PARTRIDGE SNOW & HAHN LLP
COUNSELORS AT LAW

Tax Tips for Charitable Giving

November 2009

Kathleen A. Ryan, Esq.
David C. Morganelli, Esq.

5 ways to make a difference in your charitable tax deduction
Every contribution to a qualified charitable organization generates a potential tax deduction for the donor if the documentation, appraisal and reporting requirements under the tax code and regulations are met. However, the value of the tax deduction may vary depending on the type of property donated, the applicable deduction limits and the donor's tax circumstances for the year in which the charitable contribution is made. Here are 5 tips for charitable giving that can make a difference in the extent of the tax deduction available for a contribution to charity.

1. Choose Property to Donate Wisely
A donation in kind is not treated the same as a cash contribution to charity for tax purposes. There are rules that require the contribution amount to be reduced for purposes of calculating the charitable deduction depending on the type of property chosen for donation. The general rule for appreciated short-term property (e.g., held less than 1 year) is that the individual donor may deduct a value that is equal to fair market value or the property's cost basis, if less than fair market value. For a charitable gift of property subject to long-term capital gain, the contribution amount may be further reduced depending on the type of property donated and the kind of charity that will receive the donation. It is advisable to give due consideration to choosing the appropriate property to donate so that the maximum charitable deduction is available.

2. Watch the Charitable Deduction Limits and Tax Rates
Separate from the contribution rules that apply to donated appreciated property, there is also a cap for each taxpayer on the total amount that may be deducted. Generally, an individual who donates cash may not deduct more than 50 percent of adjusted gross income. Deductions for contributions of long-term appreciated property to a qualified charity are further limited to 30 percent of adjusted gross income. Special rules apply to donations to non-operating private foundations or certain other private organizations.

Taxpayers should also be aware that a recently proposed health care bill as drafted by the U.S. Senate includes a provision to limit the tax rate at which itemized deductions, including charitable deductions, reduce tax liability to a maximum of 35%. In other words, a high income taxpayer would save no more than 35 cents of federal income tax for each dollar that is donated, regardless of his or her tax bracket. The proposed limit on itemized deductions would not take effect until 2010. So, postponing a desired charitable donation could result in less tax benefit if the proposed deduction limits take effect.

3. Consider Donations From an IRA

Through the end of 2009, individuals age 70 1/2 or older can make direct gifts from an individual retirement account (IRA), including required minimum distributions, of up to $100,000 to public charities and to private operating and pass-through foundations, without being required to first report the charitable distributions as taxable income on their federal income tax returns. By not being taxed on the donation, the donor in essence receives the equivalent of a full tax deduction on the donated amount. For this special treatment, the donation must be made directly by the trustee of the IRA to a qualified public charity, and not to a supporting organization or a donor advised fund.

4. Don't Forget About Partial Interest Gifts

It may not be necessary to give a charity all of your interest in certain property to receive a valuable charitable deduction. Consider a charitable remainder trust when seeking to transfer highly appreciated stock to a charity at death while retaining some use of the asset during life. With this charitable giving tool, a donor may retain an annual income stream for life after transferring the asset into trust. The annual payment may be in the form of a percentage of the trust property or annuity amount, as allowed by the charitable trust rules. There are several tax benefits to a charitable remainder trust. First, the highly appreciated asset may be sold by the trustee of the trust without the immediate realization of capital gain tax to the donor. Second, the donor will be entitled to a charitable deduction for income tax purposes for the amount transferred over and above the retained lifetime interest. Third, for estate tax purposes, the donor's estate will be reduced by the amount contributed to charity.

A charitable lead trust, where the interest of the charity "leads", or arises first, and allows a charity to be the recipient of a charitable donation during a donor's life, is particularly attractive if a donor expects a surge in income, but expects to have less income later. Using a charitable lead trust, the charitable deduction arising at the creation of the trust can offset higher income in that year. With a charitable lead trust, the trust property passes to the donor or the donor's designated beneficiaries at the end of the trust term.

5. Time Your Gifts

Contributions to charity that exceed the deductible ceiling for the calendar year of the gift may be carried over for a period of 5 successive years. A donor may plan to spread out charitable contributions after considering the expected tax deductions and the anticipated annual income tax liabilities for the year of the contribution and the carry-over period.

Prudent planning often involves a comparison of the tax consequences of charitable gifts to determine when a gift should be effectuated to provide the best tax result. Whenever considering a lifetime charitable donation or changes to estate planning documents to add a charitable bequest, a donor should consult with his or her legal or tax advisor, understand the deductibility limits and the nature of assets to be contributed, and review the necessary compliance with technical IRS regulations.

Disclosure Under IRS Circular 230: Any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any tax-related transaction or matter.

180 South Main Street · Providence RI 02903 · 401 861-8200 · Fax 401 861-8210 · www.psh.com
PROVIDENCE WARWICK SOUTHCOAST