

Charitable Gift Planning Under the New Tax Law⁸

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The new tax law has changed some of the rules and tax rates related to gift and estate taxes. In light of the increased lifetime exemption limits, tax benefits traditionally associated with charitable giving have disappeared for many donors. Curtailing a charitable giving program may be appropriate if tax savings are the only consideration. However, there are still some considerations worth mentioning. Of course, there is still a distinct tax benefit associated with direct charitable gifts made from certain IRAs that will continue during 2011. That subject is addressed in greater detail on page __. ¹⁰⁵

*Tax Considerations*²

For donors with individual estates worth more than \$5 million, or combined spousal estates worth more than \$10 million, charitable gifts or bequests still result in a reduction of the gross estate that is subject to the new 35% estate tax rate. Now that the estate tax rate is “linked” to the gift tax rate, taxable gifts in excess of the \$5 million individual lifetime exemption amount are only subject to the same 35% gift tax rate. Also, the new law postponed a reduction in itemized deductions for charitable donations by high income individuals. ⁹⁴

*Nontax Considerations*²

Perhaps one of the biggest positive effects on charities of the new tax law is that high net worth decedents will have less of their entire estate diminished by taxes. For couples with a \$10 million estate, their heirs and beneficiaries will receive the entire estate if they both die before 2013. If charitable giving is part of their estate plan, and they want to assure that their family is left with a “nest egg” that totals less than their combined \$10 million exemption amount, there will be more of their estate left for their charitable bequests. ⁹⁷

Under the new law, the unused portion of an individual’s lifetime estate and gift tax exemption amount is now available for use by the surviving spouse’s estate in addition to their own lifetime exemption amount. One potential effect of the new tax law, at least in the near future, may be a cost saving by potential charitable donors of the expense of setting up estate planning trusts to be sure to use the full available estate and gift tax exemption amount by both spouses. This may leave more of a person’s estate available for charitable gifts, but it may not necessarily be wise long term planning in light of the significant changes tax law has undergone in recent years. But remember, the current estate and gift tax provisions are only effective through 2012. ¹³²

*Planning Opportunities*²

The new law encourages wealthy charitable donors to make significant family gifts prior to the end of 2012, leaving whatever assets remaining in their estates available for deductible charitable gifts to offset whatever estate tax might exist at the time of their death. It may be beneficial for those with sizable estates, and who want to avoid possible future increases in estate and gift taxation, to make gifts before the end of 2012 to take advantage of the \$5 million exemption amount. The generation skipping tax exemption amount has also been increased to \$5 million. Making gifts to take full use of these increased exemptions would assure that significant gifts can be made to family members at no or low tax cost. ¹²²

For those with estates exceeding the new exemption limits, a current gift of property to family members that may appreciate substantially in the future may help assure that assets remain in their estate to carry out charitable planning objectives with minimum impact on family transfer planning. If that is part of their planning objective, and they had used the full \$1 million gift tax exemption under the old law, they can now transfer an additional \$4 million each without gift taxes prior to the end of 2012. Also, the new exemption limits may mean that someone with substantial assets may want to make tax free gifts to family members other than children while still leaving assets available for charitable giving.¹¹⁰

The new law may also encourage other charitable planning methods, such as charitable lead trusts, under which a charitable beneficiary receives an income payment stream for a term of years, typically followed by a transfer of the remainder for trust assets to family members. The donor who creates such a trust is deemed to have made a non-charitable gift to the family member beneficiaries based upon the assumed appreciation of assets in the trust, and subject to the gift tax rules in effect at the time the trust is created. With today's historically low interest rates, and the \$5 million gift tax exemption amount under current tax law, a charitable lead trust may be an excellent way to make a gift to charity while preserving a significant remainder beneficial interest for family members.¹³³

The new tax law provides unique opportunities for family and charitable gift planning over the next two years, especially for those concerned about transferring assets or reducing their estates prior to any future increase in federal estate and gift taxes.⁴⁰