Updates

Charitable Giving – It's Not Just for December

At the end of the year, many people think about giving to charities, especially people who are seeking additional tax deductions. In fact, statistics show that as much as 30% of charitable giving is done in the last month of the year, with 10% coming in the last three days of the year.

At Warner, we encourage our clients to be more strategic in their efforts to make an impact in their communities. We often help them create charitable giving plans that utilize multiple giving options and provide funds to charities over time.

Depending on your tax needs and your philanthropic goals, 2023 may be the year to consider other ways to support charitable organizations beyond making a gift of cash or property.

1. Make a gift of appreciated assets. A best practice is to donate appreciated assets directly to the charity, rather than selling the appreciated assets and then donating the after-tax sales proceeds, as this avoids capital gains taxes.

- If donated assets have appreciated in value and have been held for more than one year, you can generally claim the fair market value of the contributed assets as a tax deduction of up to 30% of your adjusted gross income (AGI). Alternatively, you can donate these assets valued at your cost and deduct up to 50% of your AGI.
- Assets that have been held one year or less can be donated but must be valued at your cost for a deduction up to 50% of your AGI.

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2. Make a gift bequest in your will or trust where you can provide that a certain amount of your assets will pass directly to a charity upon your death. If your estate will be subject to estate taxation, you would generally be entitled to a charitable deduction against those estate taxes.

3. Designate a charity as a beneficiary of all or a portion of a life insurance policy so that these proceeds will pass directly to the charity upon your death. If your estate will be subject to estate taxation, you would generally be entitled to a charitable deduction against those estate taxes. Another alternative would be to gift a life insurance policy to a charity during your lifetime. In this case you would receive a charitable deduction for the value of the policy, together with charitable deductions for your payments of future insurance premiums.

4. Name a charity as a beneficiary of an IRA, 401(k) or other qualified retirement plan. These retirement assets will pass directly to the charity and neither you nor your heirs will pay any of the deferred income taxes associated with the IRA or plan — meaning the full amount of the account will benefit the charity without loss from income or estate taxes. Additionally, if your estate will be subject to estate taxation, you would generally be entitled to a charitable deduction against those estate taxes.

5. Make qualified charitable distributions from your IRA. During your lifetime, you can give up to $100,000 directly from your IRA and count it as all or part of your required minimum distribution(s). You must be age 70 ½ or older to do this, and the gift is not included in your AGI.

6. Establish a private foundation. A private foundation is a non-profit entity established for charitable purposes by an individual, family or business. It could be administered by you, your family members or your professional advisors, with the primary activity of making grants to other charitable organizations. A private foundation must apply for tax-exempt status with the IRS and may be subject to certain excise taxes, including a tax on net investment income. The establishment of a private foundation provides an immediate deduction for donated funds and allows families to establish a legacy of giving that may continue for future generations.

7. Establish a donor-advised fund at a charity. A somewhat simpler alternative to a private foundation is the establishment of a donor-advised fund with a charity. Donor-advised funds do not need to apply for tax-exempt status, do not pay the excise taxes that may be applicable to private foundations and do not have ongoing administrative requirements. A donor-advised fund can have a stated purpose, as long as it aligns with the charity's purposes, and you can make one or more gift contributions to this fund which then will be invested within the charity and grow tax free. You will generally receive an income tax deduction in the year the gift is made, and you can recommend grants from the fund in the future.

8. Create a charitable gift annuity to benefit a charity. With this strategy, you make a gift to the charity, and in return, you would receive an annuity, which is a fixed stream of income for a term of years or for your remaining lifetime. The remainder of the gift after all annuity payments have been made will belong to the charity. Your gift would generally entitle you to an income tax deduction in the year you establish the annuity for the amount of the remainder passing to the charity, but a portion of your annuity payments may be taxable.

9. Create a charitable remainder trust to benefit the charity. This trust would make distributions to you or your selected beneficiary for a period of years and the remaining assets would pass to the charity at the end. You can be the trustee of the trust, and you can change the beneficiary as needed. You would generally be entitled to an income tax deduction in the year you establish the trust for the amount of remainder interest that will pass to the charity, but a portion of the annuity payments may be taxable.

10. Create a charitable lead trust to benefit the charity. This trust would make annuity payments to the charity for a period of time, and the remaining assets would pass to your beneficiaries at the end. You generally are entitled to an income tax deduction in the year the trust is created for the annuity amount passing to the charity.

11. Grant a conservation easement. A conservation easement is a voluntary, legally recorded agreement between a landowner and a state that restricts land to agricultural and open space uses. The easement prohibits or limits any subdivision, development or any activity that would diminish the property's agricultural or open space value. An individual donor of the conservation easement is entitled to a charitable deduction of up to 30% of the donor's adjusted gross income for the value of the easement. The use of this strategy requires careful consideration of the property valuation and other tax compliance requirements.

You will need to talk with your estate planning attorney and financial professionals about any charitable giving strategies you are considering so that you can understand how these may or may not work with your current estate and financial planning. Also, remember that your charitable contributions exceeding the AGI limitations described above can be carried forward to the next five years, subject to the limitations in those later years.

The start of a new year is a good time to set philanthropic goals and create or update your charitable planning. Contact your Warner attorney or Frank Henke at **fhenke@wnj.com** or 586.303.4108 to discuss creating a charitable giving plan that meets your family's legacy and tax goals.