ESTATE PLANNING CHARITABLE GIFTS

Estate Planning Council of Rochester

R. Thompson Gilman, Esq.

December 4, 2018

WOODS OVIATT GILMAN LLP

The art of representing people

I. The Basics

A. Lifetime gift strategies usually maximize tax savings

- Outright gift of cash
- Gift of appreciated stock avoids recognition of taxable capital gain
- Charitable gift annuity
- Charitable trust planning/deed with retained life estate
- Gift of life insurance policy
- Donor advised funds

WOODS OVIATT GILMAN LLP
The art of representing people

I. The Basics (con't)

B. Each of the above provide income tax savings and estate tax savings

- Estate taxation thresholds may make income tax savings paramount for many donors

C. Income Tax Deductions (% of A.G.I.)

- Cash to public charity……………………………………………60%
- Appreciated capital gain property to public charity…………30%
- Cash to private foundation………………………………………30%
- Appreciated capital gain property to private foundation….20%

(5 year carry-forward)

WOODS OVIATT GILMAN LLP
The art of representing people

II. Impact of Higher Standard Deduction

A. Tax Cut and Jobs Act doubles standard deduction, now $12,000 for single taxpayers, $24,000 for married filing jointly

- May dilute or eliminate benefit of charitable deductions
- Benefit of "bunching." If annual charitable gifts do not otherwise provide income tax savings due to increased standard deduction, taxpayers can consider "bunching" what they would otherwise give over a number of years, into a single year's donations. That will allow them to have the benefit of itemizing for that year
- Donor advised fund especially useful to time deductible contributions, and desired payouts to selected charities

WOODS OVIATT GILMAN LLP
The art of representing people

II. Impact of Higher Standard Deduction (con't)

B. Charitable IRA rollover should be more popular than ever as a choice for charitable giving for eligible donors

- Taxpayer over age 70 1/2 ; direct transfer from IRA to charity, up to $100,000 per year. Does not count as taxable income to the taxpayer. Taxpayers who don't itemize benefit along with those who do

C. Former deductibility "Pease limitation"

- Former rule reducing charitable deduction(s) for higher income taxpayers now eliminated (until 2026)

WOODS OVIATT GILMAN LLP
The art of representing people

III. Charitable Remainder Trusts (CRT)

A. Provides for current payments to donor(s) or another non-charitable beneficiary, and at a specific termination date, the remaining amount of the trust is payable to charitable beneficiaries. Tried and true tax benefits:

- Income tax deduction based on actuarial value of charitable interest
- Avoidance of capital gains tax upon funding
- Income for life(s)
- Estate or gift tax deduction
- Donor can retain right to change charitable beneficiaries
- Many planning options to optimize benefits
- Sec. 7520 rate variations impact tax calculations.

B. Can be combined with "wealth replacement trust" owning life insurance policy on donor.

WOODS OVIATT GILMAN LLP
The art of representing people

IV. Charitable Lead Trust (CLT)

A charitable lead trust provides for current payments to a charitable beneficiary and, at a specific termination date, the remaining amount of the trust is payable to a non-charitable beneficiary or beneficiaries.

A. Like the CRT, a CLT may be either an annuity trust or a unitrust. (Unlike the CRT, there are neither minimum nor maximum limitations on the amount of either the annuity payment or the unitrust amount.)

WOODS OVIATT GILMAN LLP
The art of representing people

IV. Charitable Lead Trust (CLT) (con't)

B. There are two types of lifetime CLTs, each with a different income tax result to the grantor.
   1. A qualifying non-grantor charitable lead trust for which the grantor received no income tax deduction, but receives a gift tax (or estate tax, if created at death) deduction for the actuarial value of the charitable lead interest.
   2. A grantor charitable lead trust for which the grantor receives both a gift tax and income tax deduction upon its creation; however, the grantor remains taxable on the trust's income during the trust term.
      - Best use in year the grantor receives extraordinary taxable income.

WOODS OVIATT GILMAN LLP
The art of representing people

IV. Charitable Lead Trust (CLT) (con't)

C. There is no limitation on a CLT's term, other than the applicable rule against perpetuities.

D. Income tax consequences for non-grantor CLT.

A non-grantor CLT is subject to general rules governing the taxation of complex trusts, entitled to a charitable deduction for amounts paid for charitable purposes from gross income; the trust's net income, after deductions, is taxable in the same manner as a trust with no charitable interests.

E. Charitable Lead Annuity Trust can be utilized in connection with GST planning.

WOODS OVIATT GILMAN LLP
The art of representing people

IV. Charitable Lead Trust (CLT) (con't)

F. The Tax Cut and Jobs Act may make lifetime non-grantor CLTs attractive by providing taxpayers who are not itemizing due to the larger standard deduction with the benefit of the lost charitable deduction. The trust in essence allows the taxpayer to assign the income producing asset(s) used to make charitable gifts, to a trust which will then make the charitable gifts instead of the taxpayer. The trust will deduct the annual charitable contributions and thereby not pay income tax on the trust income used for the charitable payments. The taxpayer will thereby continue annual support to his or her favorite charitable organizations. The taxpayer will have less income to report and therefore pay less income tax. At the end of the trust term, the trust balance reverts to family member beneficiaries.

WOODS OVIATT GILMAN LLP
The art of representing people

V. Donor Advised Funds (DAF)

- No cost to set up. Easy to administer
- Can receive lifetime gifts, and bequests (cash or stock)
- Many donors find DAF an attractive alternative to a private foundation
- Can provide multi-generational charitable giving benefits. Donors' children can meet periodically to "advise" charitable gifts honoring parents, for example

WOODS OVIATT GILMAN LLP
The art of representing people

VI. Testamentary Charitable Gifts

A. Bequest (restricted or unrestricted) example: "to be added to endowment fund"

B. Designating IRA benefits to charity!

- No diminution by income tax
- Probably need to define as a percentage rather than a dollar amount
- Separate letter or Will provision can describe purpose of gift including intention to add to donor's family's donor advised fund

WOODS OVIATT GILMAN LLP
The art of representing people

VI. Testamentary Charitable Gifts (con't)

C. Charitable remainder trust

- For spouse (alternative to QTIP trust plan)
- For child or other relative (annuity or unitrust payment for life, remainder to charity)
- Charitable interest qualifies for estate tax deduction

WOODS OVIATT GILMAN LLP
The art of representing people

VI. Testamentary Charitable Gifts (con't)

D. Charitable lead trust

- Can offer significant estate tax savings (see below)
- Balance reverts to family beneficiaries after trust term

E. Note there are no percentage limits to estate tax charitable deductions (irrespective of whether charitable beneficiary is a public charity or a private foundation, unlike the case for lifetime gifts as noted above)

WOODS OVIATT GILMAN LLP
The art of representing people

VI. Testamentary Charitable Gifts (con't)

F. Illustration of estate tax savings using testamentary Charitable Lead Trust

1. Estate tax on an estate of $20 million

New York estate tax	2,666,800
Federal estate tax	2,461,280
Total	5,128,080

WOODS OVIATT GILMAN LLP
The art of representing people

VI. Testamentary Charitable Gifts (con't)

2. Charitable deduction by setting up a $10,000,000 10 year CLUT paying charity 5% per year in quarterly installments; remainder to children

Estate tax deduction	3,947,100
Estate tax savings for New York residents	1,957,762

WOODS OVIATT GILMAN LLP
The art of representing people

VI. Testamentary Charitable Gifts (con't)

3. Charitable deduction by setting up a $10,000,000 20 year CLAT paying charity 5% per year; remainder to grandchildren

Estate tax charitable deduction	7,170,950
Estate tax savings for New York residents	3,556,791

- CLAT with GST exemption allocation also benefits children's estate planning
- Calculations based on 7520 rate at 3.40%

WOODS OVIATT GILMAN LLP
The art of representing people

VII. Questions?

WOODS OVIATT GILMAN LLP
The art of representing people