



GIANT, IMPORTANT DISCLAIMER: WE AREN'T GIVING LEGAL, TAX OR FINANCIAL ADVICE. PLEASE SEEK YOUR OWN COUNSEL FOR ANY DONATIONS. MANY OF THESE QUESTIONS ARE OPEN TO SOME INTERPRETATION, ARE GENERAL IN NATURE OR ARE UNIQUE TO A PARTICULAR JURISDICTION. ASSUME ALL ANSWERS ARE WRONG UNTIL YOU/YOUR DONOR CONFIRMS WITH HER/HIS ADVISOR.

**Q & A from “Top Ten Noncash Post-Gift Considerations and Conundrums”
<June, 2023>**

What is the minimum donor gift for a gift annuity?	\$20k, and we do them for illiquid gifts like business interests, real estate (including retained life estate CGAs in some situations), testamentary CGAs for "stretch" IRA alternative as well as Secure 2.0 RMD CGAs.
A potential donor just called. He has R/E (no debt) inside of an LLC reporting as a partnership and wants to fund a CRUT with the R/E. 2 member LLC, H & W, multiple pieces of R/E inside of the LLC along with a consulting business. Q: What would be the ramifications of doing a 2 life CRUT inside of the LLC partnership? Is it much better to distribute it first for the individuals to directly contribute to the R/E?	Generally, with emphasis and not giving tax advice, the LLC can work quite well. If there is no UBIT, the LLC can be assigned to the CRUT and then it simply is the sole or partial owner, so all flow through K1, etc., will go to the CRUT.
What type and size of business interests are typically NOT desirable?	We usually get bumpy around the \$200-250K level and those with no clear path to liquidity (kind of ever - like I hate my sister and she doesn't want to sell, and we both own 50% interest so you take it because I don't want to deal with her... we don't either!!), or heavy debt loads on passthrough entities - like LLC, S-corp, LP, etc.
We've had issues where the HOA didn't credit checks to the correct account even though it was sent to the lockbox with the correct account number. So, check your monthly statement.	Yes, it's important to stay on top of these things. Otherwise, they can be an unpleasant, last minute surprise when the title company flags the missed payments a day before closing!



<p>To Ryan's point as well, it's great if there's a property management company. You can usually pre-fill a new owner questionnaire and get access to board minutes, etc.</p>	<p>Agreed. Although that level of sophistication is normally reserved for larger property management companies only. Small “mom and pop” companies will probably not have that info readily available, although they may have other advantages (better responsiveness in particular).</p>
<p>And don't forget about parking spaces and making sure someone isn't using it without permission. Key when prepping property for resale.</p>	<p>A perfect example of why someone on-site is needed. Usually, a realtor will catch something like this, but it is also the job of property management to fix problems of this type.</p>
<p>I see from your previous slide that S Corps are the smallest category of donated business interests relative to C Corps and LLCs/LLPs. Can you speak about the differences in executing these different business categories? TU!</p>	<p>Yes and no. They are about exactly equal to C-corps and LLCs/LPs. Because many LLCs elect to be taxed as S-corps, but legally, they are still LLCs. So we do about 50-75 S-corps a year (though at least half of them are actually LLCs).</p>
<p>How much cushion do you recommend charities add on top of monthly bills and other carrying costs of the property for an additional donation in cash or marketable securities by the donor?</p>	<p>Great question!! We see many charities ask for 6-12 months of expenses up front. We front roughly 10-15K and then get reimbursed at the time of closing.</p>
<p>PS - if the escrow is small, often the title company will not hold the escrow or it is too expensive, so keep track of the escrow if being kept by your attorney.</p>	<p>Yes, and small escrow amounts might be something a charity can manage on its own books as well. Of course attorneys are very able to hold escrowed funds as well.</p>

<p>Re: Mike Dunlap's question, if the idea is to put only one parcel into the CRT, using the individual partners as measuring lives, if distribution is direct to the partners, these would be partnership distributions resulting in ongoing basis adjustment and possible gain issues, if to the partnership itself, of course passthrough treatment regardless of actual distribution out to the partners. But if instead the partners themselves directly fund the CRT with percentage interests in the partnership, you have ongoing potential issues not only with excess holdings, but also possible self-dealing if for example, the partners are being paid, etc.</p>	<p>I think this was Russ Willis' response, which I won't attempt to improve.</p>
<p>Part of Dunlap's question was whether it would be better to distribute the property first and have husband and wife contribute to the CRT, which certainly would be cleaner, but of course the distribution itself would have basis adjustment and possible gain consequences.</p>	<p>More from Russ here.</p>
<p>Since there are multiple assets in this LLC, would the specific piece of R/E still in the name of the LLC be contributed to the CRUT? With the CRT for the lives of H&W, would the charitable contribution deduction be calculated the same as if the gift was from the individuals? Understanding that this a tax question but would the contribution deduction pass through via their K-1 from the LLC?</p>	<p>For us, less than 4 business days. Russ, on our team and responding here, got a due diligence package last night on a \$20 million deal that had to be done by tomorrow for a potential donation on Thursday. He completed the full due diligence last night. Other DAFs have different processes of course.</p>
<p>Not RE, but would like to grow that asset class. Current matter: have a donor wanting to fund a CRT with artwork. Trying to toe the line with our museum director between a gift and an art acquisition. He desperately wants to acquire the collection and has even proposed our institution leasing it from the trust, which at first blush seems to scream self-dealing. But I digress. The value is unclear, no appraisal, just a \$3.7M insurance valuation. Our art director</p>	<p>A CRT can work but another consideration MAY be a CGA. That instantly creates a bargain sale, you don't have the same potential self-dealing issues and the donor can get a fixed income and your museum director gets the asset at a lower than FMV price.</p>

<p>thinks it's valued around \$2.5M (approx \$500K cost basis). We proposed a bargain sale, but I understand the donors have modest means, they want to avoid cap gains and ideally need/want a \$200K income stream from the gift. Is this really a gift or an acquisition? Any options for ideas to structure a CRT, fractional share, etc.?</p>	
<p>Where will the artwork be physically held? Very often, a CRT holding only tangible personal property will have difficulty qualifying.</p>	<p>This is always a big question with artwork. With a CRT in particular, it's hard to see how the donor keeping the artwork in their home would be feasible.</p>
<p>Not sure if this question is relevant to this webinar, but seeing as how you do CGA risk management, I'm curious to know how Pomona College can pay 7% on an annuity that Salvation Army would pay 5% on (current single ACGA rate for 61-year-old).</p>	<p>Broadly speaking (not on their behalf at all), about 92-95% of charities follow the maximum recommended ACGA rates. Some issue at lower rates and some at higher rates. Those at higher rates, presumably, have done an internal actuarial review where they are comfortable and/or may receive enough other gifts (lifetime and estate) that can help "subsidize" higher rates. Clearly, higher rates increase exhaustion risk and decreases the charitable gift portion (the deduction and the residuum).</p>
<p>Bryan, are the S-corps that you worked with seeing a lot of UBIT issues that your team can manage/handle?</p>	<p>Usually, a good idea and least for a preliminary search. But sometimes, that can take a long time in a hot market so sometimes that because a decision of the acceptance committee.</p>
<p>What are the best practices for a charity in conducting title search as part of their gift acceptance policy prior to accepting real property?</p>	<p>Possibly - we actually do a CGA for retained life estates as well if donor is 85+ and property is over \$1 million. While we can pay the mortgage, in most cases, a bargain sale gain recognition and debt financed property UBIT on gain and income so often it doesn't work well from that perspective. We have a free recorded webinar just on how to deal with Mortgaged Property (Oct 2021 I think).</p>
<p>Could there be situations where Charitable Solutions would be willing to accept a residence and pay the mortgages until the donor tenant moves or dies? I ask because I've had several situations where a well-meaning donor asks for this. I can't see a</p>	<p>Yes, but A LOT of donors/advisors want to reclass voting to non-voting prior to a donation and that can cause a huge deduction issue under the partial interest rules. Kind of like stripping out the dividend for a donation of stock - it isn't a completed gift. And nonvoting can also have a steeper valuation</p>

<p>situation where my org would do that, but I remember a Crescendo training where this arrangement was put out as a possible arrangement for the non-profit. Any thoughts?</p>	<p>discount.</p>
<p>Planning point to set up voting and non-voting ahead</p>	<p>Those generally work (S-corp for CGAs work quite well too as a CRT alternative) but a bit beyond the scope of this presentation. This is more for outright/estate gift post-gift acceptance.</p>
<p>What about GRAT or Lead Trusts with business interest. S-corp or C-corp.</p>	<p>I am not sure how a GRAT would be used for your campaign... perhaps you meant to say CLAT. More generally, taxes/UBTI are a major issue with S-corp stock, however, we (and others) have a trust-form DAF that can mitigate much of the taxation.</p>
<p>Thanks, Bryan! I have the potential of an S-Corp owner wanting to set up a GRAT with a portion of his business for a Campaign commitment. Taxes and UBTI seem to be an issue, and I cannot seem to get a clear answer as to the benefits and risks for the University.</p>	