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A Good Time to Give To Family and Charity

With various tax breaks scheduled to expire at year-end, would-be donors are scrambling to transfer assets.

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Call it the Great Giveaway. Anticipating that a slew of tax breaks will disappear next year, seniors are scrambling to make year-end gifts to family members and charity. And they're not just writing checks. Would-be donors are scouring their portfolios, safe deposit boxes and even the attic as they seek to transfer artwork, family business interests, real estate, stocks and other assets.

In addition to benefiting charities and family members, such year-end gifts can help donors reap once-in-a-lifetime benefits. Seniors can use today's generous lifetime gift- and estate-tax exemption, rack up charitable deductions, avoid capital-gains taxes, and transfer future growth out of their taxable estates. Another boon for gift givers that won't be around forever: rock-bottom interest rates, which can help seniors transfer more assets while minimizing tax consequences. "There's a really strong case" for making sizable gifts today, says Katherine Dean, managing director of wealth planning at Wells Fargo. "We may never see a time like this again."

This gift-giving scramble comes in advance of a tax-law shakeup that some policy prognosticators call "taxmageddon." The federal exemption of $5.12 million ($10.24 million for couples) for gift and estate taxes is scheduled to revert to $1 million in 2013, while the estate-tax rate is set to rise to 55%, from 35%. With the Bush-era tax cuts set to expire, the highest rates on ordinary income and long-term capital gains are scheduled to climb higher. And proposals are circulating that would limit deductions, including charitable deductions, for high-income taxpayers and reduce the benefits of some popular wealth-transfer vehicles, such as grantor retained annuity trusts.

To be sure, seniors overly eager to seize a big tax break risk giving away too much and running short of money in retirement. Individual circumstances, such as income fluctuations, can alter the cost-benefit calculus for making gifts in 2012. And although Kiplinger's predicts that Congress will continue the current gift- and estate-tax rates and exemptions, at least for 2013, future changes are hardly written in stone. "Nobody really knows what Congress is going to do," says

Rande Spiegelman, vice-president for financial planning at the Schwab Center for Financial Research. "It puts everybody in a bind."

Despite all the question marks, many advisers believe the advantages of making gifts before year-end generally outweigh the risks. And many donors seem to agree. "Clearly, there's a rush" to talk with lawyers and draft gifting plans, says William Zatorski, partner in the Private Company Services practice at PricewaterhouseCoopers. At donor-advised fund provider Fidelity Charitable, contributions in the first nine months of this year jumped 63% from the same period last year, to $1.2 billion.

Gifts to Charity

Got a house full of rugs or antiques that you're ready to part with? You might do yourself -- and charity -- a favor by finding a philanthropic way to unload them.

In the wake of the financial crisis, many more donors are looking to give such assets to charity. In 2011, for example, Fidelity Charitable saw contributions of complex assets grow 30% from a year earlier. One factor driving the trend: Donating such holdings won't diminish the cash and other liquid assets available to cover the donor's living expenses, says Bryan Clontz, president of Jacksonville, Fla.-based Charitable Solutions, which works with philanthropic organizations to help donors contribute illiquid assets.

Charities are also making it easier for donors to contribute everything from Warhols to Windsor chairs. The National Philanthropic Trust, a donor-advised fund provider, recently launched the Charitable Asset Trust, which specializes in accepting such complex assets as artwork, real estate and derivatives. It then sells these holdings, with the proceeds going into the donor's donor-advised fund. In these funds, donors get an immediate charitable deduction for contributions and can recommend how the money should be dispersed to specific charities over time.

Laura Robb of Winchester, Va., sees the ability to donate artwork and antiques as a bonus for the donor-advised fund she established in September through the National Philanthropic Trust. As an education consultant and author of books on teaching, Robb is focusing her charitable efforts on getting books and other teaching materials to schools serving communities with high poverty rates. "I've inherited a lot of things from both sides of the family, and I have some beautiful antiques that my children don't want," she says. "I'd like to use some of it in a different way."

For tax purposes, non-cash gifts over $5,000 typically must be independently appraised. Given the year-end gifting rush, many appraisers are booked up right now. But donors can still make the gift this year and get the appraisal before filing their 2012 return.

Another wrinkle involving donations of tangible personal property, such as artwork: The donor can generally only deduct the full fair market value of the asset if the charity uses the gift for its charitable purpose, such as a museum exhibiting a donated painting. If you instead give the painting to a social-service organization that then sells it, you can deduct the lesser of the amount you paid for it or its market value.

Seniors looking to sell a family business also have an opportunity to slash their tax bills and support charity. If you are thinking of selling your business but don't yet have a formal sale agreement, you might donate a fractional interest -- say, 2% or 3% -- to charity. Typically, an appraiser would sharply discount that fractional interest to reflect lack of control and marketability, resulting in a smaller charitable deduction for the donor. But if you instead get the appraisal after you sell the business, "almost always the appraisal will match the sales price," allowing for a bigger charitable deduction, Clontz says. The charity can cash in on the gift by selling its fractional interest to your business buyer.

If you have income-producing real estate or an investment portfolio that is expected to make big gains in years to come, consider placing the asset in a charitable lead trust. This vehicle gives a charity a stream of payments -- perhaps from real estate or investment income -- with the remaining trust assets going to your beneficiaries at the end of the trust term.

For gift- and estate-tax purposes, the value of that remainder depends partly on the tax code's Section 7520 rate at the time the trust is established. To the extent those assets grow faster than the 7520 rate, excess growth is passed to beneficiaries free of gift and estate tax. With the 7520 rate currently hovering around a historically low 1%, it's relatively easy for trust assets to beat that hurdle rate and transfer more wealth to the next generation tax free. The charitable lead trust is "a good strategy, and it's made great by the right interest rates," says Andrew Auchincloss, a director at Bernstein Global Wealth Management.

Given recent years' sizable market gains, gifts of appreciated stock make sense for many donors now. When you donate appreciated stock held for more than a year, you get a charitable deduction for the full market value and avoid paying capital-gains tax on sale of the shares. Don't donate securities trading at a loss, since you can use the capital loss to offset taxable gains. You can sell them yourself and then give the proceeds to charity.
