Making Your Charitable Gifts Last

Turn year-end giving into a longer-term strategy

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KEY POINTS

- **Even as you strive to be tax-efficient and timely in your year-end giving, those gifts can be part of a longer-term charitable giving strategy**
- **Giving for the long term requires a plan for what charities to support, what assets to give, and what structures to use**
- **Including your family in the process and looking at gifting as a long-term expression of your values can create a fulfilling and lasting family legacy**

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We often think of Thanksgiving and Giving Tuesday as ushering in the year-end charitable giving season. Year end, of course, is not only a time for gratitude, as families gather for the holidays, but also a time to start organizing financially for the close of the calendar year. But year-end giving does not need to be short-term giving. So even as you strive to be tax-efficient and timely in your year-end giving, those gifts can be part of a longer-term charitable giving strategy.

How do you get started on giving for the long term?

First and foremost, as a donor you need to determine which charities to support and how much to give. You can engage your family in the process by taking the approach that larger foundations often take: looking at your overall charitable giving budget and deciding rather deliberately how much to support the local community; how much to focus on a particular passion, such as the arts or the environment; how much to give nationally; and how much to support institutions that have played an important role in your life, such as colleges, churches and synagogues, or hospitals. By making giving more intentional, you and your family can think collectively about your values and create a meaningful long-term giving plan.

The second important decision is what to give. Rather than reaching for the checkbook at the end of the year, annual giving can be part of a long-term plan to take advantage of tax-efficient opportunities to transfer assets other than cash to charity. But of course, planning non-cash gifts takes time. It's important to allow enough time before year end to analyze the best assets to transfer and to develop a long-term plan for transfer. Annual giving can carry out a long-term plan to reduce the low basis stock in a donor's portfolio, transfer a collection or business interests, or even to manage tax-efficiently an IRA required minimum distribution. Charitable giving with non-cash assets is a complex topic and well beyond the scope of this article. But just as it is important to be deliberate in selecting what charities to support, it's equally important to adopt a plan for efficient giving over a relatively long time horizon.

Of course, planning tax-efficient gifts could be impacted if Congress passes tax legislation in 2017 or 2018. It's important to contact your tax and financial advisors when planning large or complex gifts.

Once your charitable goals are set, and the assets available to give are selected, it is also important to

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Year-end gifts can be an effective part of a long-term charitable giving strategy. Giving for the long term requires a plan for what charities to support, what assets to give, and what structures to use. Donors may want to create a long-term charitable giving vehicle, such as a private foundation for larger gifts or a donor advised fund for smaller gifts or assets not suitable for a private foundation. Long-term giving can also be accomplished by a restricted gift to a charity for a specific purpose, like a scholarship at a college, or a fund to support patient care at a hospital. And other family members can contribute to the same vehicle, making it a family endeavor.

think about ways to structure your giving so that it can have a continuing impact. A gift made to a private foundation or donor advised fund established by the donor or a family member can provide a long-term vehicle for charitable giving, which can be funded annually. Alternatively, you may want to establish a fund for a specific purpose at an existing charity, for example a college scholarship fund, which can be added to annually. Some of the structures discussed below will take enough advanced planning that they can't be accomplished by year end. But they may become goals for charitable planning for next year.

Private foundations

Private family foundations are grant-making entities that provide a way to foster a family's values and can provide a focus not only for annual charitable giving, but for a family's charitable giving overall. A private foundation can encourage intergenerational involvement by sharing values and decision making within the family while establishing a long-term legacy as well. They can also create an endowment to fund future giving, while offering income, estate, and gift tax advantages.

A private foundation can be created as a nonprofit corporation or a charitable trust, and it's important to remember that it is a separate tax-exempt entity. Your family must be motivated enough to accept the complexity of the entity and the responsibility that comes with running it. It's very easy to fall into the "documents in the drawer" syndrome and simply write checks as the primary function of your private foundation. Family communication and involvement is key to creating a true endowment that reflects your family's unique values and engages the family to carry out its philanthropic vision.

A private foundation can also provide a training ground for the next generation on corporate governance, investments, and philanthropy. Families can adopt a trustee or director structure providing the next generation with the opportunity to serve on committees, such as an investment or grant-making committee, before becoming a full board member with a full vote. Some family foundations provide for fewer votes for younger, less experienced family members. For a motivated family, annual charitable giving can become part of a broader family discussion, with the family annually reviewing together important areas of focus for the foundation.

Of course, the complexity of a private foundation means that it carries several disadvantages as well, such as the time and cost associated with running it. As a tax-exempt charity, it is regulated by the IRS, as

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well as state charitable law. It must file an exemption application and an annual information return with the IRS, and must pay out to charities at least 5% of the fair market value of its assets annually. Private foundations are prohibited from self-dealing and engaging in certain activities such as lobbying and political campaign activity and are subject to limitations on holding business investments. These rules can be very strictly interpreted. For example, it can be self-dealing for a private foundation to fulfill a personal pledge made by an officer, director, trustee, or substantial contributor—or family member of any of them—of the foundation. The deduction rules applicable to contributions to private foundations are also less favorable than those for "public" charities, for example limiting a donor's deduction for a gift of closely-held stock to the donor's basis (the initial investment, with some adjustments).

Donor advised funds

Some benefits of a private foundation can be achieved by establishing a donor advised fund (DAF) through a sponsoring charity that offers them, such as a community foundation. By law, donors may only recommend charities to receive distributions of donated funds, but in almost all cases sponsoring organizations follow those recommendations. DAFs can be a good option for smaller donations as they are simpler and less expensive to establish than private foundations. Some DAFs will also allow you to select your own investment advisor to manage the funds.

Because a DAF is maintained by a public charity, the deduction limitations and operational restrictions that apply to private foundations do not apply to them. And, you can contribute appreciated property, such as closely-held stock, to a DAF and still receive a full fair market value deduction.

While a DAF can be a very attractive solution for many philanthropic families, it has some disadvantages. First and foremost, you do not retain control over the fund. You and your family will be subject to the policies and procedures of the charity maintaining the fund, including its grant-making and investment policies. If you want the fund to be invested in certain investments, for example, that may not be possible. Further, the opportunity to have your family involved as advisors for multiple generations may vary from one DAF to the next. If you want to establish a long-term advisory vehicle, you should discuss the DAF's policy in advance.

Just like a private foundation, a DAF is as good as you make it. By engaging the family in the process and communicating regularly about what you hope to achieve from your DAF, it can become more than just the charity that receives a year-end check.

Restricted gifts

Sometimes the way to make a long-term impact is not a separate donor created entity like a private foundation or a DAF, but a restricted gift to a charity that can be funded annually as part of a long-term plan. A restricted gift allows you to carry out a specific purpose while still supporting the charity. For example, your family might support a local community organization but limit your annual gifts to specific programs supporting local conservation. In some cases a simple restriction can be accomplished just by a cover letter or even a notation on a check. However, sometimes a family may want a fund established at a charity to carry out a specific purpose permanently, for example a scholarship fund at the college or university attended by many family members.

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Many restricted gifts will require a gift agreement between the donor and the charity, clarifying not only the purpose of the gift, but what will happen in the event that the charity can no longer fulfill that purpose. A gift agreement will cost money and effort upfront, but can save you unhappiness, and in the worst case, a lawsuit, if the gift doesn't go as expected. And without a gift agreement, you likely won't be able to bring a lawsuit, but must rely on the attorney general of the state where the charity is located to plead your case.

Creating a structure for long-term giving provides an opportunity not only to make your year-end charitable gifts, but also to make "life cycle gifts" to celebrate important family events, such as birthdays, weddings, or a Bar Mitzvah. However you choose to gift, including your family in the process and looking at gifting as a long-term expression of your values can create a fulfilling and lasting family.

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