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Q & A from "Real Estate Investment to Real Estate Impact: Utilizing Delaware Statutory Trusts (DSTs) as a Charitable Giving Option" <Sept, 2023>

Many DSTs have underlying debt. Discuss the problems in transferring debt-encumbered property to a CRT.	Potential bargain sale issue or likely a UBIT issue (unless it has a 5 and 5 exception - owned for 5 years and debt on property for at least 5 years without added debt or a cash out refi). Debt into a CRT will disqualify the trust.
When contributing a DST interest to a CRT, is it assumed that the CRT will immediately sell the DST?	No, DST interest is usually to be held between 5-10 years. DST governing instruments can limit sales and/or require investor approval but they may provide flexibility for estate planning purposes. The CRT will want to work with the DST sponsor in accordance with its goals and the DST's exit plan – they may choose to sell shortly before the DST's end date, allowing for income to generate for years to the beneficiaries before sale.
I'm very new to learning about DSTs so pardon me if I don't have all the terms correct in my question: Do all DSTs work the same? Do different holding companies do things the same or differently? For example, if there is a liquidation "window," is this common "window for liquidation" a similar structure across holding companies?	DST sponsors can greatly differ in how they operate depending on their size, management processes, and investment strategies. DST governing instruments may specify an exit strategy which can include conditions on timing and price of sale, but there is no single liquidation "window" for all.

Is there a reason you are only discussing transferring DST interests to a CRT or DAF and not to a CGA?	You can transfer them to CGAs as well - though, completely anecdotally, I would estimate 75% are outright or DAF donations, then 24% would be CRTs and then 1% may be CGAs. So possible - not likely. I have never seen one funding a CGA in my 35-year career.
You don't want to be holding rental property that is not generating revenue.	Agreed. That is a big problem even for outright gifts, let alone for life income gifts where there is a payment obligation.
Current leases often have renewal clauses with limitations on rent increases.	If the DST's leases have such clauses, these can allow for a steady stream of income to beneficiaries. This goes to trustee responsibility to carefully review lease terms and make informed decisions in accordance with the governing instrument. These clauses can limit the upside to beneficiaries and/or charities because of minimal income growth.
Assuming that my organization chooses to NOT accept DST contributions, can we work through you to accept these types of gifts and make distributions to us when applicable?	Yes, Dechomai can be named as a beneficiary of a CRT that will receive DST interest. The CRT can be combined with the DAF structure, so income generated to the charity beneficiary/DAF can be granted to other charities
Is there a way you could just briefly compare and contrast DSTs and CRTs? We don't usually hear questions about DSTs being used as a charitable instrument we usually get from less charitably minded folks "Why would I do a CRT when I can do a DST".	DSTs are real estate investment vehicles that CAN be used for charitable giving, while CRTs are established for the purpose of making charitable gifts and generating income. Real estate investors may seek to initiate a 1031 exchange and roll proceeds into a DST to defer capital gains as part of an investment strategy. But transferring DST interest to charity can allow for an avoidance of some capital gains PLUS a charitable deduction and an income stream

Could you give a real life example of funding a CRT with a DST interest? Is the CRUT a Flip, NI, NIMCRUT? Seems as though there would be a concern that income from the CRT while holding the DST interest would not be consistent until the DST interest is liquidated. Thoughts?	Flip-CRUTs and NIMCRUTs may allow for more flexibility on payouts, which might make them better options than standard CRTs. The provisions in the DST governing instrument on leases and rental income can allow for a steady income stream to a CRUT or a CRAT for many years until the CRT sells the interest ahead of the DST's termination date.
Does due diligence include an environmental study?	Not really - unless it is something super wacky which would be odd. The DST itself provides liability protection. So it is more about understanding the asset, debt (hopefully none), the holding period, likely cash flow, etc.
What is the best type of asset to use here?	DST properties that generate steady income, such as rental income from quality commercial properties. It's also important to look at DST interests with steady tenant leases (tenants can be nationally known stable companies), and sustainable maintenance costs for the CRT
Should my charity consider accepting gifts of real estate into a DST as an alternative to accepting the gifts into a Single Member LLC?	I have never seen a charity do this and might be overly complex. The Single Member LLC is a much simpler approach with all the advantages (and none of the disadvantages that I can see)
Does the attorney/real estate exec offer these as option? How would donor consider DST?	Real estate professionals, tax advisors, and estate planning attorneys may recommend DSTs as part of investment strategies or to achieve estate planning objectives. Often, these types of donors who are well versed in real estate investments may be familiar and seeking out this option to diversify their investment portfolio or avoid capital gains.
The Delaware statute says beneficial ownership is freely transferable, nothing specific as to bene designation, but this would imply yes.	DST interest can be freely transferred at death, per Delaware Code Title 12 § 3805(d). This doesn't necessarily make sense in the charitable space. Transferring DST interest is to defer gain, while at death there is a basis adjustment.
Why is the trustee so limited as to his powers?	The DST must meet the IRS's requirements on "like-kind" exchanges for tax-deferred treatment. This requires the Trustee to operate the DST as a passive investment. Additionally, the Trustee's limitation of powers protects investments and beneficiaries.

If beneficial interest is transferable in fractional amounts, a donor could contribute a portion of her interest in a DST to a remainder trust, while accepting gain recognition on the other portion.	This is worth considering, particularly if it is a larger interest that would still be material even if split between a CRT and donor-retained interest.
If DST interest is being contributed to a DAF, is there an immediate charitable deduction? Is it based on FMV?	Yes, and it would be based on FMV of the DST interest at the time of contribution. The DST property must meet the requirements for 1031 or DST holding requirements to get the charitable deduction
Can you explain how a business real-estate that is tax-free (let's say 2 buildings that are pretty well depreciated) and one has a verbal agreement for purchase and the other building seems less likely to sell (perhaps bargain sale) and may be gifted to charity. What would be the best way to transfer ownership for these and reduce tax/capital gains? What, if any, tax liability would the charity have?	Probably no tax liability for the charity, assuming the buildings are debt free and no state or local property and transfer taxes. It is common for commercial real estate to be owned inside an LLC (like DSTs in this respect). So, the donation often happens by transfer of the LLC, rather than a transfer of title. This means the legal owner of the real estate doesn't change – it is still the LLC. So, leases, utilities, property management, etc. don't need to be updated either.
If I have a life estate gift prospect, could I come to Charitable Solutions to help facilitate?	Yes, we have received many life estate gifts.
Could you please explain why someone would want to put a DST in between a gift of real estate to a CRT? Like, why wouldn't they just gift the real estate to the CRT to receive income? Is it the full deferral of the cap gains?	Typically, the DST and CRT go hand in hand. The CRT can be established shortly after joining in the DST offering but after enough time to meet the 1031 exchange holding requirements. This is likely to be done by real estate investors who are looking for the additional charitable deduction and an income stream generated to charities and other named beneficiaries.
Could a DST interest donated to a CGA be liquidated immediately with proceeds invested in the CGA Pool investments?	In theory yes, but practical limitations mean that there is often not an immediate opportunity, unless the donation happens shortly before an expected liquidity event inside the DST.

How does the appraisal of the real estate and in the DST fit into this process as well as any potential environmental concerns? This is a very new concept for me.	Donor will still need a qualified appraisal of the donated DST interest to claim a tax deduction – normal 8283 rules apply. Appraisals on the individual real estate parcels held by the DST will be useful for charities as part of due diligence before acceptance (including scanning for environmental concerns).
Since the expected life of a typical DST is limited, is there a way for a donor to retain a portion of ending value, rather than all of it going to the charity?	Yes - probably via a fractional donation of the DST interest.
Stated differently, can a donor retain more than X years' income from the DST?	I would think the simplest way to do that would be donating only a portion of the DST interest to charity, and retaining the rest.
When a DST interest is sold inside a CRT, is the CRT taxed on the Capital Gain at that point, or do the Capital Gains simply go into the CG bucket in the four-tier accounting system inside the CRT?	Into the four-tier accounting system inside the CRT – the gain from DST sale will be realized in part, over time.
Isn't capital gain tax exposure avoided either because of step-up on death or donation to CRT?	Generally yes. Step-up of course mitigates gain realized by heirs. Donation to a CRT will not entirely avoid capital gain, but should reduce the amount realized in any single tax year.
For tax purposes, how much is the FMV of the property donated impacted by the fact that it is in a DST?	FMV of the property can be reduced since it is illiquid in a DST and not readily converted into a marketable asset. Income generated and the timing of the appraisal (considering market factors and interests rates) can play a part as well.
Can you speak about how Charitable Solutions works with donors who would like to give real estate to Dechomai Foundation that is not held in a DST?	Charitable Solutions administers the operations of Dechomai, a 501(c)(3) public charity DAF sponsor. Donors can gift appreciated real estate assets to the DAF for an avoidance of capital gains and a charitable deduction, allowing for the DAF to later sell the real estate for funds to go to the donor’s recommended charity beneficiary
Is there a viable secondary market for the sale of DST interests by a CRT Trustee?	Some wealth management and investment firms have created secondary markets to help find buyers of DST interests, and they may be able to assist a CRT who seeks to sell DST interest early if the need arises

What's the reason debt is a consideration for not gifting a DST interest into a CRT?	Debt on a real estate asset or DST property can disqualify the CRT, along with triggering a bargain sale for donors.