

**Planning for Large
Charitable Contributions**

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June 9, 2006
Beverly Hills

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This presentation should be viewed only as a summary of the law and not as a substitute for tax or legal consultation in a particular case. This is especially true in this topic, which is very, very complex. This is a very simplified overview of the rules, for the purpose of comparing several alternatives, each of which is complex. Your comments and questions are always welcome.

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Large Charitable Contributions



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Large Charitable Contributions

- When do people make large charitable contributions?
 - ⇒ When a business is sold, especially a business that the sellers founded many years ago
 - ⇒ When an executive retires and cashes in the stock options
 - ⇒ When a couple faces the estate tax and does not want to enrich the federal government
 - ⇒ When a large inheritance is received

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Charitable Contributions -The Tax Basics -



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Charitable Contributions -The Tax Basics -

- Can I deduct this donation? It depends on:
 - ⇒ What is donated?
 - ⇒ What kind of organization is the donee?
 - ⇒ How do we measure the contribution for tax purposes?
 - ⇒ What is the maximum contribution amount that we can deduct this year?

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Charitable Contributions -The Tax Basics -

- Basic Types of Donations
 - ⇒ Cash
 - ⇒ Property that, if sold, would produce long-term capital gain (“LTCG property”)
 - ⇒ Neither cash nor LTCG property

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Charitable Contributions -The Tax Basics -

- Basic Types of Donee Organizations
 - ⇒ Publicly-supported charity
 - Typically supported by the general public or government funds
 - ⇒ Private foundation
 - Typically supported by one family or company

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Charitable Contributions -The Tax Basics -

Type of Contribution	Type of Donee	Amount of contribution	Deduction limit per year*
Cash	Public Charity	Face amount	50% of income
	Private Foundation	Face amount	30% of income
Not cash, not LTCC property	Public Charity	Tax basis in property	50%/ ord. inc. prop.
			30%/ STCG prop.
	Private Foundation	Tax basis in property	30%/ ord. inc. prop.
			20%/ STCG prop.
LTCC property	Public Charity	Fair market value*	30% of income
	Private Foundation	Tax basis*	20% of income

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Charitable Contributions -The Tax Basics -

- Special Rules
 - ⇒ Contributions of LTCG property to public charities –
 - If the property is tangible personal property (like art) that is not used by the donee, the amount of the deduction is limited to the donor's basis
 - Other special rules apply to property that is depreciable or subject to debt.

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Charitable Contributions -The Tax Basics -

- Special Rules
 - ⇒ Contributions of LTCG property to private foundations –
 - The amount of the deduction is fair market value for *publicly-traded stock*.
 - ❖ But only if the donor and the donor's family do not contribute to the foundation more than 10% of the outstanding shares.

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Charitable Contributions -The Tax Basics -

- Special Rules
 - ⇒ Donations that exceed the annual limitation –
 - Are carried *forward* for up to five years, but...
 - Do not survive the death of the donor.

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Charitable Contributions -The Tax Basics -

- Bottom Line
 - ⇒ Donations to publicly-supported charities are subject to *more generous* tax deduction rules.
 - ⇒ Donations to private foundations are subject to *less generous* tax deduction rules.

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Regulation of Private Foundations



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Regulation of Private Foundations

- **California**
 - ⇒ Nonprofit Public Benefit Corporation Law
 - ⇒ Uniform Supervision of Charitable Trusts Act
 - ⇒ Nonprofit Integrity Act of 2004
 - ⇒ Revenue and Taxation Code

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Regulation of Private Foundations

- **Federal**
 - ⇒ Internal Revenue Code
 - ⇒ Volunteer Protection Act of 1997

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Private Foundations VS. Publicly Supported Organizations



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Private Foundations vs. Publicly Supported Organizations

- A private foundation is organized as:
 - ⇒ A nonprofit corporation
 - A nonprofit “public benefit” corporation in California
 - ⇒ A trust, or
 - ⇒ An association (rarely)

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Private Foundations vs. Publicly Supported Organizations

- A nonprofit organization is *not necessarily* exempt from income tax.
- It must *apply for and obtain* “determination letters” from the IRS and FTB saying it is tax-exempt.
- The tax exemption for charitable organizations is under *Section 501(c)(3)* of the Internal Revenue Code.

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Private Foundations vs. Publicly Supported Organizations

- “Charitable” purposes under Section 501(c)(3):
 - ⇒ Religious
 - ⇒ Charitable
 - ⇒ Scientific
 - ⇒ Testing for public safety
 - ⇒ Literary or educational purposes
 - ⇒ To foster national or international amateur sports competition
 - ⇒ To prevent cruelty to children or animals

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Private Foundations vs. Publicly Supported Organizations

- All Section 501(c)(3) organizations (that is, all tax-exempt charities) default to *private foundation* status.
- To avoid private foundation status, an organization must prove that it satisfies an *exemption* from private foundation status.
 - ⇒ Note the *two kinds* of exemption:
 - Exemption from *income tax*
 - Exemption from *private foundation status*

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Private Foundations vs. Publicly Supported Organizations

- Common exemptions from *private foundation* status:
 - ⇒ Public support (more than 1/3 of support from the general public, governments, or other publicly-supported organizations)
 - ⇒ Self-support (from dues, fees or sales)
 - ⇒ Supports another public charity
 - ⇒ Hospitals, schools, colleges, medical research organizations, churches
- ⇒ *Note:* For many “public charity” is a misnomer.

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Grant-Making Foundations vs. Operating Foundations



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Grant-Making Foundations vs. Operating Foundations

- Private foundations generally are supported by a family or a company.
- A typical private foundations invests its funds and contributes the income to other hands-on public charities.
 - ⇒ This would be a “*grant-making foundation*”

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Grant-Making Foundations vs. Operating Foundations

- A private foundation that engages in “hands on” charitable activity or holds assets (such as art or an historic property) for use in a charitable activity probably qualifies as a “*private operating foundation.*”
 - ⇒ Donations to a private operating foundation get the *more generous tax deduction rules* that apply to donations to public charities.
 - ⇒ But most of the same internal *restrictions* apply as for grant-making foundations.

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Managing a Private Foundation



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A Small Tax on the Investment Income of Private Foundations

- A 2% tax applies to the net investment income of private foundations.
- If the foundation makes all of its required distributions, the tax rate decreases to 1%.
- This offsets the cost of IRS enforcement activities for tax-exempt organizations.

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Minimum Annual Distributions by Private Foundations

- Private grant-making foundations must value their assets each year.
- By the end of the following year, the foundation must “distribute” at least 5% of that year-end value.
 - ⇒ It's *value*, not *income*.
- The “distributions” are grants to hands-on charities.

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Paid Foundation Managers

- No more than 49% of the directors of a private foundation (organized as a California nonprofit public benefit corporation) can be compensated – or related to anyone compensated – by the foundation.
 - ⇒ So a child of the directors should not be a paid executive director.
 - ⇒ It is possible to sidestep this rule, but usually best to respect it.
- All permitted compensation must be “reasonable” in amount.

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Prohibited Transactions

- What family members *can't* do with their foundation:
 - ⇒ Sell, exchange, lease property at any price
 - ⇒ Furnish good, services or facilities
 - Unless the family furnishes it to the foundation for free
 - ⇒ Paying expenses of the family
 - Unless the payments are for reasonable and necessary *personal services* and are not excessive

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Prohibited Transactions

- What else family members can't do with their foundation:
 - ⇒ Make any loan or extension of credit
 - Except for interest-free loans *to* the foundation
 - ⇒ Transfer the foundation's *income* or *assets* to the family
 - ⇒ Use the foundations assets
 - ⇒ An agreement by the foundation, other than certain employment agreements, to give money or property to a *government official*.

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“Taxable Expenditures”

- A foundation can't make:
 - ⇒ Improper grants
 - For example, a grant to an *individual* without a prior IRS ruling approving the grant program
 - For some grantees, the foundation must exercise “*expenditure responsibility*”
 - ⇒ Payments for non-charitable purposes
 - ⇒ Political expenditures

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Public Tax Return

- A foundation must file a comprehensive tax return (Form 990-PF) that shows its compliance with these rules.
 - ⇒ The return must be made public.
 - ⇒ Check www.guidestar.org
 - ⇒ On the return, the foundation states whether it accepts *grant applications* from the public.
 - It's ok to say “No, thanks.”

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Charitable Lead Trusts



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Charitable Lead Trust

- An alternative to a private foundation
- Basic structure:
 - ⇒ Income to charity for a period of time
 - ⇒ *Remainder to the family of the donor*
- Some of the private foundation restrictions apply to some types of Charitable Lead Trusts.

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Charitable Lead Trust

- When to use one:
 - ⇒ Donor wants an *upfront* income tax deduction, is *not* concerned about the percentage-of-income limitations or *estate taxes*
 - Use a “grantor” charitable lead trust.
 - Make annuity or “unitrust” payments to charity.
 - Set up during life and *survive* the term of the trust.

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Charitable Lead Trust

- When to use one:
 - ⇒ Donor wants to reduce estate tax on assets expected to appreciate and wants a gift tax deduction, *and*
 - ⇒ Donor wants to make a gift that would *not* be limited by the percentage-of-income limitations in the year of formation.**
 - Use a “qualified non-grantor” charitable lead trust.
 - Make annuity or “unitrust” payments to charity.
 - Set up during life or at death.

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Charitable Lead Trust

- When to use one:
 - ⇒ Donor is *not* concerned about gift or estate taxes, and
 - ⇒ Donor wants to make a gift that would *not* be limited by the percentage-of-income limitations in the year of formation,** or
 - ⇒ Donor wants to avoid the private foundation rules, at least until 2010.
 - Use a “non-qualified non-grantor” charitable lead trust.
 - Pay all income to charity.
 - Set up during life.

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Charitable Lead Trust vs. Private Foundation



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Charitable Lead Trust vs. Private Foundation

- PF provides a larger income tax deduction.
 - ⇒ But the percentage-of-income limitations apply.
 - ⇒ Some CLTs sidestep these limits, but also defer the income tax deduction.
- PF leaves nothing for the family.
 - For growth assets, a CLT can leave a lot for the family.
 - Both are subject to complex tax rules.

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Community Foundation vs. Private Foundation



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Community Foundation vs. Private Foundation

- A community foundation provides:
 - ⇒ Best tax deduction rules,
 - ⇒ Professional management, and
 - ⇒ No set-up hassles
- But ...
 - ⇒ Limited control over investments

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Thank you

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