital or educational institution. Major financial institutions also offer associated donor advised funds. For these, the sponsoring charity is generally a newly created charitable organization. There are exceptions, however: the sponsoring charity for the Northern Trust Charitable Giving Program is an affiliate of a major community foundation.

How They Work

The charitable transfer occurs when the donor transfers assets to the donor advised account, either during life or at death. Grant-making from the account then occurs over the succeeding months and years. A key element is the ability of the donor and/or his designees to name family members and friends as “account advisors.” In this way, a donor advised fund may be used to promote family philanthropy or create a giving circle.

Considerations

There are important differences among donor advised funds, differences beyond fee structure and available investment options. Depending on your situation and your charitable objectives, among the most important factors to consider are:

- Whether the fund will accept non-traditional assets such as closely held stock or partnership interests,
- The number of individuals who may serve as advisors during your lifetime or after your death,
- The presence or absence of a requirement to make distributions to the sponsoring charity,
- The ability to designate multiple charities to receive distributions at your death,
- Whether expert advice on grant recommendations is available from the sponsoring charity, and
- Minimums for contributions and additions.

Income and Gift Tax Consequences

A lifetime transfer to a donor advised fund is treated, for both property law and tax purposes, as a direct transfer to the sponsoring public charity. For this reason, the applicable income tax limitations are those for transfers to public charities: a 50% limitation for gifts of cash and a 30% limitation for gifts of securities. As noted previously, the gift tax charitable deduction is unlimited and will be equal to the fair market value of the cash and property transferred.

Because the sponsoring organization owns the donor advised fund account, all earnings of the account appear on the tax return of the sponsoring organization. Unlike those who establish private foundations or supporting organizations, a contributor to a donor advised fund does not need to file a separate tax return for the new entity. The gift tax rules are equally benign: currently, donors are not required to file a gift tax return solely because they have transferred cash or property to a donor advised fund.

SITUATION	SOLUTION
<p>A “triggering” event Mary West and her husband Ted have two daughters. Their usual AGI is \$200,000; in 2008, however, Mary also will receive a bonus of \$50,000.</p>	<p>Value: Mary and Ted perpetuate philanthropic values. By contributing her bonus to a donor advised fund and naming her family members as fund advisors, Mary begins to develop a family tradition of giving. Because her contribution grows tax-free, the potential for future grant-making increases.</p> <p>From a tax perspective, Mary and Ted offset their 2008 taxable income with a \$50,000 income tax charitable deduction. Longer term, Mary has removed the \$50,000 – as well as any associated future earnings – from her taxable estate.</p>

Planning Tip:

Donors can maximize tax efficiencies by establishing a donor advised fund in a year when they expect a spike in income. Triggering events may range from an unusually large bonus to stock option exercises to the sale of a closely-held business.

Transfers at Death

Transfers to donor advised funds can be made at death as well as during life, so long as the appropriate language is included in the donor’s will or trust. For example, if Mary wished to include her family’s donor advised fund in her estate plan, she could include a bequest of a fixed dollar amount to the “West Donor Advised Fund, established as account 12146 with Northern Trust Charitable Giving Program.” As discussed above, an unlimited estate tax charitable deduction would be available to reduce estate tax in an otherwise taxable estate.

CHARITABLE TRANSFERS TO TRUSTS

Several different types of trusts qualify for the charitable deduction, ranging from qualified wholly charitable trusts to qualified “split-interest” charitable trusts. In this context, “split-interest” means that the trust benefits both individual beneficiaries and designated charities. Including a qualified split-interest charitable trust in your estate plan can enable you to maximize after-tax transfers to both individuals and to your favorite charity. This flexibility can be very useful when addressing a wide range of family situations.

Beneficiaries of a charitable trust may hold a variety of interests. In a *wholly charitable trust*, all interests in the trust are held by one or more charities. In a *split-interest charitable trust*, some beneficiaries hold a current interest (e.g. a current right to fixed distribution) while others hold a *future* interest (e.g. a right to receive the principal of the trust when it terminates).

Types of Charitable Remainder Trusts

As illustrated in Table 2 on the next page, there are four main types of approved charitable remainder trusts, each appropriate for a different type of donor situation. The fixed payments made by a charitable remainder annuity trust may suit those wanting steady cash flow. For donors funding with non-marketable assets (such as real estate or closely held stock) – or donors who wish to defer cash flow until retirement – a flip unitrust (that changes its payout when a trigger event occurs) may be the right answer. Regardless of the type of charitable remainder trust (CRT) chosen, the present value of the remainder interest must be at least 10% of the initial fair value of the contributed property.

TABLE 2: COMPARISON OF CHARITABLE REMAINDER TRUSTS

TRUST TYPE	TRUST PAYMENT	COMMENTS
Charitable Remainder Annuity Trust (CRAT)	Fixed	Least flexible
		No additions permitted
Straight Percentage Unitrust	Fluctuates, based on trust value	Most popular
		Annual valuation required
		Additions permitted
Net Income Alternative Unitrust	Lesser of net income or unitrust amount	Income beneficiary may be disappointed with distributions
	"Make-up" may be permitted if income exceeds unitrust amount	Annual valuation required
		May define income to include post-contribution capital gain
		Additions permitted
"Flip" Unitrust	On trigger event, flips from net income alternative unitrust to straight percentage unitrust	Sample trigger events: sale of real estate, retirement
		Annual valuation required
		Additions permitted

Benefits of Charitable Remainder Trusts (CRT)

Well-established. In 1969, Congress enacted Internal Revenue Code Section 664, which lays out the requirements for a properly structured charitable remainder trust. As a result, donors can enjoy a comforting certainty: so long as their charitable remainder trust is drafted and operated in a way that complies with the tax rules, their charitable deduction is assured. Put somewhat differently, charitable remainder trusts are a well-established, fully approved wealth transfer strategy: the Internal Revenue Service even publishes charitable remainder trust forms to make life easier for donors and their drafters.⁸

Flexible. A second endearing quality of the charitable remainder trust is its flexibility. Charitable remainder trusts can be hand-tailored by a skilled drafter to fit a variety of situations. The beneficiary of a charitable remainder trust may be the donor, another individual(s), a trust(s) for the benefit of individuals, a corporation or a partnership. Individual beneficiaries often include the donor, the donor's spouse and/or the donor's children. Equally importantly, charitable remainder trusts are valuable estate planning tools for unmarried couples, with each partner's documents creating a charitable remainder trust at death for the benefit of the other.

Tax Efficient. A third advantage of a charitable remainder trust is that it is tax efficient if properly structured. When used during life, it defers capital gains, while at the same time facilitating portfolio diversification and enhancing cash flow. The tax savings from gain deferral can be very significant.

SITUATION	SOLUTION
<p>Family member with limited income Sam's daughter Sara is unmarried, with no children and a limited income. Sam wants his estate plan to 1) provide additional cash flow to Sara over her lifetime and 2) fund a scholarship in his family's name at his alma mater, Hope University.</p>	<p>Value: Provide income to daughter and support to favorite charity. Working with his team of advisors, Sam creates an estate plan that establishes a large charitable remainder trust (CRT) that will provide cash flow to Sara for her life. At Sara's death, the balance of the trust will distribute to create a scholarship fund at Hope University honoring Sam's family.</p> <p>Sam's estate is entitled to an estate tax charitable deduction equal to the present value of the remainder interest in the trust.</p>
<p>Two Goals: Increased cash flow and funding the arts Jennifer, age 61, desires increased cash flow, but also wants to support the local art museum. She currently has a concentrated position of closely held stock, valued at \$500,000 with a zero tax cost.</p>	<p>Value: Provide retirement income to donor and support a special charity. Using her closely held stock, Jennifer funds a CRUT with a unitrust percentage of 7%. When the trustee sells the \$500,000 concentration, no gain is recognized: the trustee can reinvest the entire proceeds – unreduced by tax – creating a well-balanced portfolio.</p> <p>In year 1, Jennifer receives \$35,000 in income from the unitrust ($\\$500,000 \times 7\%$); 7% payments (based on the annual value of the unitrust) continue for Jennifer's lifetime.</p> <p>From a tax perspective:</p> <ul style="list-style-type: none"> ■ Jennifer's maximum available income tax charitable deduction (available in the year of contribution, with five-year carryover) is almost \$153,000. ■ The \$500,000 capital gain is deferred over the period that payments are made to Jennifer. Moreover, the tax character of the payments made to her by the CRT depends on the composition of the trust's earnings. Assuming \$5,000 interest income and \$8,000 qualified dividends from the trust in the first year, the \$35,000 unitrust payment is taxed to Jennifer as \$5,000 ordinary income, \$8,000 qualified dividends and \$22,000 capital gain. Should Jennifer die before the entire \$500,000 gain is taxed to her, the untaxed capital gain escapes tax forever.

Like Jennifer, many donors establish charitable remainder trusts during life to enhance their own cash flow and to facilitate diversification. Others, like Sam, establish a charitable remainder trust at death to provide cash flow for loved ones.

Types of Charitable Lead Trusts

In a charitable lead trust, the current interest is held by charity, and the future interest is held by family members. Like charitable remainder trusts, charitable lead trusts were created by Congress in 1969 and are an estate planning staple.⁹ As Table 3 indicates, there are four different types of charitable lead trusts, with the charitable lead annuity trust (CLAT) working best for deferred transfers to children and the charitable lead unitrust (CLUT) working best for generation-skipping transfers.

TABLE 3: COMPARISON OF CHARITABLE LEAD TRUSTS

TRUST TYPE	INCOME TAX DEDUCTION?	GOOD FOR GENERATION-SKIPPING TAX (GST) PLANNING?
Non-grantor Charitable Lead Unitrust (CLUT)	At trust level only (trust is taxable)	Can allocate GST exemption at inception to achieve totally exempt trust Alternately, can reduce value of remainder to zero so no allocation is needed
Non-grantor Charitable Lead Annuity Trust (CLAT)	At trust level only (trust is taxable)	GST-exempt status uncertain: initial GST allocation may not result in totally GST exempt trust
Grantor CLUT	Donor gets income tax deduction at inception	Can allocate GST exemption at inception to achieve totally GST exempt trust
	Trust income taxed to grantor	Alternately, can reduce value of remainder to zero so no allocation is needed
Grantor CLAT	Donor gets income tax deduction at inception	GST-exempt status uncertain: initial GST allocation may not result in totally GST exempt trust
	Trust income taxed to grantor	

Benefits of Charitable Lead Trusts (CLT)

Charitable lead trusts are very useful in situations where family members have no immediate need for cash flow. The gift to individuals is deferred – allowing the donor to leverage her estate, gift or generation-skipping tax exemption to the fullest. The key here is the time value of money: a gift of a future interest has less value than a gift of a present interest. Moreover, the present value of the remainder interest is calculated using the current “applicable federal rate,” which is typically low compared to returns on strong investments. This means that, to the extent that individual enjoyment is deferred, the amount of a gift, estate or generation-skipping tax exemption needed to protect the non-charitable transfer from tax is minimized. Likewise, to the extent the assets appreciate at a rate higher than the applicable federal rate, they have escaped transfer tax.

SITUATION	SOLUTION
<p>Desire to encourage personal achievement Sam's son Peter has three young children, David, Alex and John. Sam would like to share some of his considerable wealth with the three boys at his death. At the same time, he is concerned that early access to extensive funds will be a disincentive to personal achievement.</p>	<p>Value: Provide cash flow to charity with remainder to grandchildren when they're older. Sam establishes a charitable lead trust (CLT) that will provide cash flow to his favorite charity for 40 years. At the end of that term, the trust will distribute outright to the three grandchildren, who by then should all be mature adults.</p>

As illustrated in Example 3, if the charitable lead trust is established at death, an unlimited estate tax charitable deduction is available to a donor's estate for the present value of the cash flow to be received by charity. This deduction will reduce estate tax otherwise due from the donor's taxable estate. In addition, a properly structured charitable lead trust will avoid the separate generation-skipping transfer tax otherwise due on transfers that skip a generation, such as transfers to grandchildren. The generation-skipping transfer tax is a flat tax, imposed at a 45% rate, in addition to the gift or estate tax.

EXAMPLE 3: ILLUSTRATION OF ESTATE AND GENERATION-SKIPPING TAX SAVINGS

SCENARIO	CURRENT ESTATE PLAN	PHILANTHROPIC SOLUTION
Margaux, a widow in her 80s, has an estate currently valued at \$10 million and passes away in 2007. She leaves one son, who is independently wealthy, and five grandchildren.	Estate distributes to Margaux's grandchildren	\$10 million, 7% CLUT
		24-year term
		Initial beneficiary is Margaux's donor advised fund
		Remainder beneficiaries are Margaux's grandchildren
Estate Tax:	\$3,600,000	\$0¹
Generation-skipping Tax:	\$1,365,517	\$0²
Net to Grandchildren:	\$5,034,483	\$10,000,000³

¹ Due to \$8 million estate tax charitable deduction plus \$2 million estate tax exemption.

² Present value of future distribution to grandchildren is \$2 million, which is covered by GST exemption.

³ Expected future value of the remainder interest at the end of 24 years, assuming a constant 7% rate of return on investment.

PRIVATE FOUNDATIONS

By the end of 2005, there were nearly 68,000 grant-making private foundations in the United States.¹⁰ Unlike public charities, private foundations are supported not by the general public but by a very limited number of donors – typically a corporation or a high-net-worth family.

Establishing a Private Foundation

Some foundations are organized as wholly charitable trusts; others are wholly charitable not-for-profit corporations. Most are *grant-making foundations* that make grants to public charities selected by their trustees, board or grant-making committees. A smaller number are *operating foundations* that directly fulfill a charitable function, typically by providing some type of service to the public, e.g. operating a museum or a soup kitchen. More than half of all private foundations are family foundations, controlled by individual donors and their descendants, advisors and friends.¹¹

Tax Consequences

Although private foundations are exempt from income tax, most pay a 2% excise tax on their net investment income, including capital gains.¹² Private foundations are also subject to a variety of penalty taxes designed to ensure that donors do not benefit, directly or indirectly, from their assets and income.¹³

The income tax charitable deduction for lifetime transfers to private foundations is limited by the “percentage of adjusted gross income” rules summarized previously in Table 1. Gifts of cash are subject to a 30% limitation; gifts of publicly traded stock are subject to a 20% limitation. Importantly, the income tax charitable deduction for transfers to a private foundation of long-term appreciated assets other than publicly traded stock (such as real estate or closely held stock) is generally limited to tax cost. For this reason, most lifetime transfers to private foundations are funded with cash or long-term publicly traded stock.

In contrast, if a transfer to a private foundation is made at death, the unlimited estate tax charitable deduction is available, whether the asset being transferred is cash, publicly traded securities, real estate or closely held stock.

Administrative Complexity

One downside of a private foundation is its administrative complexity. For example, the tax rules require annual distributions equal to at least 5% of average monthly asset value, with a 30% penalty tax on late payments. There are also Byzantine rules on self-dealing, excess business holdings, jeopardizing investments and excess expenditures, all with associated penalty excise taxes. Finally, there is the 2% tax on net investment income – which must be paid in estimated quarterly installments. To keep their foundation on the straight and narrow, donors typically turn to their accountants or a financial services provider who will serve as agent or trustee.

Family Philanthropy

Administrative complexities notwithstanding, many donors conclude that a private foundation is the ideal vehicle to promote family philanthropy. A typical expectation is that the foundation will unite the family as it works together toward common goals. This expectation is more likely to be fulfilled if the foundation is established during the original donors' lifetimes, so that family members can share first-hand the donors' passion and vision. Conversely, it is not likely that a deeply divided family will find itself united through a family foundation, whether or not the donors are alive.

What if your finances will allow you to establish a significant private foundation at death, but not during life? Many advisers suggest "test-driving" the concept with a pint-sized private foundation while you are alive. Depending on what you learn about family dynamics, you may decide to create separate family foundations for each family member at your death – or to establish a donor advised fund for each.

SITUATION	SOLUTION
<p>Desire to instill a family legacy of giving Hal and Martha are the parents of three school-aged children – Kendra, Jason and Holly. Their estate has a current value of \$10 million. They feel strongly about giving back to the community and want to pass this passion on to their children.</p>	<p>Value: Hands-on involvement in philanthropy. After evaluating their options, Hal and Martha decide to establish a \$1 million grant-making family foundation, the mission of which is to broaden educational alternatives in the local community. Hal and Martha will serve as board members, with Kendra, Jason and Holly as junior board members.</p> <p>By being actively involved in the grant-making process, the children learn not only about philanthropy, but also are introduced to portfolio management and the importance of budgeting and cash management.</p> <p>From a tax perspective, a \$1 million income tax charitable deduction is available in the year of contribution, with a five-year charitable contribution carryover. The applicable income limitation is 30% for gifts of cash and a 20% for gifts of publicly traded stock. Furthermore, assets grow income tax free in the foundation, subject only to a 2% excise tax on net investment income.</p>

Private Foundation or Donor Advised Fund?

As suggested by Table 4, donor advised funds share two of the most appealing characteristics of private foundations: donor involvement and family participation. Of the two, donor advised funds are more tax efficient for lifetime gifts – with a 50% income limitation for gifts of cash and a 30% limitation for gifts of publicly traded stock.

The trade-off is that private foundations offer the donor more control. With a donor advised fund, the donor makes recommendations about grants and investments with final approval coming from the sponsoring charity; with a private foundation, final approval comes from the donor and her board. On the other hand, donor advised funds are far less administratively complex than a private foundation, with no taxes on net investment income and no separate tax return. In the end, donors choose the appropriate philanthropic solution based on a variety of factors, including their available time and their tolerance for complexity.

TABLE 4: COMPARISON OF PRIVATE FOUNDATIONS AND DONOR ADVISED FUNDS

PRIVATE FOUNDATION	DONOR ADVISED FUND
Wholly charitable trust/corporation	Not a separate entity
	Funds belong to sponsoring charity
Grant recipients are generally public charities	Grant recipients must be public charities
Designated individuals choose charities	Designated individuals recommend charities
Opportunity for donor/family participation	Opportunity for donor/family participation
Tax-exempt, but pays 2% federal excise tax	Part of tax-exempt sponsoring public charity

The Pension Protection

Act of 2006 has made supporting organizations far less desirable.

SUPPORTING ORGANIZATIONS

Under prior law, supporting organizations were an attractive philanthropic alternative for donors with a long-standing association with a public charity, whether through volunteer activities, personal contact or family tradition. With the passage of the Pension Protection Act of 2006, supporting organizations have become far less desirable as philanthropic vehicles, largely because of the restrictions imposed by new tax rules.

Organized as a not-for-profit corporation or a wholly charitable trust, a typical supporting organization makes grants only to those public charities designated in its governing instrument. Less commonly, a supporting organization performs a necessary function for the supported organization, e.g. a university press that performs publishing and printing functions for a publicly supported university.¹⁴ Because of this close relationship with a public charity, a supporting organization is treated as a public charity for income tax purposes, i.e. the 50% of income limitation applies for contributions of cash, and the 30% of income limitation applies for contributions of stock. In addition, donors are permitted to serve on the entity's board, so long as they do not have a controlling role.

Under prior law, supporting organizations were particularly useful for donors who wished to contribute closely held stock to charity during their lifetimes – and yet retain a degree of involvement. This strategy is generally no longer available: the new law makes supporting organizations subject to a private foundation excise tax on “excess business holdings,” a tax specifically intended to limit holdings of closely held stock.

In addition, the new law imposes new distribution and reporting requirements on supporting organizations, making them as administratively complex as a private foundation. Donors who are interested in exploring supporting organizations in more depth should consult their legal and tax advisors.

CONCLUSION

Whatever your age, income level or family situation, there is an appropriate philanthropic solution. For some, outright gifts will remain the vehicle of choice. For others, searching for a higher level of personal involvement, the answer is a private foundation – or even a private operating foundation. For still others, the flexibility of a charitable remainder trust or a donor advised fund is most appealing. Whatever your final choice, we believe that you will be most satisfied if your choice is an informed one, reached by considering the full diversity of the available philanthropic solutions.

ABOUT THE AUTHOR

As Tax Strategist in the Personal Financial Services business unit of The Northern Trust Company, Grace Allison is a frequent speaker at staff, client and continuing education programs, including programs for the Notre Dame Tax and Estate Planning Institute, the Tax Section of the California State Bar, the Chicago Estate Planning Council, the Southwest Florida Estate Planning Council, the Minnesota Council on Planned Giving, and the Illinois Institute for Continuing Legal Education. Her articles have appeared in *Trusts & Estates*, *The Journal of Taxation*, *Probate & Property*, the *Journal of Exempts*, and the *Cleveland Bar Journal*; in addition, she has co-authored chapters in the CCH Federal Tax Service and the American Bar Association's *The Lawyer's Guide to Retirement*. She is currently on the Board of the Chicago Council on Planned Giving.

Prior to joining Northern Trust in 1991, Grace was in private practice as a partner with the Chicago office of Katten Muchin & Zavis. She is a graduate of The University of Chicago Law School and Wellesley College (Wellesley College Scholar) and has served as an Adjunct Professor of Law at IIT Chicago-Kent College of Law.

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FOOTNOTES

- ¹ In 2009, the estate tax exemption is scheduled to increase to \$3.5 million; taxable transfers in excess of that amount would then be taxed at a flat 45% rate.
- ² Internal Revenue Code § 170 (h)
- ³ Internal Revenue Code § 170 (b) (1) (E)
- ⁴ Internal Revenue Code § 170 and § 1011 (b)
- ⁵ For a discussion of the “related use” test that applies to tangible personal property for income tax purposes, see “Diversity of Philanthropic Funding Alternatives”
- ⁶ 2006 Survey in *Chronicle of Philanthropy*
- ⁷ Internal Revenue Code § 4966 (d) (2)
- ⁸ See e.g. Rev. Procs. 2005-53 through 2005-59, 2005-34 IRB.
- ⁹ See e.g. Internal Revenue Code § 170 (f) (2)
- ¹⁰ “Foundation Yearbook,” Foundation Center, June 2006, www.foundationcenter.org
- ¹¹ “Key Facts on Family Foundations,” Foundation Center, January 2007, www.foundationcenter.org
- ¹² Internal Revenue Code § 4940
- ¹³ Internal Revenue Code § 4941-4945
- ¹⁴ Treasury Regulations § 1.509 (a) – 4 (g) (2) Example (1)

COMPARISON OF SELECT PHILANTHROPIC SOLUTIONS (Arrayed from least complex to most complex)

	Direct Donations & Bequests	Donor Advised Fund	Charitable Remainder Trust	Private Foundation
Description	With direct donations, gifts can be provided to a charity during your lifetime or through a bequest in your will or similar provision in your trust at death.	A donor advised fund allows you and/or one or more designees to act as a "donor advisor" who recommends grants over time to tax-exempt organizations.	With a charitable remainder trust, you or someone you designate receives cash flow for the trust's term; one or more charities receives the remainder. (A charitable lead trust is more or less the reverse.)	A private foundation allows you to make gifts to a number of charities over time, and to involve family members in the decision-making process.
Tax Implications	<p>Lifetime gift: Immediate income tax deduction</p> <p>Cash: up to 50% of AGI Securities: up to 30% of AGI</p> <p>No capital gains tax on properly structured gifts of appreciated assets</p> <p>Bequest: Estate tax deduction for full market value of donation at death</p>	<p>Lifetime gift: Immediate income tax deduction</p> <p>Cash: up to 50% of AGI Securities: up to 30% of AGI</p> <p>No capital gains tax on properly structured gifts of appreciated assets</p> <p>Bequest: Estate tax deduction for full market value of donation at death</p>	<p>Lifetime gift: Immediate income tax deduction equal to the present value of the remainder interest</p> <p>Cash: up to 50% of AGI Securities: up to 30% of AGI*</p> <p>Deferred capital gains tax on properly structured gifts of appreciated assets</p> <p>Character of the income earned determines the type of tax to be paid by non-charitable beneficiary</p> <p>Bequest: Estate tax deduction for full market value of present value of remainder interest</p>	<p>Lifetime gift: Immediate income tax deduction</p> <p>Cash: up to 30% of AGI Securities: up to 20% of AGI*</p> <p>No capital gains tax on properly structured gifts of appreciated assets</p> <p>Bequest: Estate tax deduction for full market value of donation at death</p>
Advantages	<ul style="list-style-type: none"> Contributions deductible in current year Immediate benefit to charity No front-end costs or expenses Keep assets until you donate, investing them as you choose 	<ul style="list-style-type: none"> Contributions deductible in current year Ability to recommend investments and grants Minimum cost to establish Anonymity, if desired Involvement of family members and friends Establish a family legacy of giving Because there is no excise tax, more funds are available for gifting 	<ul style="list-style-type: none"> Benefit both family members and charity Provide increased cash flow Ability to change the charitable beneficiaries Diversify a large, single investment with deferred taxation Facilitate tax-efficient transfers of low cost basis assets 	<ul style="list-style-type: none"> Contributions deductible in current year Ability to make grants over time Full control over charitable distributions Anonymity, if desired Involvement of family members and friends Establish a family legacy of giving
Considerations	<ul style="list-style-type: none"> Some charities cannot accept certain non-cash contributions One-time gift vs. continuous grants 	<ul style="list-style-type: none"> Sponsoring charity has final say on grant recommendations and investment of fund assets Program and investment fees 	<ul style="list-style-type: none"> Benefit to charity is delayed Restrictions on the income and remainder interest Annual tax returns Set-up and ongoing expenses 	<ul style="list-style-type: none"> Net investment income of private foundation is subject to 2% federal excise tax Annual tax returns Substantial set-up and ongoing expenses Complex self-dealing and other private foundation excise tax rules

*If the charitable recipient is a private foundation, deduction for closely held stock is based on tax cost.

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